

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

MINERSVILLE AREA EDUCATIONAL SUPPORT	:	
PERSONNEL ASSOCIATION PSEA/NEA	:	
	:	
v.	:	Case No. PERA-C-09-7-E
	:	
MINERSVILLE AREA SCHOOL DISTRICT	:	

**FINAL ORDER**

Minersville Area School District (District) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on November 6, 2009, challenging a Proposed Decision and Order (PDO) issued on October 20, 2009. In the PDO, the Board's Hearing Examiner concluded that the District violated Section 1201(a)(1) and (5) of the Public Employee Relations Act (PERA) by unilaterally implementing a weekend coverage schedule and eliminating the parties' past practice of allowing the second shift custodial and maintenance employees to work first shift during school vacation periods. The Minersville Area Educational Support Personnel Association, PSEA/NEA (Association) timely filed a response to the exceptions and a supporting brief, which the Board received on November 16, 2009.

The facts of this case are summarized as follows. On September 14, 2008, the District unilaterally issued a weekend coverage schedule for the custodial and maintenance employees, effective September 20, 2008. The weekend coverage schedule required full-time employees to work two to four fewer hours during their customary Monday-Friday work week and to work those hours on Saturdays and/or Sundays on a rotating basis. The weekend coverage schedule also required part-time employees to work two additional hours beyond their customary twenty hour work week when they were scheduled to work the weekend shift. The new schedule deprived the full-time custodial and maintenance employees of two to four hours of overtime that they otherwise would have received for working on weekends and the part-time employees gained two additional hours for those weeks that they worked a weekend shift. Prior to the change, the same part-time<sup>1</sup> employee worked the weekends for the District.

On September 22, 2008, the Association filed a grievance regarding the District's creation of the weekend coverage schedule. On October 10, 2008, Association President James Quinn along with UniServ Representative Terry Burnett met with District Superintendent Michael Brady and High School Principal Carl McBreen to discuss the grievance. The Association withdrew its grievance at the meeting. During the meeting, Superintendent Brady advised Mr. Quinn that he, along with bargaining unit members John Lazarchick and Joseph Krasinsky, would now work from 7:30 a.m. to 3:30 p.m. instead of 7:00 a.m. to 3:00 p.m. Thereafter, Superintendent Brady issued a memorandum to the head custodian which stated that "In view of a recent discussion with the custodial association representative and the association president, an issue was raised relative to changing shifts. In light of this disagreement, until further notice, the custodians will remain on their assigned shift through all vacation periods." Superintendent Brady's October 10, 2008 memorandum deviated from the parties' past practice of permitting the second shift custodial and maintenance employees to work first shift during school vacation periods.

The Association filed a second grievance on November 25, 2008, over the change in shifts for Mr. Quinn, Mr. Lazarchick and Mr. Krasinsky. On December 3, 2008, UniServ Representative Burnett filed a demand to bargain with the District over the changes in the custodial and maintenance employees' hours. On December 4, 2008, the Association

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<sup>1</sup> The Board notes that Finding of Fact 10 contains a typographical error mistakenly stating that a full-time employee worked the weekends. The testimony cited by the Hearing Examiner, and the record as a whole, clearly indicates that for at least eighteen years before September 2008, a particular part-time employee worked weekends and the other employees did not, with the exception of instances where they needed to perform snow removal duties. Thus, Finding of Fact 10 is hereby amended to reflect that a part-time employee worked the weekends for the District.

withdrew its second grievance. On December 16, 2008, the District refused to bargain with the Association.

Applying the balancing test under PLRB v. State College Area School District, 461 Pa. 494, 337 A.2d 262 (1975), the Hearing Examiner concluded in the PDO that the District's actions had a greater impact on the employees' interest in wages, hours and working conditions than on the District's asserted interest in maintaining safe buildings and, therefore, the District's unilateral issuance of the weekend coverage schedule violated its duty to bargain under Section 1201(a)(5) of PERA. The Hearing Examiner further concluded that the District violated Section 1201(a)(5) and committed an independent violation of Section 1201(a)(1) when it unilaterally changed the parties' past practice of allowing the second shift custodial and maintenance employees to work first shift during school vacation periods in response to the Association's filing of a grievance. Additionally, the Hearing Examiner determined that the District committed an independent violation of Section 1201(a)(1) of PERA by changing the hours of Mr. Quinn, Mr. Lazarchick and Mr. Krasinsky in response to the filing of a grievance.

