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Harrisburg City School District : Outsourced Bargaining Unit Work  
(District) : (Grievance) BOM Case: 2015-0466  
:  
and :  
:  
Harrisburg Education Assoc. :  
(Association) : Mark Lamont, Arbitrator

**Opinion and Award**

By way of a letter from the Pennsylvania Bureau of Mediation dated September 28, 2015, the undersigned was notified of his selection by the parties to serve as the Arbitrator in the above captioned matter.

A hearing was held 10:00 a.m. on Thursday, March 10, 2016 at the District's Administration Building, 1601 State Street, Harrisburg, PA 17103.

Appearing for the District: Richard Galtman, Esq.  
Appearing for the Association: Joseph Canamucio, Esq.

Also appearing for the District: Lawrence D Freeman, HR Director, Samara Scott  
Also appearing for the Association: Carolyn Funkhouser – UniServ, Jody Barksdale, HEA Pres.  
Susan Gibson, Sherri Magnuson

District Witness: Lance D Freeman  
Association Witness: Sherri Magnuson, Susan Gibson, Jody Barksdale

The parties were given a full opportunity to present testimony, exhibits and arguments in support of their respective positions. The Association and the District agreed to provide post hearing briefs. Post hearing briefs were received and reviewed.

**Issue**

The above captioned grievance was filed on June 25, 2015 by the Harrisburg Education Association (Association) as a result of the District's action in contracting with The Camelot Schools of Pennsylvania (Camelot) to provide Alternative Education Programs (AEP) for the District. The Association asserts that the District's action is in violation of the Collective Bargaining Agreement (CBA).

The District maintains that it acted in accordance with management rights and past practice; therefore, not in violation of the CBA, or a violation of the Public Employees Relations Act (PERA).

The parties' inability to resolve differences over the question of the District's contracting AEP services results in this arbitration.

## **Background**

### **Association**

On February 7, 2011 Board meeting, an agenda item was introduced that proposed contracting with Phase 4 Learning Center for the remainder of the 2010-2011 school year. Ms. Magnuson spoke out against the item. This item was tabled by the Board, but appeared on the agenda again on the Board's March 7, 2011 meeting. Again, Ms. Magnuson spoke out against the item. The Board tabled the item. It is unclear whether the District executed such an agreement.

On May 16, 2011, the District introduced an agenda item calling for the alteration of the AEP that included a recommendation to contract with Wordsworth Academy to become the service provider for its AEP. Ms. Magnuson, the Association President at the time spoke out against this agenda item. The item was tabled, but approved on the Board's June 6, 2011, meeting. The BU teachers returned to classrooms throughout the District, and the students were mainstreamed into regular classrooms.

On August 15, 2011 Board meeting, two items were included on the agenda: "Revised 2011-2012 Contract with Wordsworth Academy" and "2011-2012 Contract with Wordsworth Academy for Alternative Education for Disruptive Youth". Ms Magnuson spoke out against these items. The Board tabled both items.

On September 19, 2011, and October 3, 2011 the Board held meetings where items "Status of Wordsworth Academy Agreement", and Status of Wordsworth Contract" appeared on the agenda and no action was taken at either meeting. On October 17, 2011, the Board approved an agenda item titled "Approval of Contract with Wordsworth Academy for Alternative Education. It is unclear if the District ever executed such an agreement.

On August 12, 2013, the Board approved a contract with Success Schools, LLC to provide alternative educational services to students sent there by the District. The services were provided at their place of business at 1745 North Cameron Street in Harrisburg.

On June 15, 2015, the Board passed the "Camelot Alternative Ed Program". The contract calls for Camelot Schools of Pennsylvania, LLC to provide alternative education services and special education services to certain District students. The services are provided at the District's Hamilton Elementary School along with District security, transportation, books, computers,

materials, food service, nursing, medical services, physical education, foreign language services, maintenance, custodial services and more.

On June 25, 2015, the Association filed a grievance alleging that the District violated the CBA by outsourcing classroom teaching work in a new in-house arrangement with Camelot. The Association's bargaining unit (BU) members performed as classroom teachers in the District's in-house AEP since its inception. The only difference between Hamilton and other District schools is that teachers at Hamilton work for Camelot. The District violated the CBA by outsourcing in-house BU work to a private entity.

