

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

WESTERN WAYNE EDUCATION ASSOCIATION :
 :
 v. : Case No. PERA-C-21-84-E
 :
 WESTERN WAYNE SCHOOL DISTRICT :

PROPOSED DECISION AND ORDER

On May 27, 2021, the Western Wayne Education Association (Association or Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against the Western Wayne School District (District or Employer), alleging that the District violated Section 1201(a)(1) and (5) of the Public Employee Relations Act (PERA or Act) by unilaterally increasing the assignments and duties of the Department Chair positions, which had a demonstrable and severable impact on wages, hours, and working conditions.

On June 17, 2021, the Secretary of the Board issued a Complaint and Notice of Hearing, directing a hearing on November 1, 2021, if necessary. On October 18, 2021, the District filed a Motion to Dismiss the Complaint, alleging that the assignment of new job duties is a matter of inherent managerial prerogative and that any alleged demonstrable and severable impact on wages, hours, and working conditions was premature. On October 25, 2022, the Association filed a response opposing the District's Motion to Dismiss. By order dated October 27, 2021, the District's Motion to Dismiss was denied. The hearing ensued, as scheduled on November 1, 2021, at which time the parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence.¹ The parties each filed separate post-hearing briefs in support of their respective positions on February 22, 2022.

The Hearing Examiner, on the basis of the testimony presented at the hearing and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. The District is a public employer within the meaning of Section 301(1) of PERA. (N.T. 6)
2. The Association is an employe organization within the meaning of Section 301(3) of PERA. (N.T. 6)
3. The Association is the exclusive bargaining representative for a unit of professional employes at the District. (Joint Exhibit 1)
4. The Association and the District are parties to a collective bargaining agreement (CBA) effective 2020 through 2025. (Joint Exhibit 1)
5. The CBA provides, in Exhibit B.2 which is specifically entitled "Extracurricular Activities," for annual pay for the positions of Department Chairs. Department Chairs are bargaining unit teachers who act as liaisons

¹ The hearing was by videoconference due to the ongoing Covid-19 pandemic.

between the administration and the various teachers in each department, specifically with regard to budgeting matters. (N.T. 16-17; Joint Exhibit 1)

6. The CBA provides the same annual pay for each of the 14 Department Chair positions at the District. For the 2020-2021 year, the pay is \$1,924; for 2021-2022, the pay is \$1,980; for 2022-2023, the pay is \$2,038; for 2023-2024, the pay is \$2,098; and for 2024-2025, the pay is \$2,160. (N.T. 19-20; Joint Exhibit 1)

7. The District introduced, as Exhibit D-1, the job description for the Department Chairpersons position, which was dated August 2007. The job description includes a summary for the position, which provides as follows: "[t]o assist the District Administrators and PK-12 teachers in implementing the planned written courses and to prepare, analyze, disseminate and make decisions using student achievement data in order to help improve student learning." (District Exhibit 1)

8. The job description also included a list of primary duties and responsibilities, which provides in relevant part as follows:

- Attend monthly chairpersons' meeting per schedule provided by the district administration.
- Will assist department teachers and elementary generalists with written planned courses in their field, with implementing research-based instructional practices, with curriculum mapping and with developing assessments.
- Shall acquire and review sample copies of texts and other appropriate teaching aids specific to their field, PK-12.
- Shall coordinate, with administration, annual budget requests for their department.
- Will develop and maintain a curriculum resource center including but not limited to professional books and publications, lists of resource persons, announcement of pertinent information on seminars, conferences, workshops, etc...
- Will prepare statistical information requested by the Superintendent, Assistant Superintendent and/or other District Administrators.
- Shall prepare one written article for each District Newsletter. The article must be pertinent to department activities. Examples: Department sponsored assemblies, participation in professional development workshops or seminars, participation in various competitions relative to the department's specific discipline, special field trips or outstanding student or faculty achievement.
- Shall administer the assignment and maintenance of all teaching materials, supplies and equipment.
- Will evaluate and revise curriculum as needed.
- Shall perform other duties as assigned on an as needed basis as determined by the Superintendent, Assistant Superintendent and/or other District Administrators.

