

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

ALLENTOWN EDUCATION ASSOCIATION, :
PSEA/NEA :
 :
v. : Case No. PERA-C-11-306-W
 :
ALLENTOWN CITY SCHOOL DISTRICT :

PROPOSED DECISION AND ORDER

On September 19, 2011 the Allentown Education Association, PSEA/NEA (Association or Complainant) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against the Allentown School District (District or Respondent) alleging that the District violated sections 1201(a)(1) and (5) of the Public Employe Relations Act (PERA) by changing the start time of the middle school teacher's day from 7:45 a.m. to 7:05 a.m. without negotiating.¹

On October 18, 2011, the Secretary of the Board issued a complaint and notice of hearing directing that a hearing be held on February 7, 2012 in Allentown before Thomas P. Leonard, Esquire, a hearing examiner of the Board.

The hearing was continued to May 9, 2012, on the Association's motion and without objection from the District. The hearing was held on the rescheduled day. The parties were afforded a full opportunity to present testimony, cross examine witnesses and introduce documentary evidence. The Association submitted a brief on September 7, 2012 and the District submitted a brief on October 4, 2012.

The hearing examiner, on the basis of the evidence presented by the parties at the hearing and from all other matters of record, makes the following:

FINDINGS OF FACT

1. The Allentown City School District is a public employer within the meaning of Section 301(1) of PERA.
2. The Allentown Education Association, PSEA/NEA is an employee organization within the meaning of Section 301(3) of PERA.
3. The Association is the exclusive representative of the District's professional employes.
4. The District and the Association have been parties to a collective bargaining agreement (CBA) for the professional employes effective July 1, 2007 through June 30, 2012. The parties have agreed to extend the CBA for an additional three years. (N.T. 8)
5. In June, 2011, the District announced new start/end times for the school day for elementary, middle and high school teachers and students. In a flyer, the District set forth the new schedule:

¹ On the day of the hearing, the Association moved to amend the specification of charges to add allegations that the District also changed the starting times at the elementary schools and the high school. The District did not oppose the amendment, but noted that since it was not prepared to address the amendment that it reserved the right to have a second day of hearing to present evidence on the amended charge. However, the District chose not to present additional testimony. A second day of testimony was not offered. The parties submitted briefs on the issue of whether the change of starting times for all the schools was an unfair practice. (N.T. 8-11, 57-62, 95-97)

**ASD Allentown
School District**

NEW!

2011-2012
School Start/End Schedules

	Elementary Schools	Middle Schools	High Schools
Teacher Start	8:00 a.m.	7:05 a.m.	7:20 a.m.
Student Start	8:45 a.m.	7:50 a.m.	7:30 a.m.
Student End	3:15 p.m.	2:25 p.m.	2:40 p.m.
Teacher End	3:30 p.m.	2:35 p.m.	2:50 p.m.

(N.T. 66, District Exhibit 1)

6. On June 2, 2011, Corinne Fecho, PSEA Uniserve Representative, wrote to Dr. Gerald Zahorchak, Superintendent of Schools, about the change in the starting times, stating that the changes were a unilateral change in working conditions made without bargaining, that they negatively impacted the Association members and that the District should cease and desist from making the changes. She requested bargaining over the decision and the impact of the decision. (N.T. 9, 68, 92, Association Exhibit 1, District Exhibit 3)
7. On June 6, 2011, Superintendent Zahorchak replied to Ms. Fecho. He stated that the decision to change the start time was a managerial right. He also offered to bargain with the Association over any impact of the decision as long as the Association first provided "documentation of examples where 'the change of working hours proposed for the 2011-2012 school year' negatively impacted" the employees. (N.T. 11, Association Exhibit 2)
8. Over the next few weeks, Superintendent Zahorchak and Ms. Fecho exchanged letters and emails to try to set up a meeting. (N.T. 11, 68-71, 79, 82, 83, Association Exhibit 2, District Exhibits 5, 6, 7, 8, 9, 10 and 11)
9. On June 29, 2011, Fecho and Debra Tretter, Association president, met with Dr. Zahorchak and District officials to discuss the Association's concerns. The concerns were employee safety on their way to work at the middle schools during dark mornings, particularly the Harrison-Morton Middle School, which was in a "crime ridden" area of Allentown; the "early bird" course before school at the high schools and the unavailability of child day care at such an early time for those teachers who had very young children and having their children in day care that early in the morning (N.T. 26-29, 37, 38, 47-50, 87)
10. During the winter months in Allentown, it is still dark at 7:05 a.m. (N.T. 87)
11. On July 7, 2011, the District sent a press release that announced a later start for elementary school students and an earlier start for middle and high school students. (N.T. 89, 92, District Exhibit 13)
12. The press release stated, in relevant part,

At the start of the 2011-2012 academic school year On September 6 & 7, the Allentown School District (ASD) will be changing the start of the school day for both students and teachers. The change in bell schedules stems from the need to introduce new transportation routes in order to save ASD as much as \$1 million as the district trimmed its budget due to a state funding deficit. The recommendation for this change in the schedule was originally proposed by the ASD Community Budget Task Force in Spring 2011.

