



State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

LACONIA EDUCATION ASSOCIATION/NEA-NH

COMPLAINANT

CASE NO. E-0060-1

DECISION NO. 2008-204

v.

LACONIA SCHOOL DISTRICT

RESPONDENT

APPEARANCES

Representing Laconia Education Association/NEA-NH:

James F. Allmendinger, Esq., NEA New Hampshire, Concord, New Hampshire

Representing Town of Windham:

Paul T. Fitzgerald, Esq., Fitzgerald & Nichols, Laconia, New Hampshire

BACKGROUND

Laconia Education Association/NEA-NH (the "Association") filed an unfair labor practice complaint on April 28, 2008 against the Laconia School District (the "District") claiming the District committed an unfair labor practice in violation of RSA 273-A:5 I (a) and (e) because the District refused to bargain a schedule change and the impact of the schedule change. The Association requests that: 1) the status quo be maintained; 2) the District be ordered to bargain in good faith; 3) the board conduct an expedited hearing and that in the interim a cease

and desist order issue so that the status quo is maintained; and 4) the board grant such other relief as is just and proper.

The District filed its answer on June 2, 2008. The District denies the charges and contends it is not obligated to bargain as the Association has demanded. The pre-hearing conference originally scheduled for June 12, 2008 was continued at the Association's request and conducted on June 18, 2008. *See* PELRB Decision No. 2008-128. On June 18, 2008 the district filed a Motion to Dismiss or Hold in Abeyance Pending Result from Grievance Procedure which was granted, and the hearing was rescheduled from June 24, 2008 to July 15, 2008. *See* PELRB Decision No. 2008-130.

The undersigned hearing officer held a hearing on July 15, 2008 at the PELRB offices in Concord. The parties had a full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence. The record was held open until July 23, 2008 to allow the District to research compensation arrangements for 3 teachers (Reardon, St. James and Corriveau) in response to an offer of proof from the Association, with the understanding that counsel would prepare and submit a joint statement for the record concerning the results of the District's research. However, the parties did not make any such joint filings. The parties were also given leave to file post-hearing briefs by August 1, 2008, a date later extended to August 8, 2008. On August 8, 2008 the District filed a Motion to Stay Arbitration Proceedings pending the issuance of a decision in this case, and the Association filed its objection to the motion on August 16, 2008.

FINDINGS OF FACT

1. The Association is the board certified exclusive representative for Laconia High School teachers pursuant to RSA 273-A:10.

2. The District is a public employer within the meaning of RSA 273-A:1, X.

3. The Association and the District are parties to a July 1, 2007 to June 30, 2010 Collective Bargaining Agreement (the “2007-10 CBA”). District Ex. J.

4. Article II of the 2007-10 CBA is entitled “Management Rights” and provides as follows:

2.1 The School Board shall retain the sole right and authority to operate and direct the affairs of the School District in all its various aspects. Among the rights retained, in addition to those enumerated in RSA 273-A:1, IX, are the Board’s right to determine the School District’s mission and set standards and service offered to the public; to direct the working forces, to plan, direct, control and determine the operations or services to be conducted in and by the School District or by employees of the School District; to assign and transfer employees; to hire, promote, or demote employees and suspend, discipline or discharge employees; to relieve employees due to lack of work or for other legitimate reasons; to make and enforce rules and regulations; to determine days of operation, employees’ work schedule and school calendars; and to change methods, equipment or facilities. All rights, which ordinarily vested in and are exercised by public employers, except as such are specifically relinquished herein, are reserved to and remain vested by the School Board. Nothing in the foregoing shall convey rights limited by this collective bargaining agreement or law.

2.3 Except as otherwise provided in this Agreement, or agreed to in writing between the parties, the determination of educational policy, the operation and management of schools, and the control, supervision and direction of staff are vested exclusively in the District. It is further understood and agreed that the District has all those rights, powers, discretions, and authorities, which are vested in them by law.

5. The 2007-10 CBA covers all teachers of the Laconia School District, including elementary, middle, and Huot Center teachers. The Huot Center is a vocational center within the Laconia School District and also receives students from areas outside of the Laconia School District.

6. Teacher Employment is the subject of Article 7 of the 2007-10 CBA. Article 7.3 of the 2007-10 CBA provides that the “workday for each teacher shall begin twenty (20) minutes prior to and end thirty (30) minutes after the school day for students.” Article 7.4 provides that the time set for the beginning and the end of the student day shall be established at the discretion of the School District. Neither Article 7 nor other provisions of the 2007-10 CBA set forth a specific class schedule or teaching load for teachers.

7. Prior to the 2008-09 school year, Laconia High School teachers followed a seven period schedule which consisted of five 50 minute classes, one 50 minute duty, and 50 minutes preparation time, a daily schedule that had been in place for many years.