(District Exhibit 1)

9. Association President Maria Masankay testified that Exhibit D-1 accurately reflects the duties she performed as a Department Chair in school years prior to August 25, 2021. (N.T. 22-23)

10. Masankay testified that it took her approximately two to three hours per month to perform her duties as a Department Chair during these prior school years. (N.T. 23)

11. Masankay testified that, on or about March 30 or 31, 2021, the District's Assistant to the Superintendent, Cynthia LaRosa, approached her and provided her with a new job description for the Department Chair position. (N.T. 25-26)

12. The Association introduced as Exhibit A-1 the new job description for the Department Chair position, which is dated April 7, 2021 and which includes the following job duties:

- The Department Chair is expected to articulate the goals of the department, both within and without the department, and maintain a climate that is hospitable and encourages faculty engagement, participation, collegiality, and innovation;
- Will attend and collaborate with other department chairs and administration during monthly department chairperson's meetings to ensure consistency of district curriculum and programs;
- Will schedule, coordinate, and attend monthly department meetings and complete required documentation to be submitted to the Assistant Superintendent or their [sic] designee;
- Will work closely and cooperatively with other teachers in the department, building administrators, and instructional services to develop, maintain, implement, and assess the district's instructional programs;
- Shall acquire and review sample copies of texts and other appropriate teaching aids specific to their field, PK-12; shall share information with Superintendent, Assistant Superintendent, and/or other District Administrators;
- Shall administer the assignment and maintenance of all teaching materials, supplies, and equipment; including maintaining an accurate inventory;
- Shall prepare annual budget requests for their department; communicate budget requests to administration;
- Will evaluate and participate in the revision of the locally written planned course of instruction curricular documents as needed (according to a rolling 3-year revision protocol), including leading the department's curriculum team and corresponding communication with the administration;
- Will act as the first reviewer for all locally written curricular documents, including curriculum maps and unit plans;
- Will create a department virtual classroom (i.e.-Google Classroom) to provide professional guidance related to the implementation of research-based instructional practices and share professional growth opportunities as well as current trends and methodologies within the specific curricular area with department members;
- Will prepare data analysis for their content area to share with their department, Administration, Assistant Superintendent, and/or Superintendent;
- Will utilize data to assess the efficiency and effectiveness of existing programs in attaining high levels of academic performance;
- Will plan and conduct meetings using available data resources (performance data, attendance, the culture of the department);

- Shall prepare one presentation annually at the Board Meeting and submit a quarterly board report to administration;
- Will prepare and deliver a Department Presentation for Curriculum Night and Open House;
- Will provide ongoing effective professional guidance and support to new staff and beginning teachers;
- Will assists [sic] with the coordination of effective communication to a range of audiences the goals and tasks of the department: faculty, support staff, students, community;
- Will prepare schedules for visiting student teachers, observers, etc. for administrative review; and
- Shall perform other duties as assigned by the Superintendent, Assistant Superintendent, and/or other District Administrators...

(Association Exhibit 1)

13. Masankay testified that the new job description contained a number of duties and responsibilities that were not included in the previous job description. She also testified that the duties were not equivalent to the position's pay. She further stated that some of the duties were performed by administrators in the past. (N.T. 30-31, 52-55)

14. Masankay met with LaRosa to discuss the new job description on April 6, 2021, which was the day before the School Board was scheduled to approve it. LaRosa indicated that she did not feel like it was a change, and Masankay disagreed with such a notion. (N.T. 56)

15. On April 7, 2021, the District's School Board approved the new job description for the Department Chair position effective from the start of the 2021-2022 school year. (N.T. 57; Exhibit D-3)

16. The District did not bargain the new job description for the Department Chair position with the Association before the School Board approved it on April 7, 2021. (N.T. 58)