"The ASD Board of School Directors listened carefully to the community's input," says Gerald L. Zahorchak, D.Ed., superintendent. "Having conducted two research studies by phone directly to thousands of Allentown parents, we were assured that the vast majority of parents found this change acceptable as long as the district proposed programming to make up for the idle time, especially in the morning."

The ASD Board of School Directors voted on June 23, 2011 in support of the revised transportation routes that would dictate a change in the school schedules districtwide.

The proposed school day start times reflect a later start for elementary school students, yet earlier start times for both middle school and high school students.

. . .

(N.T. 89, 92, District Exhibit 13)

13. On July 25, Deputy Superintendent Dr. Russell Mayo emailed the Association representatives that changing the start times for middle school would be a problem because "moving the block to after school for the teacher workday creates major headaches for kids having to wait for our teachers potentially." He went on to state that "I have several meetings planned to work through this, but solutions are difficult if any. The tutoring program is to be beefed up under our strategy to improve student performance." (N.T. 71, District Exhibit 8)
14. On July 26, 2012, Dr. Mayo e-mailed Ms. Fecho and Debra Tretter, Association president, that he would be unable to change the new start times for the middle school. The Association had proposed that a starting time of 7:35 a.m. could be used by moving 30 minutes from the new morning start to the end of the day. The District had a problem with that proposal because the end of the day was to be used for tutoring students and for after school detention. (N.T. 75-76, 79, 92, District Exhibit 9)
15. In that same e-mail Dr. Mayo addressed the three concerns of the Association with the new earlier start. As for the employe safety on their way to work during dark mornings, Dr. Zahorchak informed the Association that he had obtained security officers who would arrive 15 minutes ahead of teachers. As for the "early bird" course before school at the high schools the "early bird" course students would be moved into the first period. As for the concerns about day care availability, he would continue to talk and explore ways to address the concerns about day care, noting that some day care centers did open as early as 6:30 a.m. (N.T. 79, 92, District Exhibit 9)
16. At this unfair practice hearing, Dr. Mayo testified that the District was unable to accept an Association proposal to start the teacher day at 7:35 a.m. The later start time disrupted the District's strategy to lift itself from "distressed status." The District was under a PDE Corrective Action 2 Status of a "distressed" district. In his opinion, the District's chances of leaving distressed status would be more likely if the District was able to use end of

school time for tutoring funded by the state grant. (N.T. 9, 11, Association Exhibits 1 and 2, District Exhibit 13)

17. The District's strategy of leaving distressed status was also referred to in the District's July 7, 2011 press release that explained the schedule change. (N.T. 89, 92, District Exhibit 13)
18. Ms. Tretter did not see the District's answer to security as a solution because the security people would not be watching them for two or three blocks they had to walk from their cars. The Association did not see the District's answer to child care availability as dealing with the issue of the young children of the teachers having to be in day care that early in the first place. (N.T. 39-41)
19. On August 18, 2011, Dr. Mayo became the superintendent upon the retirement of Dr. Zahorchak. (N.T. 65)
20. Dr. Mayo explained that under the new schedule, the teachers would arrive at 7:05 and the students would start at 7:50 a.m. In that 45 minutes, the District expected the teachers to engage in collaboration for the first 30 minutes with other teachers around four basic subjects to discuss concerns with student achievement data, to refine their strategies as classroom teachers and to get ready to do their jobs. The remaining 15 minutes were the teachers' time under the collective bargaining agreement. (N.T. 75, District Exhibit 3)
21. The Association's proposal to start at 7:35 a.m. would move this collaboration time to the end of the school day. The District opposed this proposal because it would interfere with the District's decision to offer tutoring and after school detention. Both tutoring and after school detention were conducted at times after the teachers left the building at 2:25 p.m. The Association's proposal would cause a gap in time from when the students left the building at 2:35 and when the teachers would end their work day at 3:05 p.m. creating a "wait time for students who need tutoring." Some teachers volunteered to tutor after their official work day ended by being paid from a state grant the District had just secured. (N.T. 79, 92, District Exhibit 9)
22. The Association acknowledged that some of its members were tutoring and that tutoring had value for the students. However, the tutoring took place after the official school day and only some teachers were involved in tutoring. The Association was not in favor excusing the District from its bargaining obligation simply because some teachers decided to tutor after school. (N.T. 94-95)
23. On September 6, 2011, the change in starting time became effective. (N.T. 89, 92, District Exhibit 13)
24. The Association did not agree to the change in schedules. (N.T. 23)

DISCUSSION

The Association's amended charge of unfair practices alleges that the District violated Section 1201(a)(1) and (5) of the Public Employee Relations Act when it unilaterally changed the teachers' starting time at all of the District's schools.

A public employer violates Section 1201(a)(1) and (5) of PERA when it unilaterally changes a mandatory subject of bargaining. Under Section 701 of PERA, "hours" are specifically listed as a mandatory subject of bargaining. 43 P.S. 1101.701. The Board has held that the subject of work schedules is a mandatory subject of bargaining. **Hazleton Area School District**, 29 PPER ¶ 29180 (Final Order, 1998).

