

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

STATE COLLEGE AND UNIVERSITY PROFESSIONAL :
ASSOCIATION, PSEA/NEA :
 :
v. : Case No. PERA-C-23-30-E
 :
STATE SYSTEM OF HIGHER EDUCATION, :
EAST STROUDSBURG UNIVERSITY :

PROPOSED DECISION AND ORDER

On January 23, 2023, the State College and University Professional Association, PSEA/NEA (SCUPA or Union) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against the Pennsylvania State System of Higher Education (PASSHE), alleging that PASSHE violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA or Act) by unilaterally removing bargaining unit work at East Stroudsburg University on or about January 18, 2023.

On April 28, 2023, the Secretary of the Board issued a Complaint and Notice of Hearing, directing a hearing on May 31, 2023, if necessary. After two continuances, hearings ensued on November 6, 2023 and November 17, 2023, at which time the parties were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence.¹ The Union filed a post-hearing brief on January 22, 2024. PASSHE filed a post hearing brief on January 23, 2024.

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. PASSHE is a public employer within the meaning of Section 301(1) of PERA. (N.T. I 6)²
2. SCUPA is an employe organization within the meaning of Section 301(3) of PERA. (N.T. I 6)
3. SCUPA is the certified bargaining representative for certain professional administrators employed by PASSHE at its universities, including East Stroudsburg University. (SCUPA Exhibit 5)
4. SCUPA and PASSHE are parties to a collective bargaining agreement (CBA) effective July 1, 2019 to June 30, 2023. (SCUPA Exhibit 5)
5. Jan Hoffman is currently employed as an Academic Success Coach at East Stroudsburg University with the College of Health Sciences. She also serves as President of SCUPA. She began working at East Stroudsburg in 2001 as an Assistant Director of Career Development and eventually became the

¹ The November 17, 2023 hearing was held virtually by agreement of the parties.

² The transcript for the November 6, 2023 hearing will be identified as N.T. I, while N.T. II will be the designation for the November 17, 2023 hearing.

Coordinator for Exploratory Studies in the Department of Academic Success in 2017. She left the Coordinator for Exploratory Studies position when East Stroudsburg implemented a reorganization and began her current position as an Academic Success Coach on January 17, 2023. (N.T. I 11-12)

6. Hoffman testified that when she was Coordinator for Exploratory Studies, Jack Truschel was her day-to-day supervisor, while she also reported to Brooke Langan, who was the Dean overseeing the department. Hoffman indicated that her Coordinator for Exploratory Studies position was in the SCUPA bargaining unit. (N.T. I 12-13)

7. Hoffman identified her job description for the Coordinator for Exploratory Studies position as SCUPA Exhibit 1 that was in effect from 2021 to 2023. (N.T. I 13-14; SCUPA Exhibit 1)

8. Hoffman testified that an Exploratory Studies student was a student who had not declared a major. She described how there were approximately 400 of these students, who were required to meet with her. She explained how her role was to work with these undeclared students to help them go from exploration to declaration within 45 credits. She testified that she also had a caseload of students, who were assigned to her by a faculty member for advising purposes. She characterized her advising work as assigning classes for the next semester and providing students with a personal identification number (PIN), so that they can register for those classes. She explained that advising was not exclusively SCUPA work, but she indicated that she was able to perform it because the faculty contract permitted the same if she was supervised. (N.T. I 18-22)

9. Hoffman described meeting with these students in one-on-one coaching sessions, wherein they would discuss the students' values, skills, and interests, as well as the reasons the students were in school, where they wanted to go, and wherever the students took the conversation. (N.T. I 21, 23)

10. Hoffman also described providing programs to help students move from exploration to declaration, which included workshops designed to run the students through assessments and self-assessments; the win program, which started in the summer and focused incoming freshmen on finding areas of interest for curriculum and class selection; presentations on Myers-Briggs personality types; and academic planning activities in the dorms. Hoffman testified that she also created and implemented a Major and Minors Fair, which exposed students to various career fields based on different areas of study. (N.T. I 21, 23-26)

11. Hoffman testified that she also performed academic coaching, which included helping students to be successful academically. She described helping students identify goals, as well as the potential source of their limitations. (N.T. I 26-27)

12. Hoffman testified that there is no longer an Exploratory Studies program at East Stroudsburg. She indicated that there are still undeclared students though. She stated that she is not aware of any SCUPA bargaining unit employees performing the major exploration work she performed prior to the reorganization. (N.T. I 27)

13. Hoffman testified that, in her current position as an Academic Success Coach, she still performs the academic success coaching duties she described doing as a Coordinator for Exploratory Studies. She acknowledged

that there are other SCUPA bargaining unit employees who also serve as Academic Success Coaches. (N.T. I 27-29; SCUPA Exhibit 2)

14. On cross-examination, Hoffman clarified that her current job title is Student Success Coach. She admitted that Academic Success Coach was also part of her previous job title when she held the Coordinator for Exploratory Studies position and that Academic Success Coach title appears in her previous job description marked as SCUPA Exhibit 1. She conceded that Jack Truschel, who she previously worked under, is a faculty member at East Stroudsburg and a member of the APSCUF bargaining unit. (N.T. I 31-33)³

15. On cross-examination, Hoffman confirmed that the Exploratory Studies program no longer exists. She acknowledged that she still works with students as a Student Success Coach and that she does coaching with those students. (N.T. I 33-34)

16. On redirect examination, Hoffman explained that the coaching she performs in her current role is focused on meeting academic goals. She testified that at least part of the coaching she used to perform in the Coordinator of Exploratory Studies position focused on major exploration. (N.T. I 36-37)

17. Adam Weber is a UniServ representative for the Pennsylvania State Education Association (PSEA) who serves as a liaison between the local SCUPA bargaining unit and the statewide PSEA union. He assists the local with discipline, terminations, settlements, bargaining, and charges of unfair practices. (N.T. I 38-39)

