

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

CHICHESTER EDUCATION ASSOCIATION :
PSEA/NEA :
 :
 v. : CASE NO. PERA-C-21-279-E
 :
CHICHESTER SCHOOL DISTRICT :

PROPOSED DECISION AND ORDER

On December 20, 2021, the Chichester Education Association (Union, Association or CEA) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the Chichester School District (District) violated Section 1201(a)(5) of the Public Employe Relations Act (Act or PERA). The Union specifically alleged that the District unilaterally diverted the bargaining unit work of the In-School Suspension Coordinator (ISSC) at the Middle School to a non-bargaining unit "Administrator." On September 1, 2022, this examiner issued a proposed decision and order sustaining the charge. On February 21, 2023, after reviewing the District's exceptions and the Union's response thereto, the Board issued an Order Directing Remand to Examiner for Further Proceedings. In its Remand Order, the Board directed this examiner to determine "whether the Association has met its burden of proving that the District unilaterally transferred the work of the ISS Coordinator to Mr. Stankavage in his role as the Administrator of Restorative Practices." The verb tense of the Board's directive indicates that I base this limited determination on the existing record. I did not request or allow briefs from the parties on remand.

The examiner, based upon all matters of record, makes the following:

AMENDED FINDINGS OF FACT¹

3. Nancy Dunn is a Middle School Spanish teacher at the District, and she is the President of the Association. President Dunn testified to the history of the Middle School ISS Coordinator position based on her presence at the Middle School. President Dunn credibly testified and established that faculty and administration jointly determined that the District needed a disciplinary practice at the Middle School that did not place students out of the building, as a result of discipline, where those students would not receive any educational services. The teachers and building administration developed a proposal and presented it to the Superintendent. (N.T. 14-18, 69)

4. Prior to 2019, In-School suspension at the Middle School was proctored by a Middle School building substitute or a teacher during his/her duty period. There was no ISSC, and there were no restorative practices at this time. In 2019, Justin Shivone was a 7th-grade social studies teacher at the Middle School in the bargaining unit. Prior to June 2019, he developed a

¹ The Findings of Fact contained in the Proposed Decision and Order at Case No. PERA-C-21-279-E, dated September 1, 2022, **as amended herein**, are incorporated by reference into this second Proposed Decision and Order at the same case number.

detailed proposal for the ISS program. Based on Mr. Shivone's proposal, the District created the position of ISS Coordinator. On June 19, 2019, the District posted the position of ISSC for a bargaining unit member. At a "Committee-of-the-Whole" meeting among school board members on September 10, 2019, the school board awarded the position of ISSC to Mr. Shivone for the 2019-2020 school year, and he resigned his teaching position. He held that position for 2 school years until June 2021, as a bargaining unit member. (N.T. 16-18, 46, 53-54, 63, 68, 71-72, 86-87; Joint Exhibits 10-12, 18)

5. While Mr. Shivone was the bargaining unit member ISSC, he was compensated under the parties' collective bargaining agreement (CBA). He had access to the grievance procedure under the CBA, and his benefits and other terms of employment were governed by the CBA. (N.T. 63, 87)

6. There is no evidence that Mr. Shivone's ISSC proposal, which contains a list of job duties, was officially adopted by the school board. Some of the job duties contained in the proposal were not corroborated by a witness with first-hand knowledge, and both parties' attorneys agreed that it is not a job description. A school-board approved job description for the ISSC was not introduced into evidence at the hearing. Although President Dunn works in the Middle School, there is no testimony that she observed Mr. Shivone perform his ISSC duties or that she supervised Mr. Shivone.² President Dunn did credibly testify, consistent with the ISSC proposal, that she observed Mr. Shivone providing character education and mentoring online during the pandemic, that the character education was his lesson plan, and that he provided supervision for students to work on teacher provided work assignments. Dr. Daniel Nerelli is the Superintendent for the District. Dr. Nerelli credibly confirmed that Mr. Shivone, as the previous ISSC, provided character education. (N.T. 43-46, 48-50, 67; Joint Exhibit 10)

