

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

EASTERN WESTMORELAND CAREER AND :
TECHNOLOGY CENTER EDUCATION :
ASSOCIATION PSEA/NEA :
: :
v. : Case No. PERA-C-03-409-W
: :
EASTERN WESTMORELAND CAREER AND :
TECHNOLOGY CENTER :

PROPOSED DECISION AND ORDER

On September 25, 2005, the Pennsylvania Labor Relations Board (Board) issued an Order Directing Remand to Hearing Examiner for Further Proceedings. The Board's order was issued after the Eastern Westmoreland Career and Technology Center (Center or Employer) filed exceptions to the Proposed Decision and Order (PDO) issued by the hearing examiner on July 25, 2005. In the PDO, the examiner concluded that the Center violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA) by unilaterally discontinuing the practice of permitting teachers to choose an earlier or later work schedule without prior bargaining with the Eastern Westmoreland Career and Technology Center Education Association, PSEA/NEA (Association).

In the PDO, the examiner relied on prior Board decisions which hold that changes in employe work schedules are generally mandatory subjects of bargaining.¹ However, the Board determined that the issue here of whether the Center had a duty to bargain over the flexible work schedule "is distinguishable from other issues involving 'hours' previously determined by the Board to be mandatory subjects of bargaining" (remand order at 2). Therefore, the Board held that this case presents a novel issue that must be decided through application of the balancing test set forth in PLRB v. State College Area School District, 461 Pa. 494, 337 A.2d 262 (1975). In remanding the case to the examiner, the Board stated:

"[A] State College balancing analysis requires findings of fact based on credibility determinations. It is the Board's consistent and well-established policy that it will rely on its hearing examiners, who conduct and preside at unfair practice hearings, to make the necessary credibility determinations and resolve issues of disputed facts. See Crestwood School District v. Crestwood Education Association, 32 PPER ¶ 32050 (Final Order, 2001). Accordingly, the Board believes that this case should be remanded to the Hearing Examiner to make the requisite findings of fact and conduct, in the first instance, a State College balancing analysis"

(remand order at 3).

The examiner, on the basis of the testimony and exhibits presented at the hearing and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

FINDINGS OF FACT numbers 1 through 8 inclusive, as set forth in the initial PDO issued on July 25, 2005, are incorporated by reference herein and made a part hereof, and the following additional findings are made:

9. The Center receives students from the following school districts: Ligonier Valley, Laurel Valley, Derry and Greater Latrobe. (N.T. 149, 151, 164-165; Employer Exhibit 2)

¹ Similarly, the United States Supreme Court and labor relations boards in other states have held that the mandatorily negotiable subject of "hours" includes employe starting and quitting times. Meat Cutters v. Jewel Tea Co., Inc., 381 U.S. 676, 691, 85 S. Ct. 1596, 1602 (1965); State of New Jersey, 11 N.J. Pub. Empl. Rptr. ¶ 16254 (New Jersey Public Employment Relations Commission, 1985); Heyworth School District No. 3, 1 Ill. Pub. Empl. Rptr. ¶ 1069 (Recommended Decision, 1985), aff'd, 1 Ill. Pub. Empl. Rptr ¶ 1182 (Illinois Educational Labor Relations Board, 1985).

10. During the 2002-2003 and 2003-2004 school years, the earliest arrival time for students who attended the Center was 7:55 a.m. and the latest departure time for students was approximately 2:37 p.m. (N.T. 151, 164-165; Employer Exhibit 2)

11. The Center's rescission of the flexible work schedule did not affect the teachers' interaction with the students because regardless of which schedule the teachers chose, they reported for work before the students arrived and completed their workday after the students departed. (N.T. 12-13, 34-35)

12. The Center's rescission of the flexible work schedule and directive that all teachers work from 7:30 a.m. to 3:15 p.m. did not affect the Center's ability to schedule faculty meetings because even when the flexible schedule was in effect, the teachers were required to work the later schedule from 7:30 a.m. to 3:15 p.m. when the Center scheduled faculty meetings in the afternoon. (N.T. 35)