8. In early 2008 the District finalized a plan to implement a 4 x 4 block schedule at Laconia High School starting at the beginning of the 2008-09 school year. The 4 x 4 block schedule results in four 90 minute classes on Monday, Tuesday, Thursday and Friday and four 85 minute classes on Wednesday, the advisory schedule day. Under the 4 x 4 block schedule teachers instruct three 90 minutes classes, have a 20 minute duty period, and have 70 minutes preparation time daily.

9. Under the 4 x 4 block schedule, Laconia High School teachers have 20 minutes more class time, 30 minutes less duty time, and 20 minutes more preparation time on a daily basis than was true under the prior schedule. The amount of time teachers are required to work (6.5 hours) does not change under block scheduling. During the course of the school year teachers will teach 6 classes, an increase over the 5 classes they taught under the seven period schedule.

10. Teachers at the Huot Center have been on a modified block schedule for 3-4 years, but there is no distinction in the compensation schedules contained in the 2007-10 CBA between Huot Center teachers and Laconia High School teachers.

11. Article 7.5 provides that teachers “are expected to put in whatever time necessary to carry out their professional duties...” Although teachers are provided some preparation time during the school day under both the seven period and the 4 x 4 block schedule it is understood that teachers will spend additional time on their work as necessary in accordance with this provision.

12. Article 12.9 of the 2007-10 states that “[s]ignificant curriculum work done outside the teacher’s day shall be compensated at a rate of 1/180 of the base salary (Step 1) for a 6.5-hour workday.

13. A teacher’s primary duty is teaching, but teachers can also be required to perform non-teaching or passive supervision duties as the District’s needs require, such as cafeteria and hallway monitoring duty. Although all such duties involve student contact, passive supervision duties do not require planning or preparation as is true when teachers are instructing a class.

14. For the 2008-09 school year, the teacher contractual school day remains at 7 hours and 30 minutes, although the District has changed the schedule to start and end the day 5 minutes earlier.

15. Although the change to a block schedule was the subject of study, discussion, and meetings, and included the involvement of teachers, the District did not negotiate either its decision to change to a block schedule or the impact of the change with the Association. In response to the Association’s requests to negotiate, the District expressed a willingness to meet and discuss the change to a block schedule with Association representatives. At the same time the District also clearly stated its position that it would not negotiate with the Association as requested.

16. The changes caused by 4 x 4 block scheduling can be summarized as follows:

Topic	50 Minute/07-08 School Year	Block/08-09 School Year
Daily Teaching Minutes	250	270
Daily Duty Minutes	50	20
Daily Prep Minutes	50	70
Teacher Work Day	6.5 hours	6.5 hours
Teaching Days per Year	180	180
Teacher in Service Days per Year	6	6
Teacher Start and End Time	7:05 a.m. – 2:35 p.m.	7:00 a.m. – 2:30 p.m.

DECISION AND ORDER

DECISION SUMMARY

The District has the right and authority to determine whether the school curriculum will be delivered to students via a seven period schedule or by a 4 x 4 block schedule and does not have to bargain this decision with the Association. However, the District has an obligation to impact bargain because its decision has an effect on the terms and conditions of Laconia High School teachers' employment. The District shall bargain with the Association about the impact within 60 days unless the parties agree to a different schedule. The Association's request that the parties return to the class schedule in effect during the 2007-08 school year pending negotiations is denied.

JURISDICTION

The PELRB has primary jurisdiction of all violations of RSA 273-A:5. *See* RSA 273-A:6, I. PELRB jurisdiction is proper in this case as the Association has alleged violations of RSA 273-A:5 I (a) and (e).

DISCUSSION:

Whether the District is obligated to bargain its decision to change to a block schedule is resolved by the language contained within Article II of the parties' 2007-10 CBA, entitled "Management Rights" as well as RSA 273-A:1, XI. Section 2.1 of the 2007-10 CBA specifically reserves to the District the right: "to plan, direct, control and determine the operations or services to be conducted in and by the School District or by employees of the School District; to assign and transfer employees...to determine employees' work schedule and school and school calendars; and to change methods..." Section 2.3 provides that the "determination of educational policy, the operation and management of schools, and the control, supervision and direction of staff are vested exclusively in the District." Under the statute, managerial policy includes "but shall not be limited to the functions, programs and methods of the public employer, including the use of technology, the public employer's organizational structure, and the selection, direction and number of its personnel, so as to continue public control of governmental functions." *See* RSA 273-A:1, XI. This contract and statutory language provides the District with the express and exclusive authority to determine matters such as the manner and duration of student instruction, including whether that instruction will be provided in classes of 50 minute or 90 minute duration.

The remaining issue is whether the District has an obligation to impact bargain its decision to change to the 4 x 4 block schedule. The District has such an obligation if: 1) the

Association has demonstrated an impact on the terms and conditions of employment, such as wages, hours and other conditions other than managerial policy; and 2) the District has refused the Association's request to bargain on such subjects. However, impact bargaining does not give the Association the right to in effect bargain the District's underlying managerial decision to change to a 4 x 4 block schedule.