18. Weber initially heard rumors of a reorganization at East Stroudsburg in May 2022 and reached out to the University's human resources department in that spring or summer. He heard nothing in response until October 14, 2022 when Yvonne Catino, the Human Resources Director at East Stroudsburg, indicated that the reorganization had been put on hold. Catino then advised Weber in November 2022 that the University was going forward with the reorganization and requested a meeting with SCUPA. (N.T. I 39-41)

19. On December 2, 2022, Weber and Hoffman attended a Zoom meeting with Catino, as well as the University's Provost, Margaret Ball, and Dean of the College of Education, Brooke Langan. Weber testified that the University provided the Union with information regarding the reorganization during the meeting, which included draft job descriptions shortly following the meeting. (N.T. I 41-42)

20. Weber identified as SCUPA Exhibits 3 and 4 draft job descriptions for APSCUF positions, which were both entitled "Academic Success Advisor." (N.T. I 42-43; SCUPA Exhibit 3, 4)

21. Weber testified that he provided a response to PASSHE and University officials on December 12 or 13, 2022, which consisted of a color-coded highlighted assessment of the old job descriptions compared to the new ones, indicating the work that had disappeared from the SCUPA job descriptions. He described how the work was now contained in the new job descriptions for the APSCUF positions. He testified that he notified PASSHE

³ APSCUF is the Association of Pennsylvania State College and University Faculties, which is the exclusive bargaining representative for another professional unit of faculty employees at PASSHE. (SCUPA Exhibit 6, PASSHE Exhibit 2).

and University representatives that this was SCUPA's work and that it needed to be returned to the SCUPA job descriptions. (N.T. I 43-44; SCUPA Exhibit 3, 4)

22. Specifically, Weber objected to the second sentence of SCUPA Exhibit 3 under the "Summary" section, which provides as follows:

Academic Success Advisors engage with students from all programs, providing supports [sic] to increase academic achievement as well as provide support for program exploration.

(N.T. I 43-44; SCUPA Exhibit 3)

23. Weber testified that he also objected to other portions of the job description contained in SCUPA Exhibit 3, including the first and third sentences of the section entitled "Summary." He described highlighting everything that he felt needed to be returned to the SCUPA job descriptions. (N.T. I 44)

24. Weber testified that he objected to the first bullet point of the job description contained in SCUPA Exhibit 3 under "Essential Responsibilities," which states "[d]evelop and implement a major exploration program for undeclared students." (N.T. I 44-45; SCUPA Exhibit 3)

25. Weber testified that the parties also discussed "advising" duties. He explained that his understanding of advising duties was that advice regarding which courses are needed to graduate was APSCUF work, while any advising work beyond that belonged to SCUPA. (N.T. I 45-46)

26. Weber testified that he objected to the third bullet point of the Essential Responsibilities contained in SCUPA Exhibits 3 and 4, which states "[a]dvise undeclared students on major exploration, course scheduling, [and] potential internships." He explained that advising duties regarding major exploration and potential internships belonged to SCUPA. (N.T. I 45-46; SCUPA Exhibit 3, 4)

27. Weber testified that neither PASSHE, nor East Stroudsburg responded to the Union's objections. As a result, Weber followed up with an email to management on January 11, 2023, which then prompted a response on January 17 or 18, 2023, containing a brief summary. He indicated that he did not receive any final job descriptions for the faculty positions until August 2023, which were then identical to the drafts that he had previously objected to. (N.T. I 46-47)

28. Weber characterized the December 2, 2022 Zoom meeting as a meet and discuss session between the parties. He described how the CBA requires PASSHE to have a meet and discuss with the Union prior to any reorganization. He testified that neither PASSHE, nor East Stroudsburg bargained over the removal of work from the SCUPA unit, despite numerous objections to the removal and requests to bargain from SCUPA. (N.T. I 47-49; SCUPA Exhibit 5)

29. In support of its position, the University offered the testimony of Margaret Ball, who is the Vice President for Academic Affairs at East Stroudsburg and who also serves as the Provost or Chief Academic Officer. She began working at East Stroudsburg as an Associate Professor in August 1999 and worked as a faculty member until 2018 when she became Interim Associate Dean for the College of Arts and Sciences. She briefly left the PASSHE system during the Covid-19 pandemic for about 18 months to work at a

New Jersey college and returned to East Stroudsburg to become Interim Provost in July 2021. She then became Provost in July 2023. (N.T. I 53-57)

30. Ball testified that when she returned to East Stroudsburg, the University was struggling in many ways, including with the retention of students from year to year, as well as graduation of those students. She described how the University particularly had a problem retaining students, who were undeclared or in the exploratory studies program, and was losing approximately 50 percent of those students by their third year. She explained how the University needed to make changes quickly to resolve this issue. (N.T. I 57-60)

31. Ball testified that the University decided to implement a program called Meta Majors, which is known for improving retention and graduation rates. She described Meta Majors as being similar to career clusters or a career pathway, which allows students to gain an understanding of where a degree could potentially take them in their careers. (N.T. I 60-61)

32. Ball testified that the SCUPA bargaining unit employees did not lose any job duties when they were transitioned from Academic Success Coaches to Student Success Coaches. She explained how she was an APSCUF faculty member, advising students for over 20 years. She took issue with the characterization of advising as simply selecting a schedule for students and giving them a PIN. She provided an example of a student whose chemistry professor contacted her and indicated that the student would probably be much happier taking theatre classes.⁴ She testified that the student's mother was concerned about career options for a theatre major, so Ball helped her become a theatre major, who also took classes in speech pathology. Ball indicated that these are the types of conversations that faculty and chairs have on campus. She specified that this role the faculty plays with advising students dates back to her time as a faculty member. She described the role as mentoring. (N.T. I 62-65)

33. Ball testified that the faculty look for and oversee internships for the students, who get credits for those internships. She indicated that all faculty participate in the Majors and Minors Fairs. She stated that the Majors and Minors Fairs are primarily driven by the faculty, who are essentially indispensable to the fairs. (N.T. I 64-65)