In its exceptions, the District initially argues that the Hearing Examiner improperly applied the balancing test set forth in State College, *supra*. In order to determine whether a matter in dispute is a mandatory subject of bargaining under Section 701 of PERA, the Board is required to "determine whether the impact of the issue on the interest of the employe[s] in wages, hours and terms and conditions of employment outweighs its probable effect on the basic policy of the system as a whole." State College, 461 Pa. at 507, 337 A.2d at 268. Upon review of the PDO and the record as a whole, the Board finds no error in the Hearing Examiner's application of the State College balancing test.

Indeed, the District's unilateral action regarding coverage on weekends had the effect of changing the work schedules of the entire bargaining unit from fixed to rotating schedules. Previously, for at least eighteen years, one unit member worked weekends and the other unit members worked only during the week, with the exception of snow emergencies. Under the new schedule unilaterally implemented by the District, all unit members now had to work on weekends on a rotating basis. The Board has consistently held that a unilateral, bargaining unit-wide change in shift schedules from fixed schedules to rotating schedules and vice versa is a mandatory subject of bargaining. *See, e.g., Indiana Borough v. PLRB*, 695 A.2d 470 (Pa. Cmwlth. 1997); Township of Upper Saucon v. PLRB, 620 A.2d 71 (Pa. Cmwlth. 1993). The same result must obtain here where the District's unilateral action deprive the employees of weekends off and keeps them from receiving overtime for working weekends, and the impact on employee interests clearly outweighs the impact on the District's basic policy. Indeed, the new schedule has no impact on the District's basic policy because it has the same weekend coverage that it had before; the sole change is that the entire bargaining unit provides weekend coverage rather than a single employee. Such a schedule change affecting the entire bargaining unit must be bargained and may not be unilaterally imposed by the District.<sup>2</sup>

The District further asserts that the Hearing Examiner erred by concluding that the management rights clause in the parties' collective bargaining agreement did not authorize the District to unilaterally change the hours of the custodial and maintenance employees. It is well-settled that broad language in a management rights clause does not evidence a waiver of the employee representative's right to bargain over a mandatory subject. Township of Upper Saucon, *supra*; Teamsters Local Union No. 205 v. Munhall Borough, 40 PPER 76 (Proposed Decision and Order, 2009), 40 PPER 102 (Final Order, 2009). In order to find a waiver of bargaining rights, the language relied upon by the public employer must show a clear and unmistakable waiver. Munhall Borough, *supra*. Upon review, the management rights clause in the parties' collective bargaining agreement does not demonstrate a clear and unmistakable waiver by the Association of its right to bargain over changes in the employees' hours. As such, the District's assertion is without merit.

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<sup>2</sup> The District also alleges that the Hearing Examiner erred by failing to conclude that the weekend coverage schedule had been implemented as a matter of past practice. The record does not support this allegation. Rather, the record demonstrates that the same custodian, who retired in June 2008, worked the weekends for at least eighteen years before the issuance of the weekend coverage schedule. (N.T. 38-40, 54, 62-63).

The District next alleges that the Hearing Examiner erred by concluding that the facts in Minersville Area School Service Personnel Association, PSSPA/PSEA v. Minersville Area School District, 18 PPER ¶ 18025 (Final Order, 1986) are distinguishable from the facts in the present case. In Minersville, the District changed the schedules of several custodial employees from working during the day in the summer to working at night. The Board held that the change in schedules did not impact the employees' hours because they worked the same number of hours and were receiving shift differential pay for working the night shift.

