

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

MARS AREA EDUCATIONAL SUPPORT :  
PERSONNEL ASSOCIATION ESPA/PSEA/NEA :  
 :  
v. : Case No. PERA-C-99-404-W  
 :  
MARS AREA SCHOOL DISTRICT :

**FINAL ORDER**

On December 29, 2000, the Mars Area School District (District) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) to the Proposed Decision and Order (PDO), dated December 13, 2000. In the PDO, the Hearing Examiner concluded that the District committed unfair practices in violation of Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA), as charged by the Mars Area Educational Support Personnel Association (Union), by unilaterally increasing the number of days in the work year for the District's computer lab paraprofessionals.

On February 8, 2001, the Union filed a response and a brief in support to the District's exceptions. Section 95.98(c) of the Board's regulations provides that "[w]ithin 20-calendar days following the date of receipt of the statement of exceptions and supporting brief, a party may file an original and four copies of a response to the statement of exceptions and a supporting brief with the Board and one copy with the hearing examiner." 34 Pa. Code § 95.98(c). It is the practice of the Board to grant routinely requests for extensions of the time to file briefs in support of and opposition to exceptions, so long as the requests are filed within the time provided under the rules for such filings.<sup>1</sup> On January 22, 2001, the Board received a copy of a letter from the Union's attorney, dated January 16, 2001, addressed to the District's attorney confirming a private agreement between the parties to grant the Union an extension to file its response brief. The Union, however, did not separately request an extension of their time for filing its brief directly with the Board.

Although the Secretary, on behalf of the Board, routinely grants requests for filing extensions made within the prescribed time period for filing, such extensions are within the discretion of the Board and not the parties. The Board has a significant interest in entertaining such requests because they potentially affect the disposition of the entire matter. Where parties enter private agreements dehors the record for extensions beyond that routinely granted by the Board, the Board's ability to entertain and dispose of exceptions in due course is prejudiced. Accordingly, the Board's caseload cannot be subject to private agreements not of record for filing extensions for potentially long periods of time. Because the Union did copy the Board with the extension agreement within the time for filing its brief, which the Board will regard as in the nature

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<sup>1</sup> The Board, however, has not granted extensions for filing exceptions to a proposed or nisi order, and regards such filings as jurisdictional and required for a party to preserve its interest in a matter. Fraternal Order of Police, Fort Pitt Lodge No. 1 v. PLRB, 553 A.2d 469 (Pa. Cmwlth. 1988).

of a request for an extension, and the agreement was for an amount of time routinely granted, the Board will entertain the brief of the Union.

The Board, however, cautions that the preferred procedure requires that the party seeking an extension directly request an extension from the Board. Parties who file briefs after the expiration of the 20-day filing date pursuant to a private agreement risk having their briefs rejected or disregarded by the Board, even if they timely notified the Board of such private agreements. The Board further cautions that extensions are only considered for brief filings because they do not preserve issues on appeal.

After a thorough review of the exceptions and the record, the Board makes the following:

#### **AMENDED AND ADDITIONAL FINDINGS OF FACT**

6. The District's reason for extending the school year for 4 of 5 of the computer lab paraprofessional positions was that it believed that it could improve its educational program by ensuring that the computer hardware and software operated without problems before the students and the professionals begin the school year and thereby improving the quality and accessibility of its computer lab operations. In the past, the District experienced certain problems with computer connections and general equipment maintenance at the beginning of the school year. This was exemplified by the Internet problems experienced during the Christmas season of the 1999-2000 school year. Also, the District's computer lab system is intended to be a state-of-the-art system that must be updated with new software technologies every year. The District wanted the process of loading the updated software and system enhancements to occur before and after the school year so that any problems that occur with those changes could be addressed and resolved without interfering with the school year and the students' education. The District has fully integrated its computer program into the curriculum so that the computers are used by the students as tools for their classes instead of limiting the use to learning computers in a vacuum as a separate subject. (N.T. 74, 77, 81-86, 129, 141).

