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LABOR LAW ALERT: REASSIGNING BARGAINING UNIT WORK TO INTERNAL NON-UNION EMPLOYEES REQUIRES BARGAINING

We wish to bring to your attention a recent decision of a hearing examiner of the Pennsylvania Labor Relations Board (PLRB) concerning an issue we are asked about on a regular basis. *Clearfield Education Association v. Clearfield Area School District* addresses when an employer can transfer bargaining unit work to non-bargaining unit employees without the need to bargain with the union.

In this case, Clearfield School District for a number of years ending in 2017, employed a technology coach who was a bargaining unit member and performed various technology related duties, including training teachers. Since 2017, the position had been vacant and from time to time, the district used third-party experts for teacher training during in service programs. However, starting with the 2024-2025 school year, the district used a non-bargaining unit employee to perform training work that had been previously performed by the technology coach. The union filed an unfair practice charge alleging that the district unilaterally removed bargaining unit work.

The situation that most often gets attention concerning employer rights and responsibilities is when an employer subcontracts bargaining unit work to a third party outside contractor. However, as explained in this case, the transfer of bargaining unit work to employees who are within the district but outside a bargaining unit without first bargaining with the union is also a situation where an unfair practice can occur.

> **In this setting, the unlawful removal of bargaining unit work occurs when the union proves the employer unilaterally removed work that was exclusively performed by a bargaining unit member or when an employer alters a past practice regarding the extent to which bargaining unit employees and non-bargaining unit employees performed the same work. There is no threshold amount of bargaining unit work that needs to be diverted so that even a de minimis amount can be challenged. Moreover, even where bargaining unit and non-unit employees have both performed similar duties, a union can satisfy the exclusivity requirement by proving that the bargaining unit members exclusively performed an identifiable proportion or quantum of the shared duties such that the bargaining unit members have developed an expectation and interest in retaining that amount of work.**
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> **Therefore, an employer commits an unfair practice by altering the manner in which work had been traditionally assigned or by varying the extent to which members and non-members of the bargaining unit have performed the same work.**

If the employer violates the law, the usual remedy and the one imposed by the hearing examiner in this case, is to direct the employer to return the exclusive bargaining unit work to the unit, restore the status quo, and make whole any bargaining unit employees who had been adversely affected together with six percent per annum interest.

The lesson to be gleaned from this case is that employers must have a clear understanding concerning what work is being performed **exclusively** by a bargaining unit member and any assignment of that work outside the bargaining unit, without first bargaining with the union over the reassignment, will create a problem if challenged by the union.

Clients who have questions regarding issues discussed in this article, or any employment law matter, should feel free to call us at 215-345-9111.