34. On cross-examination, Ball testified that upon entrance to East Stroudsburg, students join a particular Meta Major or cluster. She acknowledged that the students are processed through career assessments, which are performed by SCUPA bargaining unit employees, before they go to the faculty for advising. She noted that the SCUPA bargaining unit employees also perform a strengths test, which she described as a questionnaire. (N.T. I 65-67)

35. On cross-examination, Ball indicated that after the students receive their assessments from career services, the students then go to two faculty advisors, who work exclusively with Meta Majors. She acknowledged that SCUPA Exhibits 3 and 4, which are for the Academic Success Advisor

⁴ Ball previously had a background in theatrical productions prior to her time at East Stroudsburg and then became chair of the theatre department at the University. (N.T. I 54-55).

positions, are the two faculty advisors the students now see to explore what Meta Major or cluster to enter. (N.T. I 67-69)

36. On cross-examination, Ball insisted that she has been to these meetings between the faculty advisors and students. She testified that the faculty advisors review transcripts and materials, and have a conversation with the students about what the students want to pursue. She admitted that, prior to January 2023, those meetings occurred between the SCUPA bargaining unit employes and the students. She claimed that faculty had the same meetings with students. She indicated that there were specific faculty assigned to that role and that students would also seek out other faculty who specialized in certain areas to have those discussions with. (N.T. I 69-71)

37. On cross-examination, Ball testified that Truschel was a faculty member, who was assigned to that role. She acknowledged that Hoffman also performed this task as well. She contradicted the notion that Truschel had essentially given the entire role to Hoffman, as Hoffman previously testified. She couched her assertions in this regard as her understanding. She asserted that as a chair, she had many discussions with students who were unhappy in their major or struggling. (N.T. I 71-72)

38. On cross-examination, Ball testified that these discussions are actually part of the CBA between APSCUF and PASSHE. She identified Article 31(G) of the APSCUF CBA, which provides in relevant part as follows:

Academic Advising and Student Scheduling

1. The parties recognize that academic advising is the role of the faculty, and that no change in the involvement of faculty in academic advising is intended by this statement.
2. The parties also recognize that it is appropriate for the UNIVERSITIES to assign to other personnel (who may not be a member of the bargaining unit) the following tasks in cooperation with the faculty advisor of record and the department chairperson:
 - A. Student course schedules and registration;
 - B. Informing students of degree, major field, distribution and track requirements;
 - C. Assisting in the implementation of academic advisor's recommendations;
 - D. Problem-solving in scheduling conflicts;
 - E. Assisting students in gaining access to recommended courses;
 - F. Maintaining and communicating the schedule of current and future course offerings (including special designation courses) by department; and
 - G. Understanding the four-year structure of course offerings.

(N.T. I 72-73; SCUPA Exhibit 6) (Emphasis in original)

39. On cross-examination, Ball acknowledged that "assisting in the implementation of academic advisor's recommendations," which is included in Article 31(G)(2)(e) of the APSCUF CBA, covers the individual meetings about major exploration. She described how students in the Meta Majors program now go from the career assessment to the faculty advisors, and then see the SCUPA success coaches. She testified that after students are assigned to their Meta Major, they become part of a caseload where every freshman Meta Major gets assigned to one of the academic success coaches, who can work on major exploration. (N.T. I 74-75)

40. On cross-examination, Ball explained that SCUPA success coaches can have discussions with students who come to them with problems. However, she indicated that the SCUPA employees are just not part of the original assignment of where the students are going. (N.T. I 75-76)

41. On cross-examination, Ball confirmed her belief that there was no removal of work from SCUPA employees to the faculty. When confronted with SCUPA Exhibit 1, which is the job description for the Coordinator of Exploratory Studies position, she claimed that the job duty of "coach[ing] exploratory studies students through major exploration to major declaration by introducing self-assessment tools, educational planning, and career ideas appropriate for each student; and highlight[ing] strengths, interests, and values" was now being done by SCUPA career advisors. Specifically, she indicated that the self-assessment tool is being done on entry to the Meta Major program by career services. She stated that prior to January 2023, the career services employees used the self-assessment tool "a bit," but it was not consistently used. (N.T. I 77-78)

42. On cross-examination, Ball conceded that career services employees do not perform educational planning. She testified that career services employees do work with students on strengths, interests, and values. She claimed that faculty members have always done educational planning with students. She testified that faculty members also perform coaching on career ideas with students and highlight strengths, interests, and values. (N.T. I 78-79)

43. On cross-examination, Ball described the Majors and Minors Fairs as events, which are held once or twice a year wherein different departments send a representative to an area of campus and basically try to sell their program to students on campus. She claimed that it is not just for exploratory students, but rather for all students. She explained that it is almost always driven by faculty, but then admitted that SCUPA employees have assisted in putting it together and that it has been a joint effort. (N.T. I 79-80)

44. On cross-examination, Ball testified that there was no Majors and Minors Fair this year for the entire campus. She acknowledged that the Dean and Associate Dean for the College of Arts and Sciences organized one, which was very successful. She indicated that the Deans are not in the faculty unit and instead are considered management. She admitted that Truschel set the dates for the Majors and Minors Fairs. She also conceded that Hoffman was involved in the online fairs that took place during either the 2020-2021 or 2021-2022 academic years. (N.T. I 80-82)

45. On cross-examination, Ball testified that the faculty would propose a date for the fairs, which would have to be coordinated with management. She indicated that she developed an assessment to essentially force students to engage with the faculty representatives at the fairs when she was a faculty member from 2016 to 2020. She reiterated that it was a collaborative effort between SCUPA and faculty employees. She claimed that SCUPA employees primarily helped with ordering tables, helping students sign in, and putting up flyers. (N.T. I 82-84)

46. The University also offered the testimony of Yvonne Catino, who has been the Human Resources Director at East Stroudsburg for over two years. In this role, she is responsible for overseeing labor relations with regard to settlements, grievances, discipline, and interpreting the CBA. She

testified that PASSHE has a bargaining relationship with seven different bargaining units. (N.T. I 86-87)

47. Catino testified that she was involved with the reorganization of the Exploratory Studies program into the Meta Majors program. She indicated that she reviewed the job duties and responsibilities of SCUPA and APSCUF employes in connection with the reorganization. (N.T. I 87-89)

48. Catino identified as PASSHE Exhibit 2 the CBA between APSCUF and PASSHE, which includes a provision in Article 4(B) entitled "Duties and Responsibilities of Faculty Members," and which provides in relevant part as follows:

A proper academic climate can be maintained only when members of the FACULTY meet their fundamental duties and responsibilities regularly. These duties and responsibilities include but are not limited to...conferring with and advising students and advisees...

