

STATE OF DELAWARE  
PUBLIC EMPLOYMENT RELATIONS BOARD

NEW CASTLE COUNTY VO-TECH CUSTODIAL	:	
AND MAINTENANCE ASSOCIATION, DSEA/NEA,	:	
	:	
Charging Party,	:	
	:	
v.	:	<u>U.L.P. No. 95-06-139</u>
	:	
NEW CASTLE COUNTY VOCATIONAL TECHNICAL	:	
SCHOOL DISTRICT,	:	
	:	
Respondent.	:	

**BACKGROUND**

The New Castle County Vo-Tech Custodial and Maintenance Association, DSEA/NEA (hereinafter “Association”) is an employee organization within the meaning of §4002(h) of the Public School Employment Relations Act, 14 Del. C. Chapter 40 (1982, 1989) (hereinafter “PSERA”).

The New Castle County Vocational Technical School District (hereinafter “District”) is a public school employer within the meaning of 14 Del.C. §4002(m).

On June 15, 1995, the Association filed an unfair labor practice charge with the Public Employment Relations Board (“PERB”) alleging violations of 14 Del.C. §§4007 (a)(1), (a)(2), (a)(3) and (a)(5). The Charge was amended on June 28, 1995. The District filed its initial Answer on June 28, 1995, and an Answer to the Amended Charge on June 30, 1995. The Association’s Reply to New Matter was filed on July 14, 1995.

A hearing was held on August 28, 1995. The parties simultaneously briefed the legal issues, with the final brief received by the PERB on November 13, 1995.

## FACTS

On May 3, 1995, the New Castle County Vo-Tech Custodial and Maintenance Association, DSEA/NEA was certified as the exclusive bargaining representative of the District's custodial and maintenance employees. The Association replaced AFSCME, Local 218 ("AFSCME"), as the certified exclusive representative of the bargaining unit as a result of a decertification election. The most recent collective bargaining agreement between AFSCME and the District had a term of July 1, 1990 through June 30, 1993. Article 28.1 of that agreement provides:

This Agreement shall automatically renew annually from year to year thereafter, unless either party shall give the other party written notice of desire to terminate, modify or amend this Agreement. Such notice shall be given to the other party in writing by Certified Mail.

On May 4, 1995, Linaya D. Yates-Lea, the DSEA UniServ Director assigned to work with this bargaining unit, wrote to District Superintendent Dr. Dennis Loftus on behalf of the Association requesting the following:

1. Dues deductions to their previous bargaining agent, AFSCME, be stopped immediately.
2. The collective bargaining agreement currently in force be assumed by DSEA. This will help insure an orderly transition and continuity of work rules until a successor agreement can be reached.
3. An alpha list of all members of the bargaining unit including names, home addresses, telephone numbers, social security numbers, work location and position.

Copies of this letter were also sent to District Personnel Director LeeRoy DeShazor and Building and Grounds Director Tom Sharp.

In preparation for an Association meeting scheduled for May 13, 1995, and having received no response to the May 4 letter, Ms. Yates-Lea called Dr. Loftus' office on May 11, 1995. As Dr. Loftus was unavailable she left a message for him to return her call. Personnel Director DeShazor returned her call that day and advised her that a responsive letter had been mailed. At her request, Mr. DeShazor transmitted a copy of the letter to Ms. Yates-Lea by facsimile transmission. The letter, from Mr. DeShazor, dated May 11, 1995, provided:

In response to your letter dated May 4, 1995, we are aware that D.S.E.A. has become the bargaining agent for the New Castle County Vocational Technical School District's custodial and maintenance workers.

Dues deduction for AFSCME have been stopped. We acknowledge that the collective bargaining agreement currently in force is assumed by D.S.E.A. until such time a[sic] successor agreement can be reached. We have enclosed an alphabetical list of the N.C.C.V.T. S.D.'s custodial/maintenance personnel.

Looking forward to working with you. Should you have any questions, please call 995-8048.

The letter indicates copies were provided to Superintendent Loftus, District Business Manager Mike Shockley and Building and Grounds Director Sharp.

On or about May 16, 1995, Ms. Yates-Lea and Mr. DeShazor had a telephone conversation regarding the Association's right to have fair share fees withheld from non-members. Mr. DeShazor stated he had received phone calls from bargaining unit employees who had been told that they had to choose between joining the Association or having a fair share fee deducted from their wages. Ms. Yates-Lea responded that the Association had communicated to the employees its intent to exercise its right to have fair share fees deducted from those who declined to become Association members. Mr. DeShazor stated that he did not believe the Association could have fair share fees deducted because the District had not negotiated a fair share provision with it. Ms. Yates-Lea asserted that the Association's right to the deduction of fair share fees was based on Article 2 of the agreement, which states:

## UNION SECURITY

### ARTICLE 2

- 2.1 All employees in the collective bargaining unit who have completed the probationary period for new employees who are not, do not become or do not remain members shall, during any such period of non-membership, pay to the Union a service fee equivalent to the dues uniformly required of its members, as a condition of employment.