13. No employees had their hours reduced or lost their jobs because of the Center's rescission of the flexible work schedule. (N.T. 44-45)

14. Even after the Center rescinded the flexible work schedule and directed all teachers to report for work at 7:30 a.m., a secretary reported for work at 7:00 a.m. to open the building. (N.T. 46-48)

15. When the flexible work schedule was in effect, the Center required the teachers to choose the earlier or later schedule at the beginning of the school year and did not permit them to change their schedule during the year. Therefore, from the very outset of the school year, the Center was aware of which teachers worked the earlier schedule and which teachers worked the later schedule. (N.T. 50-51, 55)

16. The Center employs approximately twenty teachers. Before the Center rescinded the flexible work schedule, approximately half of the teachers worked the earlier schedule and half worked the later schedule. (N.T. 50)

17. The Center has employed Joseph Lester as a teacher since 1980. Before the Center eliminated the flexible work schedule, Lester worked the earlier schedule. He chose this schedule because he was a widower with two school age children at home, and the earlier schedule allowed him to care for his children when they arrived home from school in the afternoon. (N.T. 96, 99-100)

18. When Lester worked the earlier schedule before the Center eliminated this option for teachers, he never had a problem meeting with guidance counselors or specialists due to his schedule. (N.T. 101)

19. The Center has employed Gerry Zacur as a plumbing instructor for ten years. Before the Center eliminated the flexible work schedule, Zacur worked the earlier schedule. He found that working the earlier schedule gave him greater access to the copier machine. (N.T. 130-131)

20. Zacur was a member of a committee that sought to generate outside interest in the Center's programs. Zacur found that working the earlier schedule made it easier for him to meet with members of the plumbing trade after school to encourage them to participate in educating students in the trade. (N.T. 131-132)

21. Working the earlier schedule made it easier for teachers to take afternoon courses needed to obtain or maintain certification. (N.T. 90-91, 132)

22. The Center has employed Glenn Isaac as a cosmetology instructor for nine years. Isaac worked the earlier schedule because he found that there was less traffic when leaving work at 2:45 p.m., rather than at 3:15 p.m. (N.T. 132-133)

23. The Center has employed Victoria McLaughlin as a health assistant instructor for six years. McLaughlin worked the later schedule because she went to the gym before work. (N.T. 134-135)

24. McLaughlin found that she had better access to the copier machine when the flexible work schedule was in effect because the teachers worked staggered schedules and were not all attempting to use the copier at the same time. Although an additional copier was installed at some point during the 2003-2004 school year, this did not rectify the situation because the additional copier was a poorer quality machine and the teachers preferred using the old copier. (N.T. 135-136)

DISCUSSION

As discussed in the initial PDO, the Center had a practice before the 2003-2004 school year of permitting teachers to report for work at approximately 7:00 a.m. or at 7:30 a.m. If the teachers opted to report for work at approximately 7:00 a.m., they had a thirty-minute duty-free prep period first thing in the morning and left work at 2:45 p.m. If the teachers opted to report for work at 7:30 a.m., they had a thirty-minute duty-free prep period at the end of the day and left work at approximately 3:15 p.m. However, if there was a faculty meeting scheduled in the afternoon, all teachers had to report for work at 7:30 a.m.

Regardless of whether the teachers opted to work the earlier or later schedule, they reported for work before the students arrived and completed their workday after the students departed. Indeed, even with the optional starting and quitting times, all teachers were present at the Center from 7:30 a.m. to 2:45 p.m. The first students did not arrive until 7:55 a.m. and the last students departed at approximately 2:37 p.m.

The Center unilaterally rescinded the flexible work schedule at the beginning of the 2003-2004 school year without prior bargaining with the Association. The Center directed all teachers to work from 7:30 a.m. to 3:15 p.m., with a thirty-minute duty-free prep period at the end of the day.