17. On or about April 15 or 16, 2021, the Association held an internal meeting, during which the Association created a document and outlined its specific concerns regarding each bullet point of the new job description. Then, at some point thereafter, during the spring of 2021, Masankay provided the document to LaRosa and advised her that these were the Association's issues with the new job description. (N.T. 69-71; Exhibit A-2)

18. Masankay testified that she specifically raised the issue of additional work hours and pay. For example, with regard to the second bullet of the new job description, Masankay wrote "[t]his would mean more meetings and time therefore pay should reflect this." In addition, with regard to bullet five of the new job description, she wrote "[t]his was not in the original and individuals have been getting paid for being present at curriculum night. Open House presentations were never required. This means more time therefore more pay..." (N.T. 71-73; Exhibit A-2)

19. LaRosa subsequently provided a response to the Association's concerns in May 2021, essentially rejecting all of the Association's points. LaRosa did not agree to any wage increases or changes, nor did she agree to alter the job duties or make any counteroffers. (N.T. 73-76, 88; Exhibit D-4)

20. Masankay testified that she next met with LaRosa and the District's Superintendent, Matthew Barrett, in August 2021, which was before the 2021-2022 school year began. During that meeting, the District indicated that it wanted the instant unfair practices charge to be resolved, and the Association wanted to change the wording of the new job description. There was no further dialogue regarding the new job description at that meeting. (N.T. 88-90)

21. Near the end of September 2021, after the beginning of the 2021-2022 school year, Masankay met again with LaRosa and Barrett. During that meeting, there was no resolution regarding the new job description. The District did not make any counteroffers to change the pay for the Department Chairs or change the job description. (N.T. 90-92)

22. Masankay testified that she began performing the new job duties for her Department Chair position in the science department after the start of the 2021-2022 school year in August 2021. She explained that she did not have to perform these duties in the past. She estimated that she had to perform an additional two hours in September 2021 and an additional three to four hours in October 2021 beyond what she usually had to work in prior years. (N.T. 93-96)

DISCUSSION

The Association has alleged that the District violated Section 1201(a)(1) and (5) of the Act² by unilaterally increasing the assignments and duties of the Department Chair positions, which had a demonstrable and severable impact on wages, hours, and working conditions. The District argues that the charge should be dismissed because the adoption of a new job description and the corresponding assignment of duties for the Department Chairs is a managerial prerogative under the Act. Likewise, the District asserts that the charge should be dismissed because the Association has not sustained its burden of proving the elements of an impact bargaining claim. The District further contends that the charge was premature because the new job description did not go into effect until the start of the next school year in August 2021.

Section 1505 of PERA provides that "[n]o petition or charge shall be entertained which relates to acts which occurred or statements which were made more than four months prior to the filing of the petition or charge." 43 P.S. § 1101.1505. As a general matter, the nature of the unfair practice claim alleged frames the limitations period for that cause of action. Upper Gwynedd Township Police Dept. v. Upper Gwynedd Township, 32 PPER § 32101 (Final Order, 2001). For a refusal to bargain a change in terms and conditions of employment, notice to the union of the implementation of the challenged policy or directive triggers the statute of limitations. Harmar Township Police Wage and Policy Committee v. Harmar Township, 33 PPER § 33025 (Final Order, 2001). Implementation is the date when the directive becomes

² Section 1201(a) of PERA provides that "[p]ublic employers, their agents or representatives are prohibited from: (1) Interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of this act...(5) Refusing to bargain collectively in good faith with an employe representative which is the exclusive representative of employes in an appropriate unit, including but not limited to the discussing of grievances with the exclusive representative. 43 P.S. § 1101.1201.

operational and serves to guide the conduct of employees, even though no employees may have been disciplined or corrected for failure to abide by the directive. *Id.* Mere statement of future intent to engage in activity, which arguably would constitute an unfair labor practice, does not constitute an unfair labor practice for engaging in that activity. Upper Gwynedd Township, at 264. The Board will dismiss a charge as prematurely filed where the complainant files the charge prior to actual implementation. City of Allentown, 19 PPER § 19190 (Final Order, 1988).

