

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

SHENANDOAH VALLEY EDUCATIONAL :
SUPPORT PROFESSIONAL ASSOCIATION :
PSEA/NEA :
v. : CASE NO. PERA-C-15-199-E
SHENANDOAH VALLEY SCHOOL DISTRICT :

SHENANDOAH VALLEY EDUCATIONAL :
ASSOCIATION :
v. : CASE NO. PERA-C-15-198-E
SHENANDOAH VALLEY SCHOOL DISTRICT :

PROPOSED DECISION AND ORDER

On July 20, 2015, the Shenandoah Valley Educational Association (Professional Association) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the Shenandoah Valley School District (District or Employer) violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA).

On July 21, 2015, the Shenandoah Valley Educational Support Professionals Association, PSEA/NEA (Support Professionals) filed a charge of unfair practices with the Board alleging that the District violated Section 1201(a)(1) and (5) of PERA.

On July 30, 2015, the Secretary of the Board issued complaints and notices of hearing, assigning the charges to conciliation for the purpose of resolving the matters in dispute through mutual agreement of the parties, and designating October 2, 2015, in Harrisburg, as the time and place of hearing for the two related matters.

The hearing was continued to allow the parties more time to meet with the conciliator. The hearing proved necessary and hearing was ultimately held on May 16, 2016, in Harrisburg, before the undersigned Hearing Examiner. At the hearing, the two matters were consolidated.

All parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence. The Associations¹ filed a post-hearing brief on June 16, 2016. The District filed a post-hearing brief on July 19, 2016.

The Hearing Examiner, based upon all matters of record, makes the following:

FINDINGS OF FACT

1. The District is a public employer within the meaning of PERA. (N.T. 4).
2. The Associations are employe organizations within the meaning of PERA. (N.T. 4).
3. The District implemented a policy on March 25, 2015, which revised and changed District policy "536.1 Uncompensated Leave". Pursuant to the revision of policy, members of the Associations were required to reimburse 1/365th of their annual health care premium if they took an approved day for which they had no remaining allotment; i.e., an absence without pay, unpaid leave or uncompensated leave. The policy was retroactive to February 20, 2015. (N.T. 26, 37-38, 46-47; Employer Exhibit 1).

¹ When referred to as a combined entity, the Professional Association and the Support Professionals will be referred to as the "Associations".

4. This policy was announced by District letter dated March 27, 2015. The letter was sent to members of both the Associations. The letter states in full:

March 27, 2015

The Shenandoah Valley School District on March 26, 2017 revised the Policy for Uncompensated Leave. The revised policy is Section No. 536 (See Attached). Essentially, this policy revision states that any employee who is approved for absences without pay will be required to reimburse the district the total cost of insurance benefits for each day approved without pay. If an employee has exhausted all sick, personal and/or vacation time and takes a day without pay, this policy will be enforced. At the current rate structure for the 2014-2015 school year the daily amount owed would be as follows:

Single Insurance: \$26.05/day

Two Party Insurance: \$58.51/day

Family Insurance: \$73.17/day

This charge will be withheld from the employee's paycheck. Please direct any further questions to Business Office.

Thank you.

Sean Macleary
Assistant Business Manager.

(N.T. 39; Joint Exhibit 1).

5. Subsequent to the implementation of the policy, members of the Associations were charged for their health care when they took uncompensated leave, pursuant to the policy. Funds were deducted from their paycheck pursuant to the policy. (N.T. 10-11, 20, 26, 28-29; Associations Exhibit 1, 2).

6. The District did not bargain the policy with either of the Associations prior to implementation. (N.T. 12, 26, 50).

DISCUSSION

The Associations argue that the District violated Section 1201(a)(1) and (5) of PERA when it unilaterally implemented its policy which required employees who took approved, unpaid leave to reimburse the District 1/365th of the annual cost of the employee's health insurance via deduction from the employee's paycheck. The Board will find an employer in violation of Section 1201(a)(5) of PERA when the employer unilaterally changes a mandatory subject of bargaining under Section 701 of PERA. **Appeal of Cumberland Valley School District**, 483 Pa. 134, 394 A.2d 946 (1978). Section 701 provides as follows:

Collective bargaining is the performance of the mutual obligation of the public employer and the representative of the public employees to meet at reasonable times and confer in good faith with respect to wages, hours and other terms and conditions of employment. . . .