The Board remanded this case to the examiner to conduct a State College analysis to determine if the flexible work schedule in effect before the 2003-2004 school year was a mandatory subject of bargaining. In State College, the Pennsylvania Supreme Court announced the following balancing test to determine if a matter is a mandatory subject of bargaining under Section 701 of PERA or a managerial prerogative that need not be bargained under Section 702:

"[W]here an item of dispute is a matter of fundamental concern to the employees' interest in wages, hours and other terms and conditions of employment, it is not removed as a matter subject to good faith bargaining under section 701 simply because it may touch upon basic policy. It is the duty of the Board in the first instance and the courts thereafter to determine whether the impact of the issue on the interest of the employe in wages, hours and terms and conditions of employment outweighs its probable effect on the basic policy of the system as a whole."

461 Pa. at 506, 337 A.2d at 268.

As the findings of fact set forth above indicate, the Association offered substantial, credible testimony regarding the impact of the Center's unilateral action on the teachers' interest in hours and working conditions. Teachers credibly testified that the option to work an earlier schedule allowed them to return home in time to care for school age children when they arrived home after school, gave them greater access to the copier machine at work due to the staggered schedules worked by the teachers,² allowed them to leave work when there was less traffic, and made it easier to take afternoon courses needed to obtain or maintain certification (FF 17-24). Thus, the Center's rescission of the flexible work schedule and directive that all teachers work the later schedule had a demonstrable impact on the teachers' interest in hours and working conditions.

On the other hand, I find that the Center's rescission of the flexible work schedule had no demonstrable effect on its basic policy of educating students. As conceded by the

² As indicated in Finding of Fact 24 above, based on my observation of the witnesses and review of the entire record, I have credited the Association's testimony that the Center's installation of an additional copier during the 2003-2004 school year did not relieve the tie-up at the copier because the additional copier was a poorer quality machine and the teachers preferred using the old copier.

Center's administrative director (Marie Bowers), the Center's rescission of the flexible schedule had no impact on the teachers' interaction with the students because even when the teachers had the option of working an earlier or later schedule, all teachers reported for work before the students arrived and completed their workday after the students departed (FF 11; N.T. 12-13, 34-35). The Center's rescission of the flexible schedule and directive that all teachers work from 7:30 a.m. to 3:15 p.m. also did not affect the Center's ability to schedule faculty meetings because even when the flexible schedule was in effect, the teachers were required to work the later schedule from 7:30 a.m. to 3:15 p.m. when a faculty meeting was scheduled in the afternoon (FF 12; N.T. 35).

When asked by the Association's counsel how rescission of the flexible schedule impacted the Center, Administrative Director Bowers testified as follows:

"[W]e want the teachers to be there on the same schedule so they can have their prep period or more planning time together. So they can work on projects together. So they can share their best practices. So they can help each other improve instruction."

(N.T. 36).

However, under the collective bargaining agreement (CBA) between the Center and the Association, the teachers' thirty-minute prep periods are "duty-free" (FF 4). Thus, as Bowers conceded, the Center could not, and did not, direct the teachers to work together during their prep periods (N.T. 36-39). Rather, it is the teachers' choice whether to work together during their duty-free prep periods. Id. Teachers may choose to work together during their prep periods or they may choose to engage in any necessary collaboration at other times, such as during their thirty-minute lunch period (FF 4) or during the time that all teachers are present and working before the students arrive and/or after the students depart.³ Therefore, merely directing the teachers to take their prep periods at the same time of the day will not necessarily result in greater collaboration between the teachers. Accordingly, the Center's rescission of the flexible work schedule did not have a demonstrable impact on its educational policy.

Of course, it is entirely possible that scheduling the teachers' prep periods at the same time of the day will lead to greater collaboration between the teachers. However, I find that this possible impact of the Center's rescission of the flexible work schedule does not outweigh its actual impact on the teachers' interest in hours and working conditions.

