

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

CONNEAUT EDUCATION ASSOCIATION :
 :
v. : Case No. PERA-C-14-379-W
 :
CONNEAUT SCHOOL DISTRICT :

ORDER DIRECTING REMAND TO HEARING EXAMINER FOR FURTHER PROCEEDINGS

Conneaut School District (District) filed timely exceptions and a supporting brief with the Pennsylvania Labor Relations Board (Board) on October 26, 2015, challenging a Proposed Decision and Order (PDO) issued on October 7, 2015. In the PDO, the Board's Hearing Examiner concluded that the District violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA) by unilaterally implementing a Cyber Snow Day policy. The Conneaut Education Association (Association) filed a response to the District's exceptions and a supporting brief on November 17, 2015.

The facts of this case are summarized as follows. At the beginning of the 2013-2014 school year, Superintendent Jarrin Sperry announced that the District planned to have Cyber Snow Days instead of traditional snow days commencing in the 2014-2015 school year. Cyber Snow Days would be conducted using the District's existing internet-based learning management system, which is referred to as "My Big Campus." A teacher may send messages to, and receive messages from, students and have live chats with them using My Big Campus. Students may also retrieve and complete assignments on the system.

On May 19, 2014, Superintendent Sperry issued a letter to parents and guardians regarding Cyber Snow Days, which stated, in relevant part, as follows:

The Conneaut School District is pleased to announce we have been granted sole permission to pilot "Cyber Snow Days" during the 2014/2015 school year. ...

Cyber Snow Days will allow learning to continue on our traditional Snow Days, yet the days will count for attendance. This means, when the district cancels a school day we will actually be conducting classes and students will remain home and still have educational lessons. Our traditional Snow Make-up Days on our school calendar will be days off/no school.

...

At the start of the 2014/2015 school year, students will be trained on how to access lessons during a Cyber Snow Day. The district will also instruct parents and caregivers on how the Cyber Snow Days will work through building level workshops, correspondence, and online venues. Students with Internet access will utilize My Big Campus for their Cyber Lessons. Alternative lessons can be retrieved from a student's teacher (Snow Day Learning Bundles) upon request. These Snow Day Learning Bundles will allow a student to complete the Snow Day Assignments without the utilization of the Internet.

On May 30, 2014, Michael Hillman-Huber, the Association's President, delivered a letter to the District stating, in relevant part, as follows:

The Association understands that the District has made the decision to create cyber snow days for students beginning in the 2014-2015 school year. As you are aware, the District cannot unilaterally implement or change the wages, hours and terms and conditions of employment for those employees represented by the Association without first meeting its bargaining obligation under

Act 195. Although we have had informal discussions and you have indicated you intend to include the Association in the process, the Association would like to go on record with our desire to bargain over this matter. Please consider this letter to be the Conneaut Education Association's formal demand to bargain regarding this matter pursuant to Act 195.

If some aspects of the cyber snow day procedure ultimately do not implicate a mandatory subject of bargaining, the District still has an obligation under Act 195 to bargain with the Association regarding the impact of any new policies or policy revisions.

On September 8, 2014, the District responded that it would not bargain over the Cyber Snow Day policy or its impact on wages, hours and working conditions. In the beginning of the 2014-2015 school year, the District distributed a handout to the teachers during in-service training for the Cyber Snow Day program. The handout states, in relevant part, as follows:

Cyber Snow Day:

1. Have lessons created prior to possible snow days. Lessons will contain authentic curriculum on or about the snow day.

...

3. If you are planning to be absent have plans ready as you would for a normal absence. Post the lesson on [My Big Campus] rather than leave on desk.

4. A schedule for the length of a lesson is as follows. (5th grade - 12th grade: 20-25 per class, k - 4th grade: 2 hours maximum).

5. Lessons should have questions attached for the formative assessment of the lesson. Completion and submission of the questions will provide student attendance for that class and ultimately for the day. In addition worksheets or book assignments can be used for completion of assignments for all grade levels. But questions attached to the lesson will be utilized in 5th - 12th grade.

6. Students will have a two week period from the date of the cyber snow day to complete cyber snow day assignments.

7. Teachers will keep track of completed assignments and send in to their school office. Please send student names that did not complete the lesson.

...

9. Communication is the key to a cyber lesson and students should have the ability to communicate with their teachers (and possibly their classmates) therefore have discussion boards, your district e-mail and [My Big Campus] messaging available for your class. The k - 4th grade levels will primarily use district e-mail to communicate with parent/guardian and students.

The District also directed that on snow days teachers would be required to be available through My Big Campus from 10:00 a.m. to 2:30 p.m., with a 30 minute duty-free lunch. My Big Campus requires teachers to have internet access during a snow day in order to communicate with students. Teachers have never been required to provide instruction

from their homes through the internet, or to travel on a snow day to a school building or other location where free internet access is available.

The Association filed its Charge of Unfair Practices on December 2, 2014, alleging that the District violated Section 1201(a)(1), (2), (3) and (5) of PERA by refusing to bargain over implementation of the Cyber Snow Day policy and its impact on the teachers' wages, hours and working conditions. A hearing was held before the Board's Hearing Examiner on August 5, 2015, at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. Both parties filed post-hearing briefs.