In this case, the record shows that the Association's charge was premature. The Association's President Maria Masankay testified that, on or about March 30 or 31, 2021, the District's Assistant to the Superintendent, Cynthia LaRosa, approached her and provided her with a new job description for the Department Chair position. Masankay testified that the new job description contained a number of duties and responsibilities that were not included in the previous job description. Masankay met with LaRosa to discuss the new job description on April 6, 2021, which was the day before the School Board was scheduled to approve it. LaRosa indicated that she did not feel like it was a change, and Masankay disagreed with such a notion. Then, on April 7, 2021, the District's School Board approved the new job description for the Department Chair position effective from the start of the 2021-2022 school year. On May 27, 2021, the Association filed the instant charge of unfair practices alleging a unilateral change in the assignments and duties of the Department Chair positions, which had a demonstrable and severable impact on wages, hours, and working conditions. However, Masankay confirmed that she did not begin performing the new job duties for her Department Chair position in the science department until after the start of the 2021-2022 school year in August 2021. She explained that she did not have to perform these duties in the past.

The timeline set forth directly above clearly shows that the Association filed its charge on May 27, 2021, which was well before the new job description was actually implemented in August 2021 for the 2021-2022 school year. The Association did not file any amendments to the charge at any time after the start of the 2021-2022 school year. Nor did the Association attempt to amend its charge on the record during the hearing on November 1, 2021 or any other time within the four-month limitations period following August 2021. Thus, the Association did not file any unfair practice charges or amended charges after the directive at issue became effective. As such, the charge was plainly premature and must be dismissed as a matter of law. See Pennsylvania State Troopers Ass'n v. Commonwealth of Pennsylvania, Pennsylvania State Police, 35 PPER 114 (Final Order, 2004) (holding that the Board and its hearing examiners do not have jurisdiction to entertain premature claims that are not ripe for adjudication).

In its post-hearing brief, the Association argues that the charge was not premature because the charge was filed after the School Board approved the new job description on April 7, 2021. The Association contends that the new job description became operational at that point and served to guide the conduct of employees because two employees allegedly withdrew their applications and quit their positions around that time. See Association's Brief at 25. The Association's reliance on this point, however, is misplaced. Indeed, the School Board's approval of the new job description was not effective, by its own terms, until the start of the 2021-2022 school year, which did not occur until August 2021, well after the charge was filed in May 2021. Further, the Association also maintains that the charge should

not be dismissed as premature because this Board "always addresses events that post-date the filing of a ULP charge if those events relate to the unfair labor practice alleged in the ULP charge." See Association's brief at 24. The Association posits that the Board always considers post-charge conduct when the overall course of conduct at issue in a charge concludes after the charge is filed, and when the post-charge conduct events are related to the unfair practices alleged in the charge. See Association's brief at 24-25. The Association points to the Board's decisions in Philadelphia Department of Recreation, 14 PPER ¶ 14017 (Final Order, 1982) and Pennsylvania Department of Transportation, 19 PPER ¶ 19137 (Final Order, 1988) as support for these propositions. Once again, however, the Association's reliance on these cases is misplaced.

First of all, the Board's decision in Philadelphia Department of Recreation is wholly inapplicable to the instant matter because that case involved an allegation of discrimination or retaliation for protected concerted activity. In fact, the Board specifically noted that the hearing examiner placed limited reliance on events that occurred after the filing of the charge, but not for the purpose of establishing that the employee's transfer was itself an unfair practice. Instead, the purpose was to shed light on the employer's motives regarding the unfair practice alleged. In this case, the Association has not alleged that the District discriminated or retaliated against any employees, nor is the Association relying on events that post-date the charge simply to show intent. To the contrary, the Association concedes in multiple places of its post-hearing brief that the actual alleged unfair practice, i.e. the new job description and corresponding assignment of additional duties, did not go into effect until the start of the new school year in August 2021. This critical fact also distinguishes the instant case from the Board's decision in Pennsylvania Department of Transportation.