The Center's administrative director also suggested in her testimony that the Center had an economic motive in rescinding the flexible work schedule. However, as the Board explained in Scranton School District, 19 PPER ¶ 19173 (Final Order, 1988), it is the employer's overall budget, and not individual components of that budget (such as the cost savings of a unilateral change), that is a managerial prerogative under Section 702 of PERA. Although cost reduction is a legitimate goal of management, it is not a core managerial function that outweighs the impact on employe terms and conditions of employment. City of Wilkes-Barre, 33 PPER ¶ 33087 (Final Order, 2002), citing Plumstead Township v. PLRB, 713 A.d 730 (Pa. Cmwlth. 1998).

Not only is a claimed economic motive no defense to an unfair practice charge alleging a failure to bargain in good faith, but the Center's administrative director conceded that no employes had their hours reduced or lost their jobs because of the rescission of the flexible work schedule (FF 13, N.T. 44-45). Also, even though the teachers were denied the option of reporting for work at 7:00 a.m. and were directed to report for work at 7:30 a.m., a secretary reports for work at 7:00 a.m. to open the building (FF 14; N.T. 46-48). Therefore, the record fails to indicate that the Center's rescission of the flexible work schedule resulted in a cost savings.

Later in her testimony, Administrative Director Bowers claimed that the flexible work schedule was rescinded because of the following additional managerial concerns: (1) different

³ Even when the flexible schedule was in effect, all teachers were required to report for work by 7:30 a.m. and to continue working until at least 2:45 p.m. (FF 5). On the other hand, the first students did not arrive at the Center until 7:55 a.m. and the last students departed from the Center at approximately 2:37 p.m. (FF 10).

schedules made it difficult for office staff to track down teachers; (2) different schedules made it difficult to schedule parent/teacher conferences; (3) different schedules made it difficult for guidance counselors and other specialists to track down teachers; (4) elimination of the early schedule gives the Center more time to inform the staff of school cancellations and more time for snow removal; (5) different schedules make it more difficult to account for teachers in the event of an evacuation; and (6) membership on school committees had declined. However, I find that these alleged managerial concerns are not credible and do not tip the balancing test in the Center's favor, for several reasons.

First, to the extent that Administrative Director Bowers claimed that these alleged managerial concerns played a part in her decision to rescind the flexible work schedule, I do not find her testimony credible. She failed to mention these alleged concerns when given the opportunity earlier in her testimony. Moreover, she did not reference these concerns until after she spent considerable time on the witness stand "thinking" about the alleged reasons for the Center's unilateral action (See, e.g., N.T. 49-50, 63-64, 72). From my observation of the testimony, it was apparent that the administrative director, upon prodding by the Association's counsel, simply offered any justification she could think of while on the witness stand for the Center's action. Thus, her claimed reliance on these concerns in deciding to rescind the flexible schedule is not credible.

Second, at least several of the alleged managerial concerns bear no relationship to the Center's basic policy of educating students. The concerns with (1) office staff tracking down teachers, (4) informing teachers of school cancellations and having more time to remove snow, and (5) accounting for teachers in the event of an evacuation do not relate to the District's educational policy, and thus cannot support a finding that the schedule change is a managerial prerogative.

Third, the record does not contain substantial, credible evidence to support these alleged concerns. For example, the concerns with (1) office staff tracking down teachers and (5) accounting for teachers in the event of an evacuation appear to be meritless because under the flexible schedule, the teachers were required to choose one of two schedules at the beginning of the school year (FF 15). Thus, as the Center's administrative director conceded, the Center was aware of the teachers' schedules and only needed to consult a list if a question arose as to a particular teacher's schedule (N.T. 79-80).

It is also important to remember that the teachers' schedules only varied slightly, in that all teachers were present at the Center from 7:30 a.m. to 2:45 p.m. The only difference was that some teachers were also present for a half hour before 7:30 a.m., whereas the other teachers were present for a half hour after 2:45 p.m. Therefore, the claimed difficulty in tracking down teachers, who are all present and working for most of the day, appears greatly exaggerated.