Personnel Director DeShazor authored and sent a Memorandum dated May 19, 1995, to "Custodial/Maintenance Personnel", captioned "DISTRICT'S POSITION REGARDING DSEA's FEE CHARGE", which stated:

Since DSEA is sending out information indicating that our custodial/maintenance employees must either join DSEA or be charged a fair share fee, or be subject to termination, we thought we would share with you the District's position on the issue.

Joining DSEA is an option of the employee. This District does not agree that the agency fee provision in Article 2:1 of the agreement between AFSCME and New Castle County Vocational Technical School District carries over to DSEA.

We agreed to honor the contract currently in effect until such time as we negotiate a new contract, or reach an impasse, but we do not believe DSEA has a right under the provisions that were negotiated by AFSCME and New Castle County Vocational Technical School District to insist that employees who decline to join DSEA pay a fee to DSEA as a condition of employment. We believe they are a different organization and as such, they will need to address that issue at the bargaining table.

You should, however, realize that if you sign forms authorizing deductions for a fee charge, payable to DSEA, the District will honor such a dues deduction authorization.

On or about May 17, 1995, two memoranda were posted on the bulletin boards in the Maintenance Shop at DelCastle High School.<sup>1</sup> Both were issued by the Chief Custodian at DelCastle High School, Bill Burkholder. The first memo concerned the use of telephones in the shop and stated:

**EFFECTIVE IMMEDIATELY**

**NO ONE  
is permitted to use these telephones for  
personal calls unless there is an emergency.**

**Telephones in this shop are to be used for  
School Business Only.**

*[Emphasis in original]*

The second May 17, 1995, memorandum from Mr. Burkholder addressed "Scheduled Break Times" and provided:

I have noticed that Break Times are beginning to get a little out of hand, starting early and/or being extended past the time allotted. Article 13:2 of the contract entitles you to two (2) breaks per day, fifteen minutes each. Those breaks shall be **inclusive of travel time** to and from the area you are working, **not in addition to.**

For example: **If your break is scheduled to begin at 9:00 a.m. and end at 9:15 a.m., this means that you are not to leave your area until 9:00 a.m. and are expected to be back to your area working at 9:15 a.m.**

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<sup>1</sup> Testimony was inconclusive as to whether these memoranda were also posted in the Maintenance Shops at either or both Howard and Hodgson High Schools.

Your break times are scheduled for the same time everyday unless they need to be changed due to the nature of your work assignment. If you fail to abide by this in the future, disciplinary action may be taken against you.

Thank you for your cooperation in this matter.

pc: Tom Sharp  
Tim Kain  
Gary Jones

*[Emphasis in original]*

At some time prior to May 30, 1995, a third notice was posted in the DelCastle Maintenance Shop. This notice was also posted in the Maintenance Shops at Howard and Hodgson High Schools:

**No Employees  
Allowed in Shop  
After Working Hours  
Without Permission  
from Tom Sharp**

*[Emphasis in original]*

At some time within the week prior to June 6, 1995, Chief Custodians advised bargaining unit employees they would be required to work ten hour days (including a half hour unpaid meal period) during the summer months on either a 7:00 a.m. - 5:30 p.m., or 6:00 a.m. - 4:30 p.m. schedule, Monday through Thursday. In 1994 and prior years these employees had worked the following summer schedule:

7:00 a.m. - 4:45 p.m.	Monday through Wednesday
7:00 a.m. - 4:00 p.m.	Thursday

The local Association President, Barry Tielleman, spoke to both Director Sharp and Superintendent Loftus regarding the change in summer hours. Dr. Loftus advised Mr. Tielleman to call the State Department of Public Instruction for clarification as to the number of hours custodial and maintenance employees were required by the State to work during the summer.

At some later date during the summer, Director Sharp reduced the number of hours the custodial and maintenance employees were required to work by thirty (30) minutes each day.