43 P.S. § 1101.701. It is well settled that health care benefits, as a fringe benefit, are wages within the meaning of PERA and thus a core mandatory subject of bargaining. **Appeal of Cumberland Valley Sch. Dist., supra**. There is no dispute that the policy in question changed the terms of employment. The policy implemented by the District in this matter clearly and obviously impacts employees wages by

deducting 1/365th of the employees' health care costs from their paychecks when employees take approved, unpaid leave. The impact of the policy on employees' wages is direct and explicit. There is no dispute that the District did not bargain the policy in question before it was implemented. I find that the District violated Section 1201 (a)(1) and (5) when it implemented the policy.

In defense, the District argues that ". . . implementation of the Uncompensated Leave Policy [is] not a mandatory subject of bargaining because ". . . pursuant to Public School Code, 24 P.S. §5-510 . . . the Board of School Directors had the absolute right to adopt the Uncompensated Leave Policy and implement the same so as to effectuate the necessary and proper management of its school affairs." (District's Brief, page 4). 24 P.S. §5-510 states in relevant part:

The board of school directors in any school district may adopt and enforce such reasonable rules and regulations as it may deem necessary and proper, regarding the management of its school affairs and the conduct and deportment of all superintendents, teachers, and other appointees or employes during the time they are engaged in their duties to the district

However, in addition to the Public School Code of 1949, 24 P.S. § 1-101 **et seq.**, the General Assembly also enacted PERA which demands that a public employer has the obligation to bargain with the representative of the public employes over wages, hours and other terms and conditions of employment. 43 P.S. § 1101.701. Notwithstanding sections of the Public School Code of 1949, PERA is still the law of the Commonwealth and still requires mandatory bargaining over wages, hours, and other terms and conditions of employment, including issues related to health care benefits. **Philadelphia Federation of Teachers, AFT, Local 3, AFL-CIO v. School District of Philadelphia, School Reform Commission**, 46 PPER ¶ 66 (Pa. Cmwlth. 2015); **Appeal of Cumberland Valley Sch. Dist, supra**.

CONCLUSIONS

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

1. Shenandoah Valley School District is a public employer within the meaning of Section 301(1) of PERA.
2. Shenandoah Valley Education Association and the Shenandoah Valley ESP Association are employe organizations within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties hereto.
4. Shenandoah Valley School District has committed unfair practices in violation of Section 1201(a)(1) and (5) of PERA.

ORDER

In view of the foregoing and in order to effectuate the policies of the Act, the Hearing Examiner

HEREBY ORDERS AND DIRECTS

that the Shenandoah Valley School District 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:

(a) Immediately rescind its March 25, 2015, revision to District policy "536.1 Uncompensated Leave" and related March 27, 2015, letter and restore the *status quo ante*;

(b) Make all affected employees whole for deductions made as a result of, and pursuant to, the revised District policy "536.1 Uncompensated Leave" and related March 27, 2015, letter;

(c) Post a copy of this Decision and Order within five (5) days from the effective date hereof in a conspicuous place readily accessible to the bargaining unit employees and have the same remain so posted for a period of ten (10) consecutive days;

(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; and

(e) Serve a copy of the attached Affidavit of Compliance upon the Associations.

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 become and be absolute and final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this ninth day of August, 2016.

PENNSYLVANIA LABOR RELATIONS BOARD

STEPHEN A. HELMERICH, Hearing Examiner

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AFFIDAVIT OF COMPLIANCE

Shenandoah Valley School District hereby certifies that it has ceased and desisted from its violation of Section 1201(a)(1) and (5) of the Public Employe Relations Act; that it complied with the Proposed Decision and Order as directed therein; that is has immediately rescinded its March 25, 2015, revision to District policy "536.1 Uncompensated Leave" and related March 27, 2015, letter and restored the *status quo ante*; that it has made all affected employes whole for deductions made as a result of, and pursuant to, the revised District policy "536.1 Uncompensated Leave" and related March 27, 2015, letter; that it has posted a copy of the Proposed Decision and Order as directed therein; and, that it has served an executed copy of this affidavit on the Associations at their principal place of business.

Signature/Date

Title

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

Signature of Notary Public