Alleged managerial concern (6) is equally meritless. The Center's administrative director conceded that she simply assumed that committee membership had declined because of the flexible schedule (N.T. 83). She admitted that she did not attempt to determine the actual cause of the decline in committee membership, and had no basis to attribute the decline to the flexible schedule. Id.

The Center's administrative director offered conflicting testimony concerning alleged managerial concern (3). Initially, she testified that she could not identify specific instances where guidance counselors or other specialists were unable to track down teachers (N.T. 57-58). Later in her testimony, the administrative director claimed to recall specific instances where guidance counselors or other specialists informed her that they could not track down teachers (N.T. 68-71). Not only do I find this conflicting testimony unworthy of credit, but the administrative director's testimony regarding what she was told by others is hearsay. Although not objected to, this hearsay testimony cannot form the basis for finding that the alleged problem existed. Adams Township, 36 PPER 162 (Final Order, 2005), citing Walker v. Unemployment Compensation Board of Review, 367 A.2d 366 (Pa. Cmwlth. 1976)(Board cannot base findings on unobjected to hearsay).

With regard to alleged managerial concern (2), there is no substantial, credible evidence that the flexible schedule prevented scheduling of parent/teacher conferences. Nor

would requiring all teachers to work the later schedule with a prep period at the end of the day necessarily ease scheduling of such conferences. The teachers would have to voluntarily agree to schedule the conferences during their non-duty prep periods. Moreover, parents may prefer to meet with teachers before the students arrive in the morning, rather than after the students depart in the afternoon. Thus, requiring the teachers to work the later schedule with a prep period at the end of the day may not improve scheduling of parent/teacher conferences.

In sum, I find that the rescission of the flexible schedule had a greater impact on the interests of the teachers than on the Center's basic policy. Therefore, the Center had a duty to bargain with the Association before rescinding the flexible schedule and committed an unfair practice by failing to do so.

CONCLUSIONS

CONCLUSIONS numbers 1 through 4 inclusive, as set forth in the initial PDO issued on July 25, 2005, are incorporated by reference herein and made a part hereof.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the Center shall:

1. Cease and desist from interfering, restraining or coercing employes in the exercise of the rights guaranteed in Article IV of PERA.

2. Cease and desist from 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.

3. Take the following affirmative action which the examiner finds necessary to effectuate the policies of PERA:

(a) Rescind the requirement that all teachers report for work at 7:30 a.m. and leave work at 3:15 p.m., with a prep period at the end of the day;

(b) Restore the flexible work schedule that was in effect before the 2003-2004 school year;

(c) Post a copy of this decision and order within five (5) days from the 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 attached 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 be and become absolute and final.

SIGNED, DATED AND MAILED this seventeenth day of January, 2006.

PENNSYLVANIA LABOR RELATIONS BOARD

PETER LASSI, Hearing Examiner

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

EASTERN WESTMORELAND CAREER AND :
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AFFIDAVIT OF COMPLIANCE

The Eastern Westmoreland Career and Technology Center hereby certifies that it has ceased and desisted from its violation of Section 1201(a)(1) and (5) of PERA; that it has rescinded the requirement that all teachers report for work at 7:30 a.m. and leave work at 3:15 p.m., with a prep period at the end of the day; that it has restored the flexible work schedule that was in effect before the 2003-2004 school year; that it has posted the proposed decision and order as directed therein; and that it has served a copy of this affidavit on the Association 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

January 17, 2006

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EASTERN WESTMORELAND CAREER AND TECHNOLOGY CENTER
Case No. PERA-C-03-409-W

Enclosed please find a copy of the proposed decision and order issued in the above-captioned case.

Sincerely,

Peter Lassi
Hearing Examiner

Enclosure

cc: Eastern Westmoreland Career and Technology Center
James T. Felice
Pittsburgh Regional Office
Myron H. Tomb, Esquire