(N.T. I 89-90; PASSHE Exhibit 2) (Emphasis in original)

49. Catino testified that Article 31(G) of the APSCUF contract reinforces Article 4(B) by stressing that academic advising and student scheduling is faculty work. She claimed that if faculty employes assign tasks to employes in different bargaining units, that it does not diminish the role of faculty employes with respect to advising and conferring with students. (N.T. I 90-91)

50. Catino testified that she became involved in the reorganization at East Stroudsburg in October 2022. She prepared a spreadsheet purporting to show the roles and responsibilities of SCUPA employes in the Exploratory Studies program and how those roles would track over to the Meta Majors program. (N.T. I 91-92)

51. Catino testified that Hoffman's job duties did not change as a result of the reorganization. She claimed that Hoffman's duties were instead simply more clearly specified in her new job description. (N.T. I 96-97)

52. Catino described Hoffman's duties prior to the reorganization in her spreadsheet as "connect resources and guide students to successful completion of a degree program within the college." She described Hoffman's duties after the reorganization as "support, encourage engagement, networking, future planning, follow up with students, assess student needs, motivate and inspire, [and] utilize analytics to monitor student progression." (N.T. I 95-96; PASSHE Exhibit 3)

53. On cross-examination, Catino testified that Hoffman still works with undeclared students on major exploration by coaching them through the Meta Majors program. She claimed that Hoffman may still meet with students to explore what majors to join as part of her coaching discussions. She explained her assertion by giving an example of a student, who is learning English as a second language, and who might come to the student success coach because of a language barrier or difficulty understanding a faculty employe. She described how those issues might come up, but she insisted that faculty in the new model are responsible for advising. She acknowledged that Hoffman had a role working with students on major exploration under the old model, but claimed it was only a supportive role. (N.T. I 99-100)

54. When confronted on how she knows that information, Catino testified that it is "probably [from] both" interviewing people and reviewing the job descriptions. When asked if Hoffman currently performs the job duty in the Coordinator of Exploratory Studies position, which was listed as "engage students in major exploration following advising curriculum and student career development theory," Catino indicated that Hoffman engages with Meta Majors who are undeclared. She insisted that Hoffman is not advising, but rather that Hoffman is following advising curriculum. She explained that East Stroudsburg does not have major exploration and that Hoffman engages with students in support, connecting, and guiding roles. (N.T. I 101-103)

55. On cross-examination, Catino acknowledged that SCUPA Exhibit 4, which is the job description for the APSCUF Academic Success Advisor position, lists the first essential responsibility as "develop and implement a major exploration program for undeclared students." When asked how to explain her testimony that the University does not have major exploration anymore, she insisted the exhibit was a draft. She claimed not to know whether that responsibility is listed in the current or signed version of the job description. (N.T. I 103-104; SCUPA Exhibit 4)

56. On cross-examination, Catino acknowledged having discussions with UniServ Representative Weber regarding the job descriptions. She admitted that Weber identified parts of the job descriptions, which were problematic from SCUPA's perspective. She claimed that the University made changes to the job descriptions and that a response was provided through the Dean. She did not recall if the develop and implement a major exploration duty was removed from the Academic Success Advisor position. When asked whether the faculty advisors develop and implement a major exploration program, her response was "[t]hey create programs as needed." (N.T. I 104-105)

57. On cross-examination, Catino conceded that most of the time, she lists the most important job duty at the top of the job description and that the develop and implement a major exploration program responsibility appears as the first bullet point in the job description, which she again characterized as a "draft." When asked whether any employees at East Stroudsburg develop and implement a major exploration program for undeclared students, she replied that any employee can create a program for students at the University. (N.T. I 105-106)

58. The University also offered the testimony of Brooke Langan, who is the Dean of the College of Education at East Stroudsburg. Her responsibilities include supervision of all faculty and overseeing academic and nonacademic procedures within the College of Education. She has been at East Stroudsburg since 2016 and has served as full-time Dean since November 2021. (N.T. II 6-8)

59. Langan testified that the Department of Academic Enrichment and Learning no longer exists at the University. She explained that the Department of Academic Enrichment and Learning changed names to the Department of Academic Success in 2020. But as of January 2023, that Department was reorganized to better serve the needs of the students. (N.T. II 8-9)

60. Langan testified that the Exploratory Studies program used to be housed in the Department of Academic Success, but that it no longer exists either. She described how the Exploratory Studies program was reorganized

into a new format of Meta Majors, which the University is now using to create educational pathways for students who are unclear of what major they would like to pursue. She indicated that Meta Majors are associated with colleges or clusters within the College of Arts and Sciences to better pair students with the Dean and the departments where they find interests. (N.T. II 9-10)

61. Langan testified that she had a role in the reorganization with regard to reviewing job descriptions of the SCUPA employees that worked in Exploratory Studies. She stated that only one SCUPA employee, Jan Hoffman, worked in the Exploratory Studies program. However, she also claimed that Hoffman was not the only Academic Success Coach working at the University at the time. She testified that she was the direct supervisor for the Academic Success Coaches within the Department in 2021 when Hoffman worked as Coordinator for Exploratory Studies. (N.T. II 11-13)

62. Langan testified that coaching is different from advising. She identified Jack Truschel as being the Director of Exploratory studies in 2021. She indicated that Truschel would not have been a supervisor of Hoffman in that role. Instead, she explained that she was Hoffman's direct supervisor, while Truschel worked in collaboration with Hoffman. (N.T. II 13-15)

