

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

CONRAD WEISER EDUCATION :
ASSOCIATION, PSEA/NEA :
v. : Case No. PERA-C-12-359-E :
CONRAD WEISER AREA SCHOOL DISTRICT :
:

PROPOSED DECISION AND ORDER

On November 19, 2012, the Conrad Weiser Education Association, PSEA/NEA (Association) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) against Conrad Weiser Area School District (District), alleging that the District violated sections 1201(a)(1), (3) and (5) of the Public Employe Relations Act (PERA) when it unilaterally offered early retirement incentives to teachers without bargaining with the Association, which is the exclusive representative of the District's professional employees.

On December 12, 2012, the Secretary of the Board issued a Complaint and Notice of Hearing in which the matter was assigned to a conciliator for the purpose of resolving the dispute through the mutual agreement of the parties and May 23, 2013, in Harrisburg was assigned as the time and place of hearing if necessary.

A hearing was necessary, but was continued to June 21, 2013, at the request of the hearing examiner to accommodate a family matter. The hearing was held on the rescheduled day, at which time all parties in interest were afforded a full opportunity to present testimony, cross examine witnesses and introduce documentary evidence. Post hearing briefs were submitted on July 18 and 29, 2013. The examiner, on the basis of the testimony presented at the hearing and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. Conrad Weiser Area School District is a public employer within the meaning of section 301(1) of PERA. (N.T. 11, 47, Association Exhibit 1)
2. Conrad Weiser Education Association, PSEA/NEA is an employe organization within the meaning of section 301(3) of PERA. (N.T. 11, 47, Association Exhibit 1)
3. The Association is the exclusive representative for the purposes of collective bargaining of the District's professional employees. (N.T. 11, 47, Association Exhibit 1)
4. The District and the Association are parties to a collective bargaining agreement that expired on June 30, 2012. They are currently conducting negotiations for a successor agreement. (N.T. 8-9. Association Exhibit 1)
5. In the fall of 2012, the District began preparing its 2013-14 budget and anticipated a budget deficit of over \$900,000. (N.T. 18, 27)
6. It was expected that with the Act 1 maximum index of 2.2% increase in property tax millage, the District could generate an increase of approximately \$500,000 in tax revenues, which still left a deficit of over \$460,000. (N.T. 27)
7. With this deficit, the Board of School Directors was confronted with a need to lay off teachers or cut programs. The Board made it clear to the District's administrators that it did not want to either lay off teachers or cut programs so the Board directed its Director of Business to explore the idea of an early retirement incentive (ERI). (N.T. 18)

8. The District Director of Business believed that in order to be useful in developing of the 2013-14 budget, the ERI would need two essential components: it would have to be irrevocable, and it have to be early enough, before January, 2013, when the budgetary decisions on whether to seek exceptions to the 2.2% index cap must be made. (N.T. 28-29)
9. The ERI for professionals was adopted by the Board. The text of the District's ERI resolution stated:

One-Time Early Retirement Incentive

The Conrad Weiser Area School District Board of School Directors is offering a one-time retirement incentive to be effective at the end of the 2012-2013 school year. This offer will be limited to ten currently employed teachers of the Conrad Weiser Area School District. The retirement incentive will be in the amount of \$30,000.00 and will be paid over four equal payments of \$7,500.00/year to a 403B plan in the name of the retiree. In order to qualify, the following restrictions must be met;

1. The age of the individual combined with the years of service as a teacher for the Conrad Weiser Area School District must be equal to or greater than 80.
2. The individual must inform the Superintendent in writing of his/her decision to retire under this incentive by December 15, 2012. This written notice will be irrevocable. The effective date of retirement from the District must be the end of the current 2012-2013 school year.
3. This incentive is not available to employees who are seeking benefits from the Buyout provision in the current Collective Bargaining Agreement (Section 12 Buyout, a through d).

(N.T. 15, 16, Association Exhibit 2, District Exhibit 1).

