

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

CHAMBERSBURG AREA EDUCATION :
ASSOCIATION, PSEA/NEA :
 :
v. : Case No. PERA-C-09-407-E
 :
CHAMBERSBURG AREA SCHOOL DISTRICT :

FINAL ORDER

The Chambersburg Area Education Association, PSEA/NEA (Association) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on November 22, 2010. The Association takes exception to a Proposed Decision and Order (PDO) issued on November 2, 2010, in which the Hearing Examiner dismissed its Charge of Unfair Practices filed against the Chambersburg Area School District (District) for an alleged unilateral removal of bargaining unit work in violation of Section 1201(a)(1) and (5) of the Public Employee Relations Act (PERA). The District filed a response to the exceptions and a supporting brief on December 9, 2010. The Hearing Examiner's Findings of Fact in the PDO are summarized as follows.

The Association represents a bargaining unit of District employees comprised of "all professional employees [of the District] including all classroom teachers, guidance counselors and home and school visitors, librarians, nurses and dental hygienist and head of the nurse department[.]" By the end of the 2008-2009 school year, the District employed counselors and a social worker to provide counseling and social services to students at its Benjamin Chambers, Fayetteville and Hamilton Heights elementary schools. At the beginning of the 2009-2010 school year, the District started using employees of a subcontractor, Manito, Incorporated (Manito) to provide counseling and social services to students at the Benjamin Chambers, Fayetteville and Hamilton Heights elementary schools. On October 8, 2009, the Association filed a charge alleging that that the District committed unfair practices under Section 1201(a)(1) and (5) of the PERA by "unilaterally remov[ing] bargaining unit work without bargaining when [it] made the decision to subcontract new positions for school counselor and social worker to Manito...."

The Hearing Examiner found that the Association failed to sustain its burden of proving that the District acted unilaterally in deciding to contract with Manito, and thus concluded that the Association failed to establish the unfair practice under Section 1201(a)(1) and (5) of PERA. See Fraternal Order of Police, Lodge No. 5 v. City of Philadelphia, 23 PPER ¶ 23152 (Final Order, 1992) (complainant alleging a unilateral transfer of bargaining unit work has the burden of proving the transfer was unilateral); Reynolds Education Association v. Reynolds School District, 37 PPER 111 (Proposed Decision and Order, 2006) (same). In its exceptions to the PDO, the Association argues that the Hearing Examiner erred in determining that there was no evidence to support a finding that the District acted unilaterally in contracting the counseling and social services work to Manito.

Upon review of the record as a whole, the evidence establishes that on May 20, 2009, the Association advised the District of its belief that contracting with Manito would be an unfair practice. (N.T. 11; Association Exhibit 1). The record evidence also indicates that on August 26, 2009, the District contracted with Manito for counseling and social services. (Association Exhibit 4). What is noticeably absent, however, is any evidence of a lack of bargaining between May 20, 2009 and August 26, 2009.

In its brief in support of its exceptions, the Association argues that substantial record evidence exists to support a finding of fact that the District did not bargain prior to the Manito subcontract. The "evidence" that the Association cites as support for such a finding is its own proposed conclusion of law in its post-hearing brief to the Hearing Examiner that the District acted "unilaterally" and its argument in the brief that the District did not, in fact, bargain. However, the Association's statements in its brief that the District acted "unilaterally" is no substitute for actual evidence that

bargaining did not occur. See Electrical Association Inc. v. Steel City Media, 2010 Pa. Dist. & Cnty. Dec. LEXIS 314 (Allegheny County Court of Common Pleas, 2010) (statements made in briefs are not evidence). Further, no inference can be made to support a finding that bargaining did not occur from the fact that the Association initially objected to the District's plan to hire Manito and that Manito was hired three months later. The Association's burden was to prove that the District did not bargain prior to contracting with Manito and it simply failed to carry that burden. On this record, because the substantial, competent evidence supports only speculation of a failure to bargain, we are constrained to dismiss the exceptions and uphold the PDO.

After a thorough review of the exceptions and all matters of record, we are compelled to agree that the Association failed to sustain its burden of proving a unilateral removal of bargaining unit work in violation of Section 1201(a)(1) and (5) of PERA, as alleged in the Charge of Unfair Practices. Accordingly, we shall dismiss the exceptions and make the PDO final.

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employe Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the Chambersburg Area Education Association are hereby dismissed, and the November 2, 2010 Proposed Decision and Order, be and hereby is made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, Anne E. Covey, Member, and James M. Darby, Member, this twenty-fifth day of January, 2011. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within order.