63. Langan testified that one of Hoffman's duties in the Coordinator of Exploratory Studies position, which included managing a caseload of Exploratory Studies students per the APSCUF CBA, was faculty work. She explained, however, that there is a provision in the APSCUF CBA, which allows this work to be done by other employees under the guidance of an APSCUF faculty member. (N.T. II 15)

64. Langan testified that PASSHE Exhibit 1, which is the job description for the Student Success Coach position, is also the new job description for Hoffman as a result of the 2023 reorganization. She testified that Hoffman was responsible for student coaching before the reorganization and that Hoffman is still responsible for student coaching after the reorganization. She claimed that Hoffman is also currently responsible for coaching students, who have not declared a major. She indicated that Hoffman is not responsible for coaching students across the University, but rather she is responsible for coaching students assigned to her workload in the College of Health Sciences, as well as the College of Arts and Sciences. (N.T. II 19-20)

65. Langan identified several coaching duties listed in SCUPA Exhibit 1 and specified where she believed they were carried over in the listed duties for PASSHE Exhibit 1. (N.T. II 21-26)

66. Langan testified that Hoffman's role in student coaching expanded as a result of the 2023 reorganization. She claimed that Hoffman went from working with one specific population to a new role working with a much broader population, including all first year students in the College of Health Sciences, as well as the College of Arts and Sciences. She indicated that this includes students, who are part of the Meta Major program, along with students at risk of being below a 2.0 grade point average. (N.T. II 25-26)

67. Langan testified that the University has offered the Majors and Minors Fairs every year since she started working at East Stroudsburg in 2016. She testified that, prior to the reorganization, in the College of Education, the Majors and Minors Fairs were not organized exclusively by

SCUPA employes, but rather that there was involvement by the APSCUF employes, as coordinated through management. She described it as being a collaborative effort where the faculty employes took the lead in organizing fellow faculty members, while SCUPA was there for a support role. She testified that Hoffman worked specifically in collaboration with Truschel and the APSCUF Department Chairs for the 2020 Majors and Minors Fair, which was done online due to the Covid-19 pandemic. (N.T. II 29-32)

68. Langan testified that the most recent Majors and Minors Fair at the University was in October 2023. But that Fair was not university-wide and was specific to the College of Arts and Sciences. She stated that the other Majors and Minors Fairs were university-wide. (N.T. II 32-33)

69. On cross-examination, Langan admitted that, prior to the reorganization, Hoffman informed students of degree requirements and distribution of general education requirements. She also conceded that Hoffman discussed with Exploratory Studies students their upcoming semester course needs and class interests, reviewed and revised academic program schedules, and discussed grades and other performance indicators. She likewise agreed that those duties are not listed in Hoffman's new job description. (N.T. II 35-36)

70. On cross-examination, Langan acknowledged that Hoffman does not coordinate special programs for Exploratory Studies students now. She admitted that she does not know specifics with regard to Hoffman's current coaching duties with Hoffman's students. She testified that she does not see much of a difference between academic coaching and major exploration or career coaching. She conceded that some coaching consists of helping students with study skills and how to manage college life so they can be effective students. She agreed that another part of coaching, as it relates to Hoffman's old job description, consisted of helping students figure out their career and life goals. She explained that would have been a very large component of Hoffman's work with Exploratory Studies students. But she claimed that now Hoffman has a much broader set of students so her duties go beyond just choosing a career. (N.T. II 36-38)

71. On cross-examination, Langan acknowledged that, prior to the reorganization, coaching and major or career exploration was SCUPA work. She claimed that Hoffman still performs those duties with Meta Majors students within the College of Health Sciences. She agreed that there are Meta Major students in the College of Health Sciences. When asked if there are still students, who are considered undeclared in their majors, she replied that she does not refer to them as undeclared, but rather as a College of Health Science Meta Major, for example. (N.T. II 38-40)

72. When asked to explain the definition of Meta Major, Langan testified that it is an educational pathway that allows students to explore courses within a college, along with the department chairs and faculty, and to have discussions about what is included in a specific program to determine what is the right choice for that student. She admitted that it is an educational pathway for students prior to them declaring a specific major. (N.T. II 40-41)

73. On cross-examination, Langan acknowledged that she was responsible for creating the job description for the APSCUF Academic Success Advisor identified as SCUPA Exhibit 3. She testified that the "develop and implement a major exploration program for undeclared students" job duty

listed in the description is not correct. She assumed that the job description was created prior to the full development of the Meta Major program. She stated that the job description should not include this purported duty because that duty really belongs to the career services employes, who perform career exploration with the students prior to the students going to the academic advisor, who then helps them determine which major is best suited for that student. (N.T. II 42-43)

74. On cross-examination, Langan testified that the "advise undeclared students on major exploration, course scheduling, [and] potential internships" job duty, which was listed in SCUPA Exhibit 3, includes discussions with students about what majors exist within their college and within their Meta Major. She explained that it essentially means making sure the students are aware of what is available to them within that Meta Major. She indicated that the internships typically do not happen until later in the program after the students have declared their major. (N.T. I 48-49)

75. On cross-examination, Langan testified that the Academic Success Advisor in SCUPA Exhibit 3 does not perform any coaching duties. She claimed that, prior to the reorganization, SCUPA employes in career services would perform coaching duties. She agreed that, prior to the reorganization, Hoffman continued coaching students until they declared a major. She testified that she views the Academic Success Advisor as remaining the students' academic coach, while the students are exploring a major, and not as coaching the students through the task of exploring a major. (N.T. II 50-51)

76. On redirect examination, Langan testified that Hoffman no longer has a caseload of Exploratory Studies students because there are no Exploratory Studies students anymore. She indicated that Hoffman would not perform any of the job duties listed in the Coordinator for Exploratory Studies position by assignment from an APSCUF faculty member with regard to her current caseload of students because those students would be advised by faculty. She claimed that those responsibilities are advising duties. (N.T. II 55-56)