10. The Board of School Directors adopted a similar ERI for the nonprofessional staff. (N.T. 15, 16, District Exhibit 2)
11. Three professional employes signed up for the ERI. Each professional employe who signed up for the ERI saved the District \$40,000 per year. (N.T. 22-23, 29)
12. As a result of both the professional and nonprofessional units being offered the ERI's, the District was able to save \$240,000 in the first year. The ERI also allowed the District to construct a budget without the furloughs or program cuts which had been threatened. (N.T. 31)
13. On September 24, 2012, Mark McDade, Association UniServ Representative, wrote to the District's Board of Directors to inform the District that its unilateral action constituted a grievance and an unfair labor practice. (N.T. 9, Association Exhibit 3)

DISCUSSION

The Association alleges that the District committed unfair practices under sections 1201(a)(1), (3) and (5) of PERA by unilaterally, without bargaining with the Association, offering an early retirement incentive to the professional employees it represents.

In **Chichester Education Association v. Chichester School District**, 16 PPER ¶ 16051 (Proposed Decision and Order, 1985) hearing examiner John Skonier decided a similar question of whether an early retirement incentive was a mandatory subject of bargaining.

Applying the balancing test from **PLRB v. State College Area School District**, 461 Pa. 494, 337 A.2d 262, 6 PPER 92 (1975), it is apparent that the plan impacts more directly on the employees' interest and terms and conditions of employment than it does on the basic policy of the school system. These employees that make use of this plan will be paid one sum, unilaterally determined by the School District, and their employment will have been terminated. The plan directly affects the "terms and conditions" of their employment and must be considered a mandatory subject of bargaining under the Act. See, **Penncrest School District**, 12 PPER ¶ 12212 (Proposed Decision and Order, 1981), 13 PPER ¶ 13240 (Final Order, 1982)

The District's defense is that the decision was not a mandatory subject of bargaining under section 701 of PERA but was rather a matter of inherent managerial policy under section 702 of PERA because it was "purely budgetary." The District's witnesses testified that the decision was made as part of preparing the 2013-2014 budget that had an anticipated a deficit of \$900,000. By offering the ERI when it did, the District was able to close the budget deficit and avoid furloughing teachers.

However, as the hearing examiner pointed out in **Chichester School District, Id.**, under the **State College Area School District** balancing test, this decision does impact employees' terms and conditions of employment in a greater way, even if it does have a positive effect on the budget. Therefore, the District's ERI is a mandatory subject of bargaining and the District's defense is not accepted. Despite being in the middle of negotiations for a successor collective bargaining agreement, the District did not offer to bargain the ERI with the Association before offering it to employees. Given the case precedent cited above, the District's decision to unilaterally establish an ERI violated its duty to bargain under PERA.

As for the remedy for this unfair practice, the Board customarily orders a return to the status quo ante. However, such a remedy in the present case would force the employees who chose the ERI to return the first year's incentive payment and reverse their retirement decisions. The Board will not subject employees to such a remedy. "[T]he Board has consistently held that when an employer commits unfair practices by directly dealing and unilaterally extending wage increases to individual, complicit employees, the Board will not order the return of those wage increases because the employer, not the employee, is deemed to have committed the unfair practice and to have engaged in the unlawful conduct." **Warminster Township**, 31 PPER ¶ 31156 (Final Order, 2000). Accordingly, the appropriate remedy in this case is a cease and desist order.

CONCLUSIONS

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

1. The Conrad Weiser School District is a public employer under section 301(1) of PERA.
2. The Conrad Weiser Education Association, PSEA/NEA is an employe organization under section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.
4. The District has committed unfair practices in violation of Sections 1201(a)(1) and (5) of PERA.
5. The District has not committed unfair practices in violation of Section 1201(a)(3) of PERA.

ORDER

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

HEREBY ORDERS AND DIRECTS

that the District shall

1. Cease and desist from interfering with, restraining or coercing employes in the exercise of the rights guaranteed in PERA.
2. Cease and desist from refusing to bargain collectively in good faith with an employe 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:
 - (a) Post a copy of this decision and order within five (5) days from the effective 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
 - (b) 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 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 twenty-first day of August, 2013.

PENNSYLVANIA LABOR RELATIONS BOARD

Thomas P. Leonard, Hearing Examiner