

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

DELAWARE COUNTY INTERMEDIATE UNIT :
EDUCATION ASSOCIATION, PSEA/NEA :
v. : Case No. PERA-C-11-158-E
DELAWARE COUNTY INTERMEDIATE UNIT 25 :

PROPOSED DECISION AND ORDER

On May 23, 2011, the Delaware County Intermediate Unit Education Association, PSEA/NEA (Association or Complainant) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the Delaware County Intermediate Unit 25 (DCIU or Respondent) violated Section 1201(a)(1) and (5) of the Public Employee Relations Act (Act).

On June 8, 2011, the Secretary of the Board issued a complaint and notice of hearing in which the matter was assigned to a conciliator for the purpose of seeking resolution of the matters in dispute through mutual agreement of the parties and October 5, 2011 in Media, was assigned as the time and place of hearing, if necessary.

The hearing was necessary and the hearing was held as scheduled but the location changed to Morton, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The parties filed post hearing briefs on December 5, 2011 and January 9, 2012.

The 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. That the Delaware County Intermediate Unit 25 is a public employer within the meaning of Section 301(1) of the Act. (N.T. 4)
2. That the Delaware County Intermediate Unit Education Association, PSEA/NEA is an employe organization within the meaning of Section 301(3). (N.T. 5)
3. That the Association is the exclusive representative of the employes of the DCIU for the purposes of negotiating hours, wages, terms and conditions of employment, pursuant to the certification of the Pennsylvania Labor Relations Board at PERA-R-654-E, PERA-U-83-264-E and PERA-R-89-166-E.
4. On or about June 7, 2006, the Board of Directors of the DCIU adopted Policy 709 concerning Building Security for the stated purpose of "maintain[ing] security of school facilities for reasons of vandalism and theft. (N.T. 17, Complainant Exhibit 6)
5. The purpose of securing the buildings is to protect the staff and students inside the buildings. (N.T. 24-25, 33, 36-38)
6. The policy also states that "Employees may be held financially responsible for lost key/access cards up to an including the cost of re-keying if necessary." (N.T. 18, Complainant's Exhibit 5)
7. In its newly renovated Marple Education Center, DCIU installed a security system which involves locking doors to prevent access from the outside, and instituted a key fob system to access the building. A buzzer system is also in place. Employees were given an initial fob at no charge, with which to access the building at their convenience. (N.T. 25, 38)

8. Prior to the fob system, doors were simply unlocked by the janitors and left unsecured during the day. (N.T. 9-10)

9. On or around December 29, 2010, DCIU notified employees that, consistent with Policy 709, a replacement cost of \$20 would be imposed if anyone needed to replace a lost fob. The Association, through regional field director, Paul Gottlieb, took issue with the replacement cost and informed DCIU that it was required to negotiate with the Association on this issue. (N.T. 15, Complainant Exhibit 4)

10. In a later e-mail, DCIU acknowledged that an error had been made in calculating the cost of the replacement fobs, and the amount was adjusted to \$6.00. (N.T. 39)

11. No employees have ever been charged for a lost fob. (N.T. 25, 32, 38, 42)

12. Helen Dunlap, a bargaining unit member, testified that she lost a fob last summer and was provided a replacement at no charge. (N.T. 32)

DISCUSSION

The Association's charge of unfair practices alleges that DCIU violated Section 1201(a)(1) and (5) of the Act by unilaterally implementing a \$6 fee for employees to pay to replace lost fobs. The fobs grant the employees electronic access to buildings in which they work.

A public employer violates its duty to bargain if it unilaterally implements a mandatory subject of bargaining covered by Section 701 of the Act. PLRB v. State College Area School District, 461 Pa. 494, 337 A.2d 262 (1975). The Board has held that the implementation of a fee for employees, even a minor fee, is a mandatory subject of bargaining. In Commonwealth v. PLRB, 467 A.2d 1187 (Pa. Cmwlth, 1983), the Commonwealth Court affirmed the Board and found a \$5.00 parking fee for faculty at the West Chester State College (now University), to be a mandatory subject of bargaining.

In Pennsylvania Department of Revenue, 18 PPER ¶ 18137 (Final Order, 1987), a case similar to the present dispute, the Board held that the Commonwealth of Pennsylvania, as the employer, had a duty to negotiate the imposition of a \$5.00 fee for lost or stolen security cards used by employees in the headquarters at Strawberry Square in Harrisburg.

DCIU argues that Pennsylvania Department of Revenue should not be followed because the Board did incorrectly applied the balancing test set forth in State College Area School District, *supra*. to decide whether the imposition of the \$5.00 fee was a mandatory subject of bargaining. DCIU argues that the Board's incorrect analysis and reasoning in Pennsylvania Department of Revenue should not control the present matter. The DCIU's argument is one that asks for a reconsideration of Board precedent, and, therefore is more appropriately addressed to the Board. As a hearing examiner, I am bound by Board precedent. Accordingly, given the similarity of the present case's facts to Pennsylvania Department of Revenue, DCIU's imposition of a \$6.00 fee on employees for replacing lost fobs is a violation of DCIU's duty to bargain.

CONCLUSIONS

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

1. That the Delaware County Intermediate Unit 25 is a public employer within the meaning of Section 301(1) of the Act.

2. That the Delaware County Intermediate Unit Education Association, PSEA/NEA is an employe organization within the meaning of Section 301(3) of the Act.

3. That the Board has jurisdiction over the parties hereto.

4. That the Delaware County Intermediate Unit 25 has committed unfair practices in violation of Section 1201(a)(1) and (5) of the Act.

ORDER

In view of the foregoing and in order to effectuate the policies of the Act, the examiner

HEREBY ORDERS AND DIRECTS

that the Delaware County Intermediate Unit 25 shall:

1. Cease and desist from interfering with, 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 the employes 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 polices of the Act:

a. Rescind the notification concerning the policy of charging employes a fee for the replacement of fobs;

b. Make refunds to any employes who paid for the replacement of fobs;

c. 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 employes and have the same remain so posted for a period of ten (10) consecutive days; and

d. 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 enclosed Affidavit of Compliance.

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 absolute and final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania this twenty-ninth day of February, 2012.

PENNSYLVANIA LABOR RELATIONS BOARD

Thomas P. Leonard, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

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EDUCATION ASSOCIATION, PSEA/NEA :
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DELAWARE COUNTY INTERMEDIATE UNIT 25 :

AFFIDAVIT OF COMPLIANCE

Delaware County Intermediate Unit 25 hereby certifies that it has ceased and desisted from its violation of Section 1201 (a)(1) and (5) of the Public Employe Relations Act; that it has rescinded the notification that employes will be charged for replacing lost fobs; that it has offered to bargain with the Association over any decision to impose a fee for lost fobs; that it has posted the proposed decision and order as directed and that it has served a copy of this affidavit on the Association.

Signature/Date

Title

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

Signature of Notary Public