77. On redirect examination, Langan testified that advising duties, as distinguished from coaching, include discussions between faculty and students regarding which courses to take, what the schedule should consist of, and the general education requirements. She explained that the duties encompass the program requirements, which the faculty advise on, such as creating an academic course schedule, registering for courses, building schedules, informing students of degree requirements, or anything that is specific to degree and graduation requirements. (N.T. II 56)

78. On rebuttal, SCUPA presented the testimony of Jack Truschel, who became a Professor in the University's Psychology Department in the spring of 2023, and who previously served as the University's Director of Advising for 15 years. He defined advising as predominantly curricular activity, such as course selection toward graduation. He described it further as helping a student pick courses and determining how those courses fit within a major that they have selected. (N.T. II 60-62)

79. Truschel testified that once a student is assigned a PIN and that PIN is provided to the faculty employe of record, the advisor of record sees the student and helps the student with curricular activities like selecting specific courses for general education or toward a major. He indicated that

once the student does that, the advisor can give the student the pin number, and then the student can proceed to register for those selected courses. (N.T. II 62)

80. Truschel testified that, for as long as he was an advisor, the role consisted mainly of just looking at courses. He provided an example of a student indicating an interest in public administration, and the faculty advisor providing recommendations for several courses because the faculty advisor would know the better professors in that department. He described coaching as being much more than that. He testified that coaching would include talking to students about study skills, personal issues, and anything that might inhibit them from continuing on to the next semester. He indicated that Hoffman also did course selection and major exploration. (N.T. II 62-63)

81. Truschel testified that after he served as the Director of Advising for the entire University for 15 years, he then became the Director of Advising for the Exploratory Studies Program in the summer of 2020 until the spring of 2023, when he assumed his current role. In his position as Director of Advising for the Exploratory Studies Program, he worked with Hoffman, who was the Coordinator for Exploratory Studies. He testified that there was a split role between himself and the Dean. He described how the Dean was the ultimate decider, but that he made the program decisions. (N.T. II 63-66)

82. Truschel testified that Hoffman performed everything on her job description, while he performed all the duties in his own job description. He stated that the advising component was mostly his duty, but that Hoffman also had the opportunity to advise roughly 125 to 150 students in the same capacity. He described how she had latitude to do whatever the APSCUF contract allowed, which included course selection, for example, in addition to coaching and major exploration. He explained that if a student came to him and indicated that he or she could not decide between different majors, he would take them to Hoffman to delve into what that student really wanted to do. He claimed that career services was essentially never involved. (N.T. II 67-69)

83. Truschel testified that he did little to nothing as it relates to major exploration. He oversaw the Exploratory Studies program prior to the reorganization, but he did not develop or implement a major exploration program, as that was done by Hoffman. Nor did he advise students on major exploration in his prior role. He reiterated that he did course selection and course scheduling only, and that major exploration was SCUPA work. He emphasized how he was very careful to ensure that work remained within the unit to which it belonged, aside from the advising duties, which were shared by SCUPA and APSCUF. (N.T. II 69-70)

84. Truschel testified that he was involved with the Majors and Minors Fair, which he described as a yearly event that Exploratory Studies held to allow students the opportunity to look into other majors. He indicated that he performed work in support of those Fairs, but he explained that Hoffman bore most of the responsibility, aside from emailing the department chairs and "some of the administration." He admitted that he does not know where the major exploration work is being performed now. (N.T. II 71-72)

85. On cross-examination, Truschel admitted that the primary responsibility for academic advising lies with the faculty. He agreed that the APSCUF contract permits him as the faculty employe to assign tasks to other personnel, but that assignment must be in cooperation with the faculty member. He acknowledged that when Hoffman performed the work she was assigned under the APSCUF CBA, it was in cooperation with him as the faculty employe. (N.T. II 77-78)

DISCUSSION

SCUPA argues that PASSHE, and specifically East Stroudsburg University, violated Section 1201(a) (1) and (5) of the Act⁵ by unilaterally removing bargaining unit work in January 2023 after the reorganization at East Stroudsburg. Specifically, SCUPA contends that coaching students and implementing programs on major exploration was exclusive bargaining unit work prior to the reorganization and that some of that work has now been assigned to faculty employes. In addition, SCUPA maintains that advising students who have yet to declare a major on course selection was shared work between the faculty and SCUPA units prior to the reorganization, which has now been assigned exclusively to the faculty employes. PASSHE, meanwhile, submits that the charge should be dismissed because the record does not support any removal of bargaining unit work, as the advising duties regarding major exploration have simply been transferred to other SCUPA employes. PASSHE also posits that the charge should be dismissed because the advising duties that Hoffman performed prior to the reorganization were faculty work under the terms of the APSCUF contract.

It is well settled that the removal of bargaining unit work is a mandatory subject of bargaining and that an employer commits an unfair practice when it fails to bargain with the exclusive representative before transferring bargaining unit work to an employe outside the unit. Hazleton Area Education Support Personnel Ass'n v. Hazleton Area School District, 37 PPER ¶ 30 (Proposed Decision and Order, 2006) citing Midland Borough School District v. PLRB, 560 A.2d 303 (Pa. Cmwlth. 1989); PLRB v. Mars Area School District, 389 A.2d 1073 (Pa. 1978). The removal of **any** bargaining unit work is a per se unfair labor practice. City of Harrisburg v. PLRB, 605 A.2d 440, 442 (Pa. Cmwlth. 1992) (emphasis in original). There is no threshold amount of bargaining unit work that needs to be diverted; even a de minimis amount is actionable under PERA. Lake Lehman Educational Support Personnel Ass'n v. Lake Lehman School District, 37 PPER 56 (Final Order, 2006). Nor does it matter whether the removal of bargaining unit work resulted in the termination or layoff of bargaining unit employes, or whether the unit members lost pay; instead, the analysis is whether the unit lost work. Tredyffrin-Easttown School District, 43 PPER 11 (Final Order, 2011).

⁵ 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.