The Association argues that another work schedule case provides guidance in the present case. In **Eastern Westmoreland Career and Technology Center Education Association, PSEA/NEA v Eastern Westmoreland Career and Technology Center**, 36 PPER ¶ 104 (Proposed Decision and Order, 2005), 37 PPER ¶ 5 (Proposed Decision and Order on Remand, 2006) the

Technology Center unilaterally eliminated the flexible work schedule and set across-the-board start and ending times for bargaining unit members, with a prep period at the end of the day. Prior to the change, approximately half of the unit members worked from 7:00 a.m. until 2:45 p.m. and the other half worked from 7:30 a.m. until 3:15 p.m.

The hearing examiner found that "the Center's rescission of the flexible work schedule had no demonstrable effect on its basic policy of educating students." 37 PPER ¶5, at 14. On the other hand, the hearing examiner found that the rescission had a demonstrable impact on the teachers' interest in hours and working conditions. Therefore, the hearing examiner concluded that the Technology Center was obliged to bargain with the Association prior to rescinding the flexible work schedule.

In the present case, at the beginning of the 2011-12 school year, the District made a system wide change for the starting and ending time of teachers' schedules. Although the change affected all the schools, in this unfair practice hearing the Association focused its production of evidence on the middle schools' schedule change. The District moved up the start time for middle schools from 7:45 a.m. to 7:05 a.m.

As stated by the hearing examiner in **Eastern Westmoreland Career and Technology Center Education Association, PSEA/NEA v Eastern Westmoreland Career and Technology Center, supra**, the Association must meet the test for determining whether a matter is a mandatory subject of bargaining as set forth in **Pennsylvania Labor Relations Board v. State College Area School District**, 461 Pa. 494, 507, 337 A. 2d 262, 268 (1975) where our Supreme Court held,

[W]here an item of dispute is a matter of fundamental concern to the employes' 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. 494, 507, 337 A.2d 262, 268 (1975)

Accordingly, I must determine whether the new schedule's impact on the teachers' interest in wages, hours and terms and conditions of employment outweighs its effect on the basic policy of the school district. **State College Area School District, supra**,

The Association demonstrated two ways the changes to the schedule impacted the interests of the middle school teachers. First, the earlier starting time raised safety concerns because one of the middle schools, Harrison-Morton, was in a high crime area. During the winter months it was still dark at 7 a.m. The teachers had to walk several blocks to the school because there was not parking on premises. Second, the early start also presented problems with getting teachers' children to day care and also with the availability of day care.

The District presented evidence of the impact of the change on the District's interests. The District pointed out that two of its interests were furthered by the schedule change. The first interest was in adjusting to a "state funding deficit." As stated in the District's July 7, 2011 press release, the state deficit led to a cut in student transportation runs, which, in turn, necessitated a change in start time. The second interest was adjusting to the District's designation as a "distressed" district by PDE. The District received a state grant that it used to carry out a strategy of lifting the "distressed" status designation. Part of the strategy was to provide end the day tutoring. The District could provide tutoring under the schedule change because the students who took advantage of the tutoring would still be on the school premises when the teachers' contractual work day ended.

Given the evidence of record the impact of the schedule change on the teachers' hours and terms and conditions of employment is outweighed by "its probable effect on the basic policy of the system as a whole." **State College Area School District, supra.** The facts of this case are distinguishable from **Eastern Westmoreland Career and Technology Center Education Association, PSEA/NEA v Eastern Westmoreland Career and Technology Center, supra** where the hearing examiner found that "the Center's rescission of the flexible work schedule had no demonstrable effect on its basic policy of educating students." **Id** at 14. Superintendent Mayo provided credible testimony that the schedule change would further the District's basic policy of educating students, particularly students needing after school tutoring. In light of the balancing of these particular interests, the Association has not demonstrated that the District's decision to change the schedules was a mandatory subject of bargaining.

The Association has also alleged that the District failed to bargain over the impact of the decision. The parties did meet twice in the spring summer of 2011 to exchange ideas on how to deal with the impact of the decision. In particular, the District responded to the two Association concerns. The District addressed the safety issue at the Harrison-Morton Middle School neighborhood by directing a security cordon to be present near the school. The District addressed the day care issue by providing the Association with the names of a number of day care facilities that were open before the earlier school start time. The District's approach to the two Association areas of concern demonstrates good faith and does not show a refusal to bargain the impact of the decision.

CONCLUSIONS

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

1. The Allentown City School District is a public employer within the meaning of section 301(1) of the PERA.
2. The Allentown Education Association, PSEA/NEA is an employee organization within the meaning of Section 301(3) of the PERA.
3. The Board has jurisdiction over the parties.
4. The District has not committed unfair practices under sections 1201(a)(1) and (5) of the PERA.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the complaint is rescinded and the charge dismissed.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed with the Board pursuant to 34 Pa. Code § 95.98(a) within twenty days of the date hereof, this order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this thirtieth day of November, 2012.

PENNSYLVANIA LABOR RELATIONS BOARD

Thomas P. Leonard, Hearing Examiner