Unlike Minersville, the weekend coverage schedule implemented in this case changed the schedules for the entire bargaining unit and impacted the wages of the full-time employees by depriving them of two to four hours of overtime for the weeks they were assigned to work the weekend. Therefore, the Hearing Examiner did not err in finding that Minersville is distinguished on the facts.

The District additionally alleges that the Hearing Examiner erred in concluding that it violated an established past practice by eliminating the policy of allowing second shift custodial and maintenance employees to work first shift during school vacation periods. A past practice is a separate enforceable condition of employment that cannot be derived from the language in the parties' collective bargaining agreement and develops as the normal and proper response to a recurring type of situation in the workplace. County of Allegheny v. Allegheny County Prison Employees Independent Union, 476 Pa. 27, 381 A.2d 849 (1977); AFSCME District Council 88 Local No. 790 v. Reading School District, 35 PPER 111 (Final Order, 2004). A unilateral change in an established past practice constitutes an unfair practice under Section 1201(a)(5) of PERA if it pertains to a mandatory subject of bargaining. Id.

Association President Quinn and custodian Robert Brown testified that the District had allowed the second shift custodial and maintenance employees to work the first shift during school vacation periods for the past eighteen years. (N.T. 26-27, 57-58). The District did not put forth any evidence to the contrary. Further, hours of work and schedule changes are mandatory subjects of bargaining. Hazleton Area Educational Support Personnel Association ESPA/PSEA/NEA v. Hazleton Area School District, 29 PPER ¶ 29180 (Final Order, 1998). As such, the Hearing Examiner properly concluded that the District violated its duty to bargain under Section 1201(a)(5) of PERA by eliminating the parties' past practice.

The District finally argues that the Hearing Examiner erred in concluding that its actions were an independent violation of Section 1201(a)(1) of PERA. The Board will find that an independent violation of Section 1201(a)(1) has occurred where, in light of the totality of the circumstances, "the employer's actions have a tendency to coerce a reasonable employee in the exercise of protected rights." Fink v. Clarion County, 32 PPER ¶ 32165 at 404 (Final Order, 2001). Actual coercion of the employees and improper motive on the part of the public employer need not be shown in order to find a violation of Section 1201(a)(1). Westmont-Hilltop Education Association v. Westmont-Hilltop School District, 24 PPER ¶ 24066 (Final Order, 1993). Viewed within the totality of the circumstances, the District's actions in changing the shifts of Mr. Quinn, Mr. Lazarchick and Mr. Krasinsky and eliminating the parties' past practice of allowing second shift custodial and maintenance employees to work first shift during school vacation periods would tend to coerce a reasonable employee in exercising his or her protected rights in filing or pursuing grievances. Indeed, the District advised Association President Quinn that his schedule, and the schedule of two other employees, would be changed at a meeting regarding the grievance, and the District stated in a memo that it would rescind the practice of allowing second shift custodians to work first shift during vacation periods "[i]n view of a recent discussion with the custodial association ... relative to changing shifts." (Finding of Fact 14; PDO at 2). Making such unilateral changes in response to filing of grievances clearly would tend to coerce reasonable employees in their participation in protected grievance activity. Accordingly, the Hearing Examiner properly concluded that the District violated Section 1201(a)(1) and (5) of PERA.

After a thorough review of the exceptions and all matters of record, the Board shall dismiss the exceptions and make the Proposed Decision and Order final.

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 by Minersville Area School District are hereby dismissed, and the October 20, 2009 Proposed Decision and Order be and the same is hereby made absolute and final.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, Anne E. Covey, Member and James M. Darby, Member, this sixteenth day of March, 2010. 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.

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

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**AFFIDAVIT OF COMPLIANCE**

Minersville Area School District hereby certifies that it has ceased and desisted from its violations of Section 1201(a)(1) and (5) of the Public Employee Relations Act; that it has restored the schedules, hours and shift start times for the custodial and maintenance employees as they existed prior to September 14, 2008; that it has posted the Proposed Decision and Order and Final Order as directed and that it has served a copy of this affidavit on the Association at its principal place of business.

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Signature/Date

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Title

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

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Signature of Notary Public