13. As Mr. Shivone was vacating the ISSC position, the administration entered an agreement with some undisclosed person or entity to transfer Mr. Stankavage from his High School Principal position and find a new position for him. Based on Mr. Stankavage's circumstances, the District sought to "infuse him into that ISS room to do some of those restorative practices and oversee K-12." The ISS function is included in this administrator's role and the intended reach was beyond the Middle School. Dr. Gregory Puckett is an Assistant Superintendent. On August 18, 2021, Dr. Puckett emailed staff a letter from Dr. Nerelli. (N.T. 23, 26, 67, 76-77; Joint Exhibit 5)

20. On September 21, 2021, the school board approved the job description for the position of "Administrator for Restorative Practices" as a 12-month position. School psychologists, school counselors, and teachers are not 12-month employees. Counselors and psychologists work 10 days per year more than teachers. The ISSC position has not been abolished, but no one currently occupies that position. The approved job description provides that the essential duties and responsibilities of the Administrator for Restorative Practices include: "Supervis[ing] and effectively run[ning] the Middle School In-School Suspension (ISS) Program." Superintendent Nerelli's testimony credibly corroborated that supervising and running the Middle School ISS program are duties actually performed by the new Administrator for Restorative Practices. (N.T. 73, 80-81, 93; Joint Exhibit 14)

² During cross-examination of Ms. Dunn, the Attorney for the Union recognized that Ms. Dunn was not the ISSC and may have limited first-hand knowledge of the specific ISSC job duties.

DISCUSSION

In answer the Board's assigned question, I conclude that, on the existing record, the Union met its burden of proving, with substantial, competent evidence, that the District unilaterally transferred the work of the ISS Coordinator to Mr. Stankavage in his role as the Administrator of Restorative Practices, even though Mr. Stankavage plans to perform additional duties not previously performed by Mr. Shivone. Dr. Nerelli wrote to President Dunn: "Mr. Stankavage is engaging as an administrator in restorative practices and not merely coordinating ISS in a single building." (F.F. 22) (emphasis added). The clear meaning of Dr. Nerelli's communication to President Dunn is that Mr. Stankavage is indeed performing some, if not all, ISSC duties formerly performed by Mr. Shivone even though not "merely" Middle School ISSC duties. The record shows that the District did not replace Mr. Shivone with a bargaining unit member to perform the work of the ISSC in the Middle School. The failure to replace the ISSC at the Middle School with a bargaining unit member in addition to Dr. Nerelli's statement indicating that Mr. Stankavage is doing at least some, if not all, the duties that Mr. Shivone formerly performed, is direct evidence that Mr. Stankavage is doing the bargaining unit work of the Middle School ISSC. It is not relevant to the legal determination at issue in this case whether Mr. Stankavage performs, or plans to perform, administrative duties above and beyond those formerly performed by Mr. Shivone.

Additionally, President Dunn did credibly testify, consistent with the ISSC proposal, that she observed Mr. Shivone providing character education and mentoring, that the character education was his own lesson plan, and that he provided supervision for students to work on teacher provided work assignments. Dr. Nerelli credibly confirmed that Mr. Shivone, as the Middle School ISSC in the bargaining unit, provided character education, even though that type of instruction does not require a certified teacher. Moreover, in his letter to the staff, Dr. Nerelli stated: "In his new role as Administrator for Restorative Practices, Mr. Stankavage will be overseeing the In-School Suspension Program at the MS, while working with the Equity Committee on collecting and analyzing data as it relates to the district's equity work." (F.F. 14) (emphasis added). Overseeing the ISS program at the Middle School is exactly what Mr. Shivone had done as a bargaining unit member. At a minimum, "overseeing" the ISS program at the Middle School, while not replacing the ISSC with a bargaining unit member, yields the inference that such oversight necessarily requires the overseeing administrator to perform the duties formerly performed by Mr. Shivone as the ISSC. Moreover, the school-board approved job description provides that the essential duties and responsibilities of the Administrator for Restorative Practices include: "Supervis[ing] and effectively run[ning] the Middle School In-School Suspension (ISS) Program." Superintendent Nerelli credibly testified that supervising and running the Middle School ISS program are duties actually performed by the new Administrator for Restorative Practices, consistent with the new job description. Those duties are also consistent with the bargaining unit work of the former Middle School ISSC.