7. The District maintains one computer lab in each of its five school buildings.<sup>2</sup> The District has five computer lab paraprofessionals, one for each of its labs. The term "paraprofessional" is a designation given to a class of non-professional, full-time employees in the District who provide various services for the District but, as a class, they all have the same daily hours, benefits and wages. (N.T. 15, 74, 90).

8. Each paraprofessional was informed that their first day of work for the 1999-2000 school year was 8/10/99, or 9 days before the first professional day, and that their last day was scheduled for 6/15/2000, or 8 days after the last professional day. They would be paid at the collective bargaining agreement (CBA) rate for that additional time. The parties' CBA does not contain any provision designating the work year for the computer lab paraprofessionals. (Association Exhibit 3; Employer Exhibit 1; N.T. 78, 102, 108).

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<sup>2</sup> The five school buildings in the District include the following: Mars Area High School, Mars Area Middle School, Adams Elementary School, Middlesex Elementary School and the Primary Center for kindergarten students.

9. Due to the relatively short notice, Dr. Pettigrew informed the District business manager to guarantee approval for leave without pay for those who had pre-planned vacations and other commitments. Also, the District made other positions available to accommodate those affected computer paraprofessionals who did not want to permanently change their work year to 205 days. (N.T. 98, 112-113, 116-119 144-146).

10. Joanne Randza worked in the computer lab at Adams Elementary School and accepted the extended work year calendar. (N.T. 72-73, 118-119).

11. Diane McGrath was the computer lab paraprofessional who worked at the middle school. Ms. McGrath decided not to submit a leave slip to keep her computer lab position and chose to apply for another paraprofessional position within the District that remained at 188 days. (Association Exhibit A-4; N.T. 22-26, 130).

12. Judith Baker, the computer lab paraprofessional at the Middlesex Elementary School, was unilaterally transferred to another paraprofessional position without the option of keeping her computer lab position because the administration officials determined that she was not performing satisfactorily with the computers. (N.T. 79, 117, 119).

13. Virginia Alexandrunas held the computer lab position at the high school when she received notice of the District's decision to extend the number of work days for the computer lab employes. Ms. Alexandrunas decided not to submit a leave slip to keep her computer lab position and requested a transfer to a 188-day paraprofessional position. (Association Exhibit 8).

14. Several years ago, the District responded to community requests to operate an evening adult computer class. Since its inception, the District has employed several different employes from its staff to teach that class, including a librarian and a secretary as well as the computer lab paraprofessionals. Ms. Alexandrunas taught the evening adult computer education class at the high school sometime during the 97-98 and the 98-99 school years. Ms. McGrath taught the class sometime during the 98-99 school year. The District did not, at any time, inform Ms. McGrath, Ms. Alexandrunas or any of the other computer lab paraprofessionals that they could not teach the evening adult computer class if they no longer worked in the computer lab. Neither Ms. McGrath nor Ms. Alexandrunas sought to teach the adult computer class after they sought transfers to other positions. Teaching the evening computer class is not bargaining unit work. The duties and the wage rates for the evening computer classes were beyond the scope of the CBA and the parties' collective bargaining relationship. (N.T. 33-36, 60, 100, 128-130).

15. The District did not increase the length of the work year for Pat Steiner, the computer lab paraprofessional at the Primary Center because the equipment and the associated software technology was antiquated and obsolete. Consequently, although the District has plans to update the technology and replace the old equipment in the near future, the current state of the computer lab at the Primary Center cannot sustain modern upgrades in software. The computers are not integrated into the kindergarten educational program to the same degree that computers are

integrated into the educational program at higher elementary, middle and high school grade levels. (N.T. 89, 98-99, 106).