In Pennsylvania Department of Transportation, the Board found that the Commonwealth of Pennsylvania committed an unfair practice by refusing to bargain in good faith with regard to a subcontract the Commonwealth entered with an independent third party. In that case, the Board opined that the events that occurred after the filing of the charge did not demonstrate a separate unfair practice. Rather, the signing and implementation of the subcontract was part of the overall course of conduct by the Commonwealth of a refusal to bargain over its intention to subcontract and ultimate entry into the contract. Once again, the Board permitted the post-charge conduct to show evidence of the employer's intent, i.e. that the employer never intended to achieve an agreement or meeting of the minds regarding the subcontracting issue. This is dramatically different from the instant case where the Association has alleged an unfair practice for the District's unilateral implementation of the new job description and duties. And, while the Association included allegations of bad faith bargaining in its charge, the record shows that the District merely announced a statement of future intent to engage in activity, which arguably would constitute an unfair practice, in April 2021; however, this announcement did not constitute an unfair practice for engaging in that activity. As a result, there was no alleged unfair practice that occurred prior to the filing of the charge, which could give rise to an overall course of conduct by the District that would enable the Board to consider the post-charge events. To be sure, the new job description was not implemented until August 2021, which was the date when the directive became operational and served to guide the conduct of employees. The Association President herself confirmed that she did not begin performing the new additional duties until after August 2021.

At least one other Board Hearing Examiner has reached the same conclusion. In Dospoy v. Harmony Area School District, 41 PPER 150 (Proposed Decision and Order, 2010), Hearing Examiner Jack Marino held that a charge filed on October 16, 2009 was timely because it was within four months of an employe's termination at the close of the 2008-2009 school year on June 30, 2009. In that case, the school board voted to eliminate the employe's position at a meeting on April 27, 2009, and the superintendent notified the employe on May 1, 2009 that his position was eliminated and that he was furloughed effective at the end of the 2008-2009 school year. In reaching his determination, Hearing Examiner Marino opined that filing the charge any time between April 27, 2009 and June 30, 2009 would have been premature because the school board could have changed its mind any time before the employe's position was eliminated and he was furloughed. In the same vein, the District in this case also could have changed its mind any time between the approval of the new job description on April 7, 2021 and its actual implementation at the start of the 2021-2022 school year in August 2021. That the District did not change its mind does not transform the Association's premature charge of unfair practices into a timely one. Simply put, the Association's failure to file an amended charge following actual implementation of the new job description and additional duties in August 2021 is fatal to its case.

Finally, the District filed a Motion to Dismiss the Complaint on October 18, 2021, alleging that the assignment of new job duties is a matter of inherent managerial prerogative and that any alleged demonstrable and severable impact on wages, hours, and working conditions was premature because the new job description did not go into effect until the start of the next school year in August 2021. The Association filed a response opposing the District's Motion to Dismiss on October 25, 2021. The District's Motion to Dismiss was denied on October 27, 2021. The District's Motion was denied at that time because the Association correctly argued that its charge of unfair practices alleged that the District unilaterally increased the assignments and duties of the Department Chairs and put the new job description into effect on or about April 7, 2021. Thus, the parties had filed competing averments, which required an evidentiary hearing to resolve the issue.³ Similarly, as previously set forth above, the District did not implement the new job description and corresponding assignment of duties until the start of the 2021-2022 school year in August 2021. Therefore, the Association was still well within the Act's four-month limitations period in October 2021 to timely amend its charge. Nevertheless, the Association did not amend the charge. Accordingly, the charge is not ripe for adjudication, and the Board is without jurisdiction to reach the merits of the Association's claims.

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.

³ The District's Motion was not denied because of a ruling on the actual merits of the Motion. Indeed, the Association knew the premature issue was still viable, as the Association dedicated a significant portion of its post-hearing brief to that discussion.

2. The 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 has not committed unfair practices in violation of Section 1201(a) (1) or (5) of PERA.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the complaint is rescinded, and the charge is dismissed.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

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

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this 15th day of March, 2022.

PENNSYLVANIA LABOR RELATIONS BOARD

/s/ John Pozniak
John Pozniak, Hearing Examiner