The District does not dispute that Mr. Stankavage, as the Administrator for Restorative Practices, is an administrator who is not in the bargaining unit. Therefore, the transfer of any bargaining unit work to Mr. Stankavage would violate the Act. City of Harrisburg v. PLRB, 605 A.2d 440 (Pa. Cmwlth. 1992). Furthermore, the Commonwealth Court has held that any work exclusively done by the bargaining unit is bargaining unit work, regardless of whether the nature of the work is better suited for a different classification of

employee or bargaining unit. City of Allentown v. PLRB, 851 A.2d 988 (Pa. Cmwlth. 2004). The Allentown Court determined that the City unlawfully reassigned the court liaison officer's (CLO) duties to a civilian by claiming that the clerical duties did not involve law enforcement functions or training. Id. The Court ruled that determining whether job duties constitute bargaining unit work is mutually exclusive of determining whether those same job duties constitute police work and that the work of the CLO position became bargaining unit work when the City assigned a member of the police bargaining unit to the CLO position, performing clerical duties. Id.

Pursuant to City of Allentown, the fact that Mr. Shivone, as the Middle School ISSC, performed mostly proctoring and character education duties, which do not require a teacher certification and which could be performed by a bus driver or an administrator, as suggested by Dr. Nerelli, is irrelevant and immaterial to the determination that the work performed by Mr. Shivone, as the Middle School ISSC, was in fact bargaining unit work. Mr. Shivone performed those duties as the Middle School ISSC while he was in the bargaining unit and the duties of the ISSC at the Middle School became exclusively performed bargaining unit work. Dr. Nerelli testified that Mr. Stankavage is supervising students and running the Middle School ISS program. Both Dr. Nerelli and President Dunn credibly testified that Mr. Shivone had previously done the same work. The District, therefore, unilaterally transferred to Administrator Stankavage the work of supervising/proctoring students in the Middle School ISS program and providing them with character education. Part of the proposal for the ISS program states that the ISSC, a designated mentor, the school resource officer, guidance counselors, child study team members or an administrator could be assigned to provide character education or mentoring. (Joint Exhibit 10 at 5). However, there is no evidence that anyone other than Mr. Shivone provided those services to students while he was the ISSC.

In its post-hearing brief, the District concedes that Mr. Stankavage is doing the work formerly performed by Mr. Shivone. The District argued that the expanded nature of the ISS program beyond the Middle School and the development of restorative practices required an administrator. In its brief, the District stated: "Exhibit J-14 [ARP Job Description] shows the expanded nature of the role, beyond simply coordinating ISS at the Middle School." (District Brief at 7) (emphasis added). The District similarly argued: "the expanded position includes duties and responsibilities well beyond what the rotating teachers and the ISS Coordinator provided, and includes customarily administration tasks such as planning and development of a program, collecting and analyzing data, working with various committees, and keeping abreast of developments in the area." (District Brief at 7-8) (emphasis added).

Both of these arguments show that Mr. Stankavage is doing work formerly done by Mr. Shivone, even though the plan is that he do something more. If the District wishes to remove the duties of the ISSC at the Middle School and give those duties to an administrator, it must bargain the removal of those duties. Moreover, the duties of "planning and development of a program, collecting and analyzing data, working with various committees, and keeping abreast of developments in the area," were duties actually done by bargaining unit teacher Shivone when he developed the proposal for the Middle School ISSC. Mr. Shivone prepared the detailed proposal for the Middle School ISSC, entered into the record as J-10, which shows how he collected and analyzed data, as well as current developments in the area, to develop the program for the District. These duties, therefore, are not necessarily administrative,

even if the ISS program at the Middle School is expanded to other District buildings, and even if the employe "overseeing" the program confers with administrators, as is the case with other bargaining unit members.