#### DISCUSSION

The District maintains one computer lab in each of its five school buildings. The District has five computer lab paraprofessionals, one for each of its labs. The term "Paraprofessional" is a designation given to a class of non-professional full-time employees in the District who individually provide various services for the District but, as a class, they all have the same daily hours, benefits and wages. Since 1994 the District has required computer paraprofessionals to work 188 days per year. By letter dated July 8, 1999, William G. Pettigrew (Dr. Pettigrew), the District superintendent, informed four of the five computer lab paraprofessionals, that they would be required to work 205 days per year, an increase of 17 work days, beginning immediately with the 1999-2000 school year. Each paraprofessional was informed that their first day of work for the 1999-2000 school year was 8/10/99 or 9 days before the first professional day and that their last day was scheduled for 6/15/2000 or 8 days after the last professional day. They would be paid at the CBA rate for that additional time.<sup>3</sup> The parties' CBA does not contain any provision designating the work year for the computer lab paraprofessionals.

Due to the relatively short notice, Dr. Pettigrew informed the District business manager to guarantee approval for leave without pay for those who had pre-planned vacations and other commitments. Also, the District made other positions available to accommodate those affected computer paraprofessionals who did not want to permanently change their work year to 205 days. Diane McGrath was the computer lab paraprofessional who worked at the middle school. Ms. McGrath decided not to submit a leave slip to keep her computer lab position and chose to apply for another paraprofessional position within the District that remained at 188 days.

Although the July 8, 1999 letter was also sent to Judith Baker, the computer lab paraprofessional at the Middlesex Elementary School, she was unilaterally transferred to another paraprofessional position without the option of keeping her computer lab position because the administration officials determined that she was not performing satisfactorily with the computers. Virginia Alexandrunas held the computer lab position at the high school when she received notice of the District's decision to extend the number of work days for the computer lab employees. Ms. Alexandrunas requested a transfer to a different 188-day paraprofessional position. Joanne Randza worked in the computer lab at Adams Elementary School and accepted the extended work year.

Several years ago, the District responded to community requests to operate an adult computer class. Since its inception, the District has employed several different individuals from its staff to teach the adult evening computer classes. The District has employed a librarian and a secretary as well as the computer lab paraprofessionals for its evening classes. Ms. Alexandrunas taught the adult computer education class at the high school during the 97-98 and the 98-99 school years. Ms. McGrath taught the evening adult education class sometime during the 98-99 school

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<sup>3</sup> The wage schedule for paraprofessionals can be found on page 6 of the CBA which was entered as Employer Exhibit 1.

year. The District did not at any time inform Ms. Alexandrunas, or any of the other computer lab paraprofessionals, that they could not teach the adult computer class if they no longer worked in the computer lab. Neither Ms. McGrath nor Ms. Alexandrunas sought to teach the adult computer class after they sought transfers to other paraprofessional positions.

The District's reason for extending the school year for 4 of 5 of the computer lab paraprofessional positions was that it believed that it could improve its educational program by ensuring that the computer hardware and software operated without problems before the students and the professionals begin the school year and thereby improving the quality and accessibility of its computer lab operations. In the past, the District experienced certain problems with computer connections and general equipment maintenance at the beginning of the school year. This was exemplified by the Internet problems experienced during the Christmas season during the 1999-2000 school year. Also, the District's computer lab system is intended to be a state-of-the-art system that must be updated with new software technologies every year. The District wanted the process of loading the updated software and system enhancements to occur before and after the school year so that any problems that occur with those changes could be addressed and resolved without interfering with the school year and the students' education. The District integrated its computer lab into the entire curriculum so that the computers were used by the students as tools for their classes, instead of limiting computer use to the learning of computers in a vacuum as a separate subject. The Union does not dispute the educational purposes and concerns offered by the District to support its action of increasing the length of the work year for the computer paraprofessionals in this case.

The District did not increase the length of the work year for Pat Steiner, the computer lab paraprofessional at the Primary Center because the equipment and the associated software technology was antiquated and obsolete. Consequently, although the District has plans to update the technology and replace the old equipment in the near future, the current state of the computer lab at the Primary Center cannot sustain modern upgrades in software technology. Also, the computers are not integrated into the kindergarten educational program to the same degree that computers are integrated into the educational program at higher elementary, middle and high school grade levels. Accordingly, the District decided that the work year for the computer lab paraprofessional at the Primary Center did not need to be increased because the imperative of having the computers and their systems fully operational and updated before the start of the school year did not exist.