In applying the balancing test set forth in **PLRB v. State College Area School District**, 461 Pa. 494, 337 A.2d 262 (1975), the Hearing Examiner concluded in the PDO that the Association's interest in wages, hours and working conditions outweighed the District's managerial interest in the Cyber Snow Day policy. Therefore, the Hearing Examiner held that the District violated its duty to bargain under Section 1201(a)(1) and (5) of PERA.¹

The District alleges in its exceptions that the Hearing Examiner erred in concluding that the Association's interest in wages, hours and working conditions outweighed the District's interest in utilizing technology to provide educational services to its students during inclement weather. Section 702 of PERA provides, in relevant part, that "[p]ublic employers shall not be required to bargain over matters of inherent managerial policy, which shall include but shall not be limited to ... [the] utilization of technology..." The Board has consistently held that a public employer's decision to utilize technology to effectuate its public function is a managerial prerogative that is not subject to mandatory bargaining. **AFSCME, District Council 13, AFL-CIO v. Commonwealth of Pennsylvania, Bureau of Labor Relations**, 17 PPER ¶ 17134 (Final Order, 1985); **Mt. Lebanon Education Association v. Mt. Lebanon School District**, 35 PPER 95 (Final Order, 2004); **Downingtown Area Education Association, PSEA/NEA v. Downingtown Area School District**, 47 PPER 98 (Final Order, 2016). The District asserts that the use of My Big Campus to provide instruction to its students during inclement weather enhances the provision of educational services and prepares its students for distance and cyber learning. The Board finds that the District's decision to provide instruction through its My Big Campus internet-based learning management system during a Cyber Snow Day is the utilization of technology in furtherance of providing the District's educational services and therefore, within its managerial prerogative under Section 702 of PERA.

However, the Board and Courts have consistently held that an employer violates Section 1201(a)(1) and (5) of PERA by refusing to bargain over employe wage, hour or working condition matters that are severable from the exercise of managerial prerogative. **City of Philadelphia v. PLRB**, 588 A.2d 67 (Pa. Cmwlth. 1991), **petition for allowance of appeal denied**, 528 Pa. 632, 598 A.2d 285 (1991); **Lackawanna County Detectives' Association v. PLRB**, 762 A.2d 792 (Pa. Cmwlth. 2000); **Pennsylvania State System of Higher Education, California University v. PLRB**, 2159 C.D. 2011 (Pa. Cmwlth. August 15, 2012) (opinion not reported), **petition for allowance of appeal denied**, 620 Pa. 726, 69 A.3d 604 (2013); **Mt. Lebanon School District, supra.**; **Pennsylvania Liquor Enforcement Association v. Commonwealth of Pennsylvania, Pennsylvania State Police, Bureau of Liquor Control Enforcement**, 45 PPER 99 (Final Order, 2014). To establish an "effects" or "impact" bargaining violation, the employe representative must demonstrate that (1) the employer lawfully exercised its managerial prerogative; (2) there is a demonstrable impact on wage, hour or working condition matters that are severable from the managerial

¹ The Hearing Examiner also concluded that the District did not violate Section 1201(a)(2) of PERA because no evidence was presented to support a finding that the District assisted or controlled the Association to the point that its independence was questioned. Nor did the Hearing Examiner find a violation of Section 1201(a)(3) of PERA because the Association failed to demonstrate that the District's actions were motivated by anti-union animus. The Hearing Examiner did not address the Association's argument in its post-hearing brief that the District committed an independent violation of Section 1201(a)(1) because that allegation was not set forth in the Association's Charge. No exceptions were filed by the Association to the Hearing Examiner's decision regarding these issues. 34 Pa. Code § 95.98(a)(3) ("[a]n exception not specifically raised shall be waived").

decision²; (3) the employe representative made a demand to bargain over these matters; and (4) the employer refused the employe representative's demand to bargain. **Lackawanna County Detectives' Association, supra.**

Upon review of the Charge and PDO, the Hearing Examiner did not separately address the allegations raised in the Association's Charge regarding the District's alleged refusal to bargain over the severable impact or effects of the District's decision to provide instruction to students over the internet on snow days. Accordingly, the Board is compelled to remand this case to the Hearing Examiner for the limited purpose of addressing the Association's allegations that the District violated Section 1201(a) (1) and (5) of PERA by failing to bargain over wage, hour and working condition matters that are severable from the District's managerial decision to use My Big Campus on snow days.³

After a thorough review of the exceptions, the briefs of the parties, and all matters of record, the Board shall remand this matter for further proceedings, if necessary, and for such additional findings of fact and conclusions of law as warranted. Therefore, the Board shall sustain the exceptions in part and remand this matter to the Hearing Examiner for further proceedings consistent with the above discussion.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the exceptions filed by Conneaut School District be and the same are hereby sustained in part and the matter is remanded to the Hearing Examiner for further proceedings consistent with this Order.

SEALED, DATED and MAILED at Harrisburg, Pennsylvania pursuant to conference call meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, Robert H. Shoop, Jr., Member, and Albert Mezzaroba, Member, this fifteenth day of November, 2016. 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.

² In this regard, where a matter sought to be negotiated is found to be severable from the managerial prerogative, it must be determined whether that issue is itself bargainable under the balancing test set forth in **State College Area School District, supra**. Under the **State College** balancing test, a matter is a mandatory subject of bargaining where "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 507, 337 A.2d at 268.

³ The District also challenges Findings of Fact 14, 17 and 20 in the PDO. However, the Board will not address these exceptions as they involve factual findings that concern alleged effects on the teachers' wages, hours and working conditions to be addressed on remand.