I also conclude that the duties of the ISSC in the Middle School were exclusively and historically bargaining unit work. Since before the creation of the Middle School ISSC position, bargaining unit teachers and building teacher substitutes supervised students serving In-School suspension in the Middle School. Also, for the two years between 2019 and 2021, after which the duties were unilaterally transferred to Mr. Stankavage, the student supervising and character education duties of the ISSC in the Middle School were exclusively performed by a bargaining unit member, i.e., Mr. Shivone. Although the District argues that administrators had at times supervised In-School Suspension, the record does not establish with substantial evidence, that administrators served that function at the Middle School prior to Mr. Shivone's time as the Middle School ISSC.

CONCLUSIONS

The hearing examiner, therefore, after due consideration of the foregoing and the record as a whole, concludes and finds as follows:

1. The District is a public employer within the meaning of Section 301(1) of PERA.
2. The Chichester Education Association is an employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.
4. The District unilaterally transferred the exclusively performed bargaining unit duties of the ISSC position in the Middle School to the Administrator for Restorative Practices position currently held by Mr. Stankavage.
5. The District has committed unfair practices within the meaning of Section 1201(a) (5) of PERA.

ORDER

In view of the foregoing and in order to effectuate the policies of the Act, the Examiner

HEREBY ORDERS AND DIRECTS

That the District shall:

1. Cease and desist from refusing to bargain collectively in good faith with the Chichester Education Association which is the exclusive collective bargaining representative of professional employes of the District, including but not limited to discussing of grievances with the exclusive representative.

3. Take the following affirmative action which the Examiner finds necessary to effectuate the policies of PERA:

(a) Immediately return all bargaining unit work performed by the Administrator for Restorative Practices and formerly performed by the ISSC in the Middle School, including proctoring, monitoring, supervising, and character educating ISS students in the Middle School to the professional bargaining unit represented by the Chichester Education Association, restore the status quo ante, and make whole any bargaining unit employees who have been adversely affected due to the District's unfair practices;

(b) Post a copy of this Decision and Order within five (5) days from the effective date hereof in a conspicuous place, readily accessible to its employees, and have the same remain so posted for a period of ten (10) consecutive days;

(c) Furnish to the Board within twenty (20) days of the date hereof satisfactory evidence of compliance with this Decision and Order by completion and filing of the attached Affidavit of Compliance; and

(d) Serve a copy of the attached Affidavit of Compliance upon the Chichester Education Association.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed pursuant to 34 Pa. Code § 95.98(a) within twenty (20) days of the date hereof, this decision and order shall become and be absolute and final.

SIGNED, DATED AND MAILED from Harrisburg, Pennsylvania this fourteenth day of March, 2023.

PENNSYLVANIA LABOR RELATIONS BOARD

/S JACK E. MARINO

Jack E. Marino, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

CHICHESTER EDUCATION ASSOCIATION :
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AFFIDAVIT OF COMPLIANCE

The Chichester School District hereby certifies that it has ceased and desisted from refusing to bargain collectively in good faith with the Chichester Education Association, in violation of Section 1201(a)(5) of the Public Employe Relations Act; that it has immediately returned all bargaining unit work performed by the "Administrator for Restorative Practices" to the professional bargaining unit represented by the Chichester Education Association; that it has restored the status quo ante, and made whole any bargaining unit employes who have been adversely affected due to the District's unfair practices; that it has posted a copy of this Decision and Order as directed therein; and that it has served a copy of this Affidavit of Compliance upon the Chichester Education Association.

Signature/Date

Title

SWORN AND SUBSCRIBED TO before me
the day and year first aforesaid

Signature of Notary Public