In its exceptions, the District asserts that the Hearing Examiner erred as a matter of law by concluding that the District's decision to extend the work year was a mandatory subject of bargaining instead of a matter of inherent managerial prerogative. The Board agrees with the District that, based on the specific facts and circumstances of this case, the District did not have a duty to bargain with the Union over its decision to increase the work year for the computer lab paraprofessionals.

In Association of Pennsylvania State College and University Faculties v. State System of Higher Education (APSCUF), 24 PPER ¶ 24042 (Proposed Decision and Order, 1993), aff'd, 24 PPER ¶ 24070 (Final Order, 1993), the Board affirmed and adopted the hearing examiner's analysis which concluded

that the employer's adjustment of a school calendar was not a mandatory subject of bargaining. In APSCUF, the State System of Higher Education (SSHE), which operated a consortium of 14 universities at the time, adjusted the course schedule calendar at the State System University Center in Harrisburg. The University Center in Harrisburg did not have its own faculty and utilized faculty from Shippensburg University. The calendar change required Shippensburg faculty to teach at the University Center when they would be on vacation under the calendar at Shippensburg University. The Board and the hearing examiner applied the balancing test espoused by the Pennsylvania Supreme Court in PLRB v. State College Area Sch. Dist., 461 Pa. 494, 337 A.2d 262 (1975), to determine whether SSHE's calendar change was within the scope of bargainable issues. In balancing the competing interests, the hearing examiner recognized that faculty members, who had to teach while Shippensburg University was on break, faced an immediate impact on hours and working conditions by interfering with vacation and preparation time. The examiner, however, concluded that the balance weighed in favor of SSHE because it "advanced reasons which directly impact upon method of operation and delivery of [educational] services." APSCUF, 24 PPER at 104. In affirming this decision, the Board stated that the "examiner's conclusion that the school calendar is not mandatorily negotiable is consistent with the Board's decision in prior cases." APSCUF, 24 PPER at 177 (citing Appalachia Intermediate Unit 8 (Appalachia), 8 PPER 75 (Nisi Decision and Order, 1977); and Northern Cambria School District, 3 PPER 319 (Nisi Decision and Order, 1973)).

In Appalachia, where the union sought to implement a change in the school calendar to make up for strike days, the Board stated that "[a]s a non-mandatory subject of collective bargaining, the [e]mployer is under no compulsion to bargain and most certainly need not acquiesce to the [c]omplainant's position." Appalachia, 8 PPER at 76. Similarly, in Northern Cambria, the school district unilaterally established and adopted a calendar in May 1972. After the employees went on strike in August 1972, the union wanted to bargain to extend the number of workdays in the calendar. The Board, in Northern Cambria stated that the school calendar and the length of the work year within a school district was a matter of inherent managerial policy within the meaning of Section 702 of PERA and concluded that the school district in that case was "well within its rights by refusing to bargain with the [union] over the school calendar." Northern Cambria, 3 PPER at 320.

However, in Jersey Shore Area Educ. Ass'n. v. Jersey Shore Area Sch. Dist., 18 PPER ¶ 18061 (Proposed Decision and Order, 1987), aff'd, 18 PPER ¶ 18117 (Final Order, 1987), the Board again adopted the hearing examiner's scope of bargaining analysis where the school district reduced the work year for certain guidance counselors, thereby reducing the number of hours they worked in the year and their pay. The hearing examiner observed that the school district's decision "did not alter the services offered to the public in any appreciable manner. Moreover, the [school district's] decision was not one designed to curtail or 'phase down' services since the counselors are now required to perform the same job in a shorter work year." Id. at 177. The hearing examiner then concluded that "pursuant to the balancing test enunciated in State College, supra, the reduction of [the] work year, without a corresponding curtailment or 'phasing down' of services, constitutes a mandatory subject of bargaining." Jersey Shore, 18 PPER at 177. Because the school district's decision was, as the superintendent characterized, the performance of the "same job" in 183 paid

days rather than 203 paid days, it amounted to no more than a reduction in compensation without prior bargaining.