A removal of bargaining unit work may take one of two forms: (1) an unfair labor practice occurs when an employer unilaterally removes work that is exclusively performed by the bargaining unit without prior bargaining with the union; and (2) an employer also commits an unfair practice when it alters a past practice related to the assignment of bargaining unit work to non-unit members or varies the extent to which members and non-members of the unit performed the same work. Tredyffrin-Easttown School District, 43 PPER 11 (Final Order, 2011). 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. Lake Lehman Educational Support Personnel Ass'n v. Lake Lehman School District, 37 PPER 56 (Final Order, 2006). The complainant in an unfair practices proceeding has the burden of proving the charges alleged. St. Joseph's Hospital v. PLRB, 373 A.2d 1069 (Pa. 1977).

In this case, SCUPA has sustained its burden of proving a violation of the Act. The record shows that, prior to the reorganization at East Stroudsburg in January 2023, Jan Hoffman held the position of Coordinator for Exploratory Studies. In this role, she was responsible for meeting with approximately 400 students, who had yet to declare a major, and helping them go from exploration to declaration within 45 credits. She did so by meeting with students in one-on-one coaching sessions, wherein they would discuss values, skills, and interests, as well as motivations and goals. She also implemented programs, such as workshops, assessments, presentations, and academic planning activities, along with the Majors and Minors Fairs. She was also responsible for a caseload of students, who were assigned to her by the Director of Advising for the Exploratory Studies Program, Jack Truschel, for advising purposes, which included assigning classes for the next semester and providing students with a PIN to register for those courses.

On December 2, 2022, Hoffman and UniServ Representative Adam Weber attended a meet and discuss session with the University's Provost, Margaret Ball, Human Resources Director Yvonne Catino, and Dean of the College of Education, Brooke Langan, wherein the University officials provided SCUPA with job descriptions for two faculty advisor positions. On December 12 or 13, 2022, Weber provided a response to PASSHE and University officials, which included his specific objections regarding bargaining unit work which had allegedly disappeared from the new job descriptions for the SCUPA employees and apparently reappeared in the job descriptions for the faculty advisor positions in the APSCUF unit. Neither PASSHE, nor East Stroudsburg bargained the removal of any work from the SCUPA unit.⁶ The University implemented the

⁶ While the Respondents do not argue that they bargained the alleged removal of work from the SCUPA unit, Human Resources Director Catino alluded to such a potential assertion during her testimony, wherein she claimed that the University made changes to the job descriptions based on Weber's objections and provided a response through the Dean. She also repeatedly insisted that the faculty advisor job descriptions, identified as SCUPA Exhibits 3 and 4, were merely "drafts," despite Weber's indication that the final job descriptions, which were eventually provided in August 2023, were identical to the drafts from December 2022. Catino's testimony has not been accepted as credible in this regard or as a whole. Rather than being direct and straight-forward, Catino was frequently evasive and gave puzzling responses to a number of questions. For example, when asked whether the faculty advisors develop and implement a major exploration program for undeclared

reorganization in January 2023 and eliminated the Exploratory Studies program in favor of a Meta Majors program. Although there is no longer an Exploratory Studies program at East Stroudsburg, there are still undeclared students who are considered Meta Major students now. And, while Hoffman still performs coaching duties in her new position as a Student Success Coach, those duties are focused specifically on meeting academic goals. At least part of the coaching she used to perform in the Coordinator of Exploratory Studies position focused on major exploration. The University's Provost and Vice President for Academic Affairs, Margaret Ball, admitted on cross-examination that, upon entrance to East Stroudsburg, students now go to two faculty advisors, who work exclusively with Meta Majors. Indeed, Ball insisted that she has attended meetings between students and the faculty advisors, who review transcripts and materials, and have a conversation with the students about what they want to pursue, which is all work that Hoffman used to perform prior to the reorganization in the Coordinator for Exploratory Studies position. In fact, Ball specifically conceded on cross-examination that, prior to January 2023, those meetings occurred between SCUPA bargaining unit employees and the students. Although Ball went to great lengths to emphasize that faculty employees would also meet with students in a similar fashion, at least in some instances, prior to January 2023, she acknowledged that this work was not exclusive to the faculty. Ball even made the critical admission that SCUPA employees are no longer part of the original assignment of where students are going now.

The University's Dean of the College of Education, Brooke Langan, made similar admissions in her testimony. She testified that one of Hoffman's duties in the Coordinator of Exploratory Studies position, which included managing a caseload of Exploratory Studies students per the APSCUF CBA, was faculty work. She explained, however, that there is a provision in the APSCUF CBA, which allows this work to be done by other employees under the guidance of an APSCUF faculty member, which was obviously the practice at East Stroudsburg for many years.⁷ Langan admitted that, prior to the reorganization, Hoffman informed students of degree requirements and distribution of general education requirements. She also conceded that Hoffman discussed with Exploratory Studies students their upcoming semester course needs and class interests, reviewed and revised academic program schedules, and discussed grades and other performance indicators. That Hoffman did so in cooperation with a faculty employe does not somehow vitiate the Union's expectation and interest in retaining that portion of the work.⁸ What is more, Langan acknowledged that, at least part of coaching, as it related to Hoffman's duties prior to January 2023, consisted of helping

students now, she replied that they create programs as needed. Likewise, when Catino was asked whether any employees at East Stroudsburg develop and implement a major exploration program for undeclared students now, she replied that any employe can create a program for students at the University. I have drawn an adverse inference based on Catino's refusal to directly answer these questions to conclude that the faculty advisors are now performing this work. Catino even seemed unwilling, at times, to admit the obvious fact that SCUPA employees shared the work of advising students with the faculty employees, despite the APSCUF contractual provisions expressly authorizing the same. In light of Catino's evasive responses, her testimony has been rejected as not credible or persuasive.

⁷ Ball also made the same admission regarding the APSCUF CBA.