The outsourcing violates the CBA because it jeopardizes the Association's status as exclusive bargaining representative. Implied in the recognition clause is a commitment by the District to maintain a relationship between the BU and the work typically assigned to it: teaching services. Providing teaching services to District students, including District students who are taught at Hamilton, is squarely within the province of the BU represented by the Association, and that it cannot be delegated to outside personnel without the consent of the Association as exclusive representative.

The outsourcing was not consistent with any past practice. While the District has used the services of private companies in the past, no other contract has attempted to simply replace professional employees with employees of a private company. No past practice supports this blatant outsourcing of bargaining unit work.

### District

During the 2010-2011 school year, with the knowledge of the Association,<sup>1</sup> the District's governing body (School Board) began to consider the alteration of their AEP program. The District's in-house AEP program came to a close in the 2010-2011 school year. The students were transitioned into regular classrooms and the affected faculty was reassigned to other assignments within the District.

The District's Superintendent presented the Board with a memo accompanied with the resolution for the alteration of the AEP program on May 16, 2011<sup>2</sup>. This action was the result of District management belief that A Chance To Succeed (ACTS) was not meeting the needs of the students educationally, or emotionally. A new and substantially different approach was necessary to include specific needs of each student. Instead of placing all alternative education students in one program and location, the District plans to enter into agreements with multiple external providers to have options for placement and education. The resolution recommended

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<sup>1</sup> Sherri Magnuson regularly attended School Board meetings in her capacity as Association President NT 22:22-25; NT 23: 1-5. The minutes from the School Board meetings on February 7, 2011 and March 7, 2011 confirm that Ms Magnuson was present at School Board meetings mentioned herein. See Exhibit D-1, p.3, and Exhibit D-3, p.3.

<sup>2</sup> District Exhibit #5

utilizing the services of Wordsworth<sup>3</sup>. The Board ultimately approved the services of Wordsworth on the November, 2011 meeting<sup>4</sup>.

Subsequently, the Board sought to seek the AEP services of Success Schools which appeared in the August 12, 2013 Board agenda, item 9.3 C<sup>5</sup>, and the Behavioral and Education Services Agreement<sup>6</sup> with Success Schools was approved.

The Association failed to assert any substantive provision of the CBA had been violated by the District's action to contract out its AEP. Moreover, the determination of education services – AEP in this instance, is a matter of managerial prerogative.

The work in question, AEP – is not exclusive to the bargaining unit and has not been since at least the 2011-2012 school year. The District has continuously contracted with outside contractors for AEP for at least the last four years.

The contract with Camelot is just a continuation of this practice. A practice carried out by the District with the Association's knowledge and acquiescence since its inception. As such, the Association has failed to establish a violation of the CBA or a right to any remedy thereupon.

No substantive right exists under the parties' CBA as to the designation of students into AEP or as to the provisions of such services. The CBA itself is silent as to this issue. Therefore, the Association has failed to meet its burden of asserting a viable grievance under the CBA.

The District's provision of AEP clearly is a managerial decision, which is a matter of "inherent managerial policy" under Section 702 of PERA. At no time did the District bargain away its right to exercise such managerial discretion. Moreover, the District retained its right to make such decisions of inherent managerial policy by virtue of Article I, section 2, and Article X, section 4 of the CBA.

For the Association to prevail with their assertions under PERA, it must be able to establish that the claimed work was exclusive to the bargaining unit. Such work is non-existent in the bargaining unit, and has not been since the 2011-2012 school year. The evidence proves that the work in question was not exclusive to the bargaining unit at the time the District contracted with Camelot. Therefore, the Association cannot make a claim of a violation under PERA.

The District acted in accordance with a change in paradigm expressly announced by the Superintendent in May of 2011. The proposed change was discussed by the Board early in 2011, and adopted in June of 2011. The Association was well aware of the District's actions.