Additionally, in Conrad Weiser, 28 PPER ¶ 28050 (Final Order, 1997), the school employer maintained a summer term wherein agriculture teachers divided their time between (1) teaching agriculture students during the summer growing season and (2) self-improvement and professional development. The employer unilaterally reduced the number of days it intended to compensate the agriculture teachers because it felt that it should not pay agriculture teachers for self-improvement and professional development. The record did not show a reduction in student related duties. (28 PPER 107, F.F. 23). Because the change did not affect the educational mission of the employer over the summer months and was intended to reduce compensation of the agriculture teachers, the Board found the employer's conduct to be a unilateral reduction in salary and not a matter of inherent managerial prerogative.

As the above-referenced cases consistently demonstrate, a public school has an inherent managerial prerogative to unilaterally adjust the calendar for school personnel where the change effectuates an appreciable and legitimate educational purpose by improving or streamlining the manner and delivery of its educational service and function, which is a core managerial interest for a public school employer. The school districts in Jersey Shore and Conrad Weiser simply reduced the compensation for certain employes, which directly impacted on mandatorily negotiable matter without a legitimate educational purpose designed to streamline services or improve its educational function in any way. Accordingly, the unilateral reduction of the length of the school year in those cases, on balance, did not outweigh the impact on the employes' wages, hours and working conditions. Therefore, Jersey Shore and Conrad Weiser are distinguishable from and inapposite to the present case.

In applying these principles and the State College balancing test to the facts here, the Board recognizes that the District's decision to extend the work year for 4 of the 5 computer lab paraprofessionals has a direct and immediate impact on those employes' hours and working conditions by reducing their summer vacation time. The record, however, contains substantial credible evidence that the District's decision was designed to improve the District's educational services. The record demonstrates that the District strives to maintain a state-of-the-art computer lab in each of its school buildings except for the antiquated facility in the Primary Center, where the work year for the paraprofessional position was not extended. The computer program in the District was utilized to integrate the use of computer technology into all subjects of the students' education. The District proffered evidence that the software technology on the computers had to be upgraded every year to keep pace with changes in software advances both pedagogically and technologically. Additionally, the record shows that the District experienced periodic breakdowns in hardware and Internet connections. Upgrading software can result in various anomalies that often require time consuming troubleshooting to correct. As a result of these experiences, the District sought to minimize the computer down time and the inability for students to utilize important educational equipment, in which the District invested large sums of money for student use. If students could not utilize the computers at the start of the school year, due to technological problems with upgrading software and hardware, the students and the District would not be deriving the maximum benefit from the District's financial or educational investment.

Additionally, the fact that the District did not increase the work year for Pat Steiner, the computer lab paraprofessional in the Primary Center corroborates the educational purpose advanced by the District for increasing the work year for the other paraprofessionals. The Primary Center has antiquated computers that are incapable of being upgraded with modern software like the computers at the other 4 locations within the District. Also, the computer lab program at the Primary Center is not fully integrated into the kindergarten curriculum like it is with the higher grade levels. Without the ability to upgrade software and absent the curricular need to ensure that the computers are operating for student use at the Primary Center at the beginning of the school year, the District properly refrained from increasing the work year for Ms. Steiner. Accordingly, the reasonableness of the District's decision to maintain the 188-day work year for Ms. Steiner at the Primary Center supports and corroborates the reasonableness of the District's decision to increase the work year for the computer paraprofessionals at the other locations where more advanced facilities serve higher grade levels and are integrated into the entire educational program.