The District places significant emphasis on Article 2.1 and 2.3 of the 2007-10 CBA to support its position that bargaining is not required. These contract provisions contain detailed language about the nature and extent of the District's management rights, but they do not expressly or impliedly exempt the District from the requirement that it otherwise bargain the impact of its decision to the extent the decision effects the terms and conditions of teachers' employment. In two earlier cases, the PELRB concluded that scheduling changes similar to the one in this case did have an impact on terms and conditions such that impact bargaining was required. *Hudson Federation of Teachers, AFT, AFL-CIO, Local No. 2263 v. Hudson School Board*, PELRB Decision No. 86-64, involved a change from a 6 period to a 7 period day. The parties' collective bargaining agreement did not address class schedule or teaching load, and the changes at issue in Hudson can be summarized as follows:

Topic	6 Period Schedule	7 Period Schedule
Length of period	58 minutes	50 minutes
Number of classes taught	5 – total of 290 minutes	5 – total of 250 minutes
Daily preparation	1 – total of 58 minutes	1 – total of 50 minutes
Daily duty minutes	None	1 – total of 50 minutes
Length of workday	No change	No change
Contract provisions addressing class schedule and teaching load	None	None

The change to a block schedule in *Hudson* did not change the total hours in a teacher work day under the parties' collective bargaining agreement, but it did alter how teachers are required to

spend that time. The board concluded that as part of its management prerogative, the Hudson School Board had the right to organize and direct the operation of the Hudson schools, but at the same time the Hudson School Board had the obligation to bargain the impact of the changes. The board cited shorter classes, additional non-teaching duties, more work at home, and less class time per week to achieve educational goals as examples of the impact of the change to the seven period schedule. The board was not persuaded by the Hudson School Board's argument that no impact resulted from the change, stating that this question should ultimately be addressed through the negotiation process, and not through the unilateral determination of the School Board. The board ordered the parties to begin negotiations immediately about the impact and also scheduled weekly status reports to the board. The board did not order a return to the status quo (the six period schedule) pending the completion of negotiations.

In *Rochester Federation of Teachers, Local 3606, AFT, AFL-CIO v. Rochester School District*, 1999-040, the District changed to block scheduling beginning with the 1997-98 school year. Previously, the school day was divided into eight 45 minute periods, a practice that had been in place for nine years, but which was not a contract term. After the initial implementation of the schedule change the Rochester Federation of Teachers obtained an arbitrator's award restoring a contractual duty free or preparation period of 47 minutes. The board ultimately found that the schedule change resulted in de minimis changes, including some deviations in the 47 minute duty free period and the 30 minute lunch break, and 18 minutes in the length of the school day. The board concluded that topics protected under the managerial policy exception to the obligation to bargain terms and conditions of employment are "still subject to 'impact bargaining' if the employer's unilateral actions have modified wages and benefits under an existing contract or status quo conditions." The board determined that the Rochester School

District violated RSA 273-A:5, I (e) for having made unilateral changes in working conditions without involving the exclusive representative and directed the parties to bargain in good faith.

In the present case the Laconia School District argues that overall the change to a block schedule improves the terms and conditions of employment and benefits teachers, because even though instruction time has increased by 20 minutes, duty time is reduced by 30 minutes per day and preparation time is increased by 20 minutes per day. The Association has a different view, and emphasizes that the District has altered the length of classes, from 50 minutes to 90, increased the number of total class minutes per day from 250 to 270 minutes, and the fact that teachers are now responsible for instructing six classes during the course of the school year instead of five.

The points emphasized by the Association arguably result in an increase of Laconia High School teachers' workload, which in turn may involve adjustments in teacher lesson planning and teacher in class delivery of material. These subjects fall within the purview of terms and conditions of employment in accordance with the *Hudson* decision. The *Hudson* decision also expresses the preference that the parties ultimately resolve impact issues like the ones raised in this case, including the precise extent of the impact on terms and conditions of employment, through negotiation, and not via the unilateral determinations of the District. The District's argument that overall the change to a block schedule is a net positive development for Laconia High School teachers can be raised and considered as part of the negotiation process.

Based upon the foregoing, the District has committed an unfair labor practice by violating RSA 273-A:5, I (e) on account of its refusal to bargain the impact of the schedule change with the Association. The parties shall commence negotiations within 60 days, unless the parties agree to a different schedule, concerning the impact of the District's decision to change to block

scheduling on the terms and conditions of Laconia High School teachers' employment. The Association's request to return to the seven period schedule pending negotiations is denied as are any requests for relief based upon the change in the starting and ending time of the school day. The District's Motion to Stay Arbitration proceedings pending the issuance of this decision is moot.

So ordered.

October 10, 2008.

/s/ Douglas L. Ingersoll, Esq.
Hearing Officer

Distribution:

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