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<sup>3</sup> District Exhibit #6

<sup>4</sup> District Exhibit #11

<sup>5</sup> District Exhibit #12

<sup>6</sup> District Exhibit #13

The Association offered no evidence in the record that it formally objected to the District's actions, or filed a grievance, or lodged a complaint, or even demanded bargaining over such issues at any time during those four years. The contract with Camelot approved by the District in June of 2015 was consistent with the established past practice.

The Association's grievance is untimely. Article IX, section 1 of the CBA states that a grievance must be filed within 15 workdays of the event giving rise to the grievance. Section 2 of the article states unequivocally that the grievant's failure to meet the requirements stated in section 1 shall result in the action on the grievance deemed terminated and the last decision made deemed final. Section 4 of the article states that the arbitrator shall in no way alter, modify, change, amend, add to, or subtract from the provisions of this agreement.

### Opinion

The Association has presented a convincing argument. The District contracted with Wordsworth Academy as the service provider for the District's AEP for the 2011-2012 and 2012-2013 school years. Then the District contracted with Success Schools for the 2013-2014 and 2014-2015 school years for its AEP. Both service providers were located in a non-District property. In fact, they had the same address: 1745 North Cameron Street in Harrisburg.

Thereafter, the Board entered into an agreement with Camelot Schools of Pennsylvania, LLC on June 15, 2015. Unlike the prior two service providers, Camelot leased space at the District's Hamilton Elementary School, bringing the AEP back on District property, which in itself may not raise concerns. But, the fact that the District also provides legal advice, support, and representation furnished by the District's General Counsel<sup>7</sup>, school security, transportation, textbooks, computers, materials, food service, services to homebound, and hospitalized students, nursing services, physical education, foreign language services, maintenance, utilities, janitorial services, trash removal and recycling<sup>8</sup> makes the arrangement with Camelot an in-house AEP in the eyes of the Association. The only discernible difference from the former in-house AEP is the presence of private management replacing District management, and Camelot teachers replacing BU teachers.

The Association viewed the new contract with Camelot as an in-house AEP, just as the AEP was from its inception up until the 2011-2012 school year. This resulted in the Association filing this grievance. The arrangement with Camelot is something the Association never envisioned. The Association looked at the arrangement with Camelot and looked at the District's move as ripe to file a grievance, and did so.

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<sup>7</sup> Assoc Exhibit #2, p 8

<sup>8</sup> Assoc Exhibit #2, p 11-14

Now the Association's president at the time of the District's decision spoke out against outsourcing the AEP. However, there was no formal action taken by the Association in a timely fashion – either the filing of a grievance or an Unfair Labor Practice (ULP).

A timely grievance should have been filed within 15 days of the Board approval of Wordsworth as the service provider for the AEP...

**Article IX, Section 1, Step 1** Any employee who believes that a justifiable complaint has arisen out of the interpretation and application of the terms of this Agreement may, in writing and on a form provided by the employer, present such grievance to their principal within fifteen (15) workdays of the event giving rise to such grievance. If the same grievance affects two (2) or more employees, such grievance may be instituted by the Association on behalf of such employees.<sup>9</sup>

Likewise with a filing of a ULP – the filing is to take place within four months of the charged action.

The CBA limits the remedial discretion of the arbitrator in this matter:

**Article IX, Section 4.** The arbitrator shall in no way alter, modify, change, amend, add to, or subtract from, the provisions of this agreement.<sup>10</sup>

That said, without any formal action against the outsourcing of the AEP, the District went about its outsourcing plan to the point that it became a past practice. What was once an activity within the BU is now a matter of management prerogative.

Consequently, the District's argument that their contracts with Wordsworth Academy, Success Schools, and Camelot are a matter of management prerogative, without a breach in a substantive provision in the CBA; and based on a well established past practice going back to the 2011-2012 school year prevails.

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<sup>9</sup> Joint Exhibit #1 , CBA – Grievance Procedure p 29

<sup>10</sup> Joint Exhibit #1, CBA – Grievance Procedure p 30

AWARD

Grievance Denied

Date:

6/6/16

Mark Lamont  
Mark Lamont