⁸ PASSHE has not raised an argument that it was contractually privileged to reassign the work at issue exclusively to the faculty, nor does the record support such a contention.

students figure out their career and life goals, and that this was a very large component of Hoffman's work with Exploratory Studies students. She plainly admitted that coaching and career exploration was SCUPA work prior to the reorganization. She further acknowledged, on redirect examination, that Hoffman does not perform any of the duties listed in the Coordinator for Exploratory Studies position by assignment from an APSCUF faculty employe with regard to her current caseload of students because those students are advised by faculty. Thus, it was unequivocally clear, even from the testimony of East Stroudsburg's witnesses, that the coaching, major exploration, and advising work was at least shared between the SCUPA and faculty employes prior to January 2023 and that nearly all of Hoffman's share of that work has been transferred to the non-bargaining unit faculty employes. As such, the Union has sustained its burden of proving that the University removed an identifiable proportion of the coaching, major exploration, and advising work, which previously belonged to Hoffman, and assigned that work to non-bargaining unit faculty employes in January 2023, thereby altering the extent to which unit and non-unit employes shared the work.

The Respondents argue in their post-hearing brief that Hoffman admitted that the assessment work that she previously performed has simply been transferred to other SCUPA employes. However, the Union does not argue that the assessment work has been removed from the unit. Indeed, the Union appears to concede in its post-hearing brief that some of the unit's work was simply transferred to other SCUPA employes in the career services and student success coaching positions. (See SCUPA brief at 7-8). Instead, the Union has consistently taken issue with the coaching, major exploration, and advising duties, which have been transferred nearly exclusively to the faculty advisors beginning in January 2023. Of course, Ball testified that she performed similar duties when she was a faculty employe in the theatre department prior to the reorganization. Yet that testimony was specific to students who sought out faculty employes for guidance or mentoring in connection with their major exploration concerns. Neither Ball, nor any other Respondent witness, claimed to have performed such duties as part of an assigned and focused caseload of students, specifically dedicated to such a task.⁹ And now, it is nevertheless apparent that the University has assigned

⁹ Ball's testimony was problematic for a number of other reasons, as well. She claimed that the coaching and major exploration work was now being performed by SCUPA career services employes, despite her critical admissions set forth above. She only offered one specific example, however, of the self-assessment tool, which is done upon a student's entry into the Meta Major program, and which is not even one of the duties alleged to have been removed from the unit. She also insisted that there were specific faculty assigned to hold these alleged major exploration meetings with students prior to January 2023, but she did not provide any other specific examples, aside from Truschel, who credibly refuted essentially every aspect of her claims. She inexplicably made assertions regarding the working relationship between Truschel and Hoffman, despite having no apparent firsthand knowledge of the same. And, she even displayed an evasive demeanor herself at times, responding to one question on cross-examination by offering to roleplay with counsel instead of simply providing a response. (N.T. I 69). Langan's testimony had similar issues, albeit to a much lesser extent. She claimed that the job descriptions for the faculty advisor positions, which included the duty of "develop and implement a major exploration program for undeclared students," were simply "not correct," despite the fact that the job descriptions had been finalized in August 2023, long after the reorganization

non-bargaining unit faculty advisors to perform such a role instead of Hoffman or any other SCUPA employes. To the extent that the University's witnesses testified that Hoffman or other SCUPA Student Success Coaches "can" or "might" still perform this work, such testimony is rejected as self-serving and speculative, at best. Even if Hoffman or other SCUPA employes would perform such work sporadically at the request of students, who are seeking assistance, the simple fact remains that the University has transferred her caseload of undeclared students to the two faculty advisor positions for the coaching, major exploration and advising duties, which clearly satisfies the Board's exclusivity requirement. Whether the University calls it an Exploratory Studies or Meta Majors program is of no consequence. The work of coaching and advising undeclared students through major exploration has been unilaterally removed from the unit and transferred to non-unit employes, who are still performing the work. Accordingly, it must be concluded that Respondents have committed unfair practices in violation of Section 1201(a)(1) and (5) of the Act.

CONCLUSIONS

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

1. PASSHE is a public employer within the meaning of Section 301(1) of PERA.
2. SCUPA is an employe organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.
4. PASSHE has committed unfair practices in violation of Section 1201(a)(1) and (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 PASSHE shall:

1. Cease and desist from interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of the Act.
2. Cease and desist from refusing to bargain collectively in good faith with the employe organization which is the exclusive representative of

was completed. She likewise tried to assert that the career services employes were the individuals now performing this work without any specific illustrations, which was inconsistent with Hoffman's credible testimony that there are no bargaining unit employes performing the major exploration work since the reorganization. (N.T. 27). As a result, the testimony of SCUPA's witnesses has been specifically credited over the testimony of the PASSHE witnesses and all conflicts in the evidence have been resolved in favor of SCUPA.

employees in the appropriate unit, 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 the coaching, major exploration, and advising work to the bargaining unit, restore the status quo ante, and make whole any bargaining unit employees who have been adversely affected due to PASSHE's and East Stroudsburg's unfair practices, together with six (6%) percent per annum interest;

(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 Union.

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 13th day of May, 2024.

PENNSYLVANIA LABOR RELATIONS BOARD

/s/ John Pozniak
John Pozniak, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

STATE COLLEGE AND UNIVERSITY PROFESSIONAL :
ASSOCIATION, PSEA/NEA :
v. : Case No. PERA-C-23-30-E
STATE SYSTEM OF HIGHER EDUCATION, :
EAST STROUDSBURG UNIVERSITY :

AFFIDAVIT OF COMPLIANCE

PASSHE, East Stroudsburg University hereby certifies that it has ceased and desisted from its violations of Section 1201(a) (1) and (5) of the Public Employe Relations Act; that it has complied with the Proposed Decision and Order as directed therein by immediately returning the coaching, major exploration, and advising work to the bargaining unit, restoring the status quo ante, and making whole any bargaining unit employes who have been adversely affected due to PASSHE's and East Stroudsburg's unfair practices together with six (6%) percent per annum interest; that it has posted a copy of the Proposed Decision and Order in the manner prescribed therein; and that it has served a copy of this affidavit on the Union at its principal place of business.

Signature/Date

Title

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

Signature of Notary Public