Moreover, the fact that Ms. McGrath and Ms. Alexandrunas did not teach the adult education class after they requested to be assigned 188-day paraprofessional positions does not factor into the analysis as an impact on their wages, hours or terms and conditions of employment. There is substantial credible evidence in the record establishing that no one from the District prevented Ms. McGrath, Ms. Alexandrunas or any other employees from continuing to teach the adult education class. The record also demonstrates that Ms. McGrath and Ms. Alexandrunas clearly failed to pursue teaching the adult education class after they sought transfers from the computer lab. Additionally, notwithstanding the reasons why Ms. McGrath and Ms. Alexandrunas no longer teach the evening computer class, the record here shows the position was non-bargaining unit work. The CBA and the collective bargaining relationship between the parties, therefore, does not govern the wages, hours and terms and conditions of the evening employment. In fact, the employees, who teach the evening classes, earn significantly higher wages for that work than they do for performing bargaining unit work. Accordingly, whether or not the District's decision had any impact on Ms. McGrath's or Ms. Alexandrunas' ability to teach the adult computer classes, is not relevant to the scope of bargaining analysis here because the wages, hours, and terms and conditions of that employment is separate and distinct from their bargaining unit work. Therefore, Ms. McGrath's and Ms. Alexandrunas' voluntary withdrawal from teaching the adult evening class cannot be weighed in balancing the competing interests in this case.

Additionally, although three of the computer lab paraprofessionals experienced transfers to other paraprofessional positions producing a change in their terms and conditions of employment, the District did not directly cause or force these transfers as a result of its decision to adjust the work year. The District was aware that notifying the computer paraprofessionals in July of 1999 of an increase in the number of work days for the 1999-2000 year could potentially interfere with vacation plans and previous commitments. Accordingly, the District gave the affected employees an opportunity to keep their computer lab positions without working the increased number of days for the first year, and the District would secure coverage in the lab for the extra days. Therefore, the District gave the affected employees one year notice so they could adjust their vacation plans for the following year when they would be expected to work the additional days. The District, however, offered the employees an opportunity to

transfer to another paraprofessional position with equal pay if they did not want to work 205 days in any future year. Of the four affected employees, one accepted the increase and one was unilaterally transferred due to job performance, which is not at issue here. The remaining two employees, Ms. McGrath and Ms. Alexandrunas, both voluntarily chose to be transferred to another position because they did not want to compromise their summer vacation in any year. Therefore, the fact that the District's decision, on short notice, would have interfered with their vacation plans in 1999-2000 was not a factor. These two employees did not want to work 205 days in any year. Ms. McGrath and Ms. Alexandrunas both voluntarily chose different positions. Accordingly, the transfers were an accommodation of the employees' wishes not to work 205 days per year. The transfers were not an impact of the District's decision to increase the work year. That impact was the increase in the number of work days and reduced vacation time which, as already stated, does not outweigh the employer's interest in this case.

The Board therefore finds that, on balance, the District's legitimate interest in ensuring the maximum return on its investment in computer technology and equipment and its interest in improving educational services outweighs the impact on the employees' wages, hours and terms and conditions of employment.

In its second exception, the District argues that the Hearing Examiner erred in concluding that the record contained no evidence to support a finding that the Union waived its right to object or demand bargaining over the issue of calendar adjustments. After conducting a thorough review of the record and the case law applicable to issues of waiver, waiver by inaction and contractual privilege, the Board concludes that the District's contentions are without merit. Furthermore, the Board herein adopts the Hearing Examiner's analysis of the waiver and contractual privilege issue. Therefore, the District's second exception is dismissed.

After a thorough review of the exceptions and all matters of record, the Board shall sustain the exceptions in part and dismiss the exceptions in part.

#### CONCLUSIONS

CONCLUSIONS 1 through 3 on pages 2 and 3 of the Proposed Decision and Order are affirmed and incorporated herein by reference.

CONCLUSION 4 is vacated and set aside.

5. That the District has not committed unfair practices in violation of Section 1201(a)(1) and (5).

#### ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employee Relations Act, the Board

#### HEREBY ORDERS AND DIRECTS

that the exceptions filed to the Proposed Decision and Order in the above-captioned matter be and the same are hereby sustained in part and dismissed

in part; and that the Order on page 3 of the Proposed Decision and Order be, and hereby is, vacated and set aside.

SEALED and DATED pursuant to Conference Call Meeting of the Pennsylvania Labor Relations Board, John Markle, Jr., Chairman, L. Dennis Martire, Member, and Edward G. Feehan, Member, this twenty-seventh day of March, 2001. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within Order. This Order is MAILED to the parties this thirtieth day of March, 2001.