On or about June 9, 1995, Ms. Yates-Lea called Personnel Director DeShazor to advise the District that she intended to visit bargaining unit employees in the schools, during their lunch breaks, the following week. Mr. DeShazor advised her to make sure that Director Sharp was aware of her planned visits. During her subsequent telephone conversation with Director Sharp, he stated she would not be

permitted to meet with employees in the shop areas during working hours. Director Sharp offered to arrange for alternative meeting sites in the schools for meetings which could be held either before or after working hours.

On June 15, 1995, the Association filed the instant unfair labor practice charge against the District, alleging violations of 14 Del.C. §4007(a)(1), (a)(2), (a)(3) and (a)(5).<sup>2</sup>

By letter dated June 26, 1995, Superintendent Loftus advised the Association by writing to Ms. Yates-Lea:

As you know, DSEA succeeds Council 81, AFSCME which negotiated the collective bargaining agreement covering the period July 1, 1990 through June 30, 1993. Two years of negotiations between the District and Council 81 failed to produce a successor collective bargaining agreement.

Given the decision of the members of the custodial bargaining unit to get a "fresh start" by electing DSEA as the bargaining agent, the District exercises its right to terminate, effective June 30, 1995, (See Article 28), the existing collective bargaining agreement. This termination permits both parties to start with a clean slate unencumbered by the provisions of the agreement negotiated by the bargaining agent recently rejected by a majority of the bargaining unit.

Should you have questions regarding this action, please call.

The letter indicates copies were provided to AFSCME, and Dave Williams, Esq., the District's attorney and were posted on custodial/maintenance bulletin boards. Attached to the letter was a copy of page 25 of the collective bargaining agreement which included Article 28:

#### TERMINATION, CHANGE OR AMENDMENT

28:1 This Agreement shall become effective as of the first day of July, 1990, and shall remain in full force and effect until midnight June 30, 1993.

This Agreement shall be automatically renewed annually from year to year thereafter, unless either party shall give the other party written notice of desire

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<sup>2</sup> 14 Del.C. §4007(a): It is an unfair labor practice for a public school employer or its designated representative to do any of the following:

- (1) Interfere with, restrain or coerce any employee in or because of the exercise of any right guaranteed under this chapter.
- (2) Dominate, interfere with or assist in the formation, existence or administration of any labor organization.
- (3) Encourage or discourage membership in any employee organization by discrimination in regard to hiring, tenure or other terms and conditions of employment.
- (5) Refuse to bargain in good faith with an employee representative which is the exclusive bargaining representative of employees in an appropriate unit.

to terminate, modify or amend this Agreement. Such notice shall be given to the other party in writing by Certified Mail.

By letter dated June 28, 1995, Ms. Yates-Lea responded to Dr. Loftus' June 26 letter:

I am writing to let you know that I am in receipt of your letter of June 26, 1995, regarding the District's desire to terminate the existing collective bargaining agreement for custodial and maintenance staff. As their UniServ consultant, I will share your letter with the officers of the local. Please be advised that, although the contract may be terminated, the District is required not to unilaterally alter the terms and conditions of employment pending the negotiation of a new agreement.

The local is currently organizing and preparing for bargaining. They will be ready to commence bargaining by the end of July/first of August. We will contact you in the near future to discuss specific dates. We look forward to what we hope will be production negotiations resulting in the resolution of a contract for the custodial and maintenance employees.

Copies of this letter were sent to the local Association officers, and Omar McNeill, Esq., the Association's attorney.

#### **ISSUE**

1. Did the District and the Association enter into an agreement which would require the withholding of fair share fees?
2. Did the District engage in conduct which interfered with the rights of the employees and/or the administration of the labor organization in violation of 14 Del.C. §4007(a)(1), (a)(2), and/or (a)(3)?
3. Did the District act in derogation of its duty to bargain in good faith in violation of 14 Del.C. §4007(a)(5)?

#### **POSITIONS OF THE PARTIES**

##### Association:

The Association argues that the District has engaged in conduct which was designed to interfere with the formation and administration of the union and to interfere, coerce and restrain bargaining unit employees in the exercise of their rights under the PSERA. The Association argues that the District's letter of May 11, 1995, clearly evidences the District's intent to extend the "collective bargaining agreement currently in force ... until such time as a successor agreement can be reached." It asserts there

is no credible evidence to corroborate the District's contention that it never intended to allow the Association to assume the entire collective bargaining agreement. The Association argues that the District, after extending the contract, nullified the service fee provision of the contract by informing the bargaining unit members that payment of a service fee would no longer be a condition of employment. The Association argues that the District's stated nullification was designed to undermine the Association.

The Association asserts that since the Association was certified on May 3, 1995, the District has engaged in conduct with the intent to undermine the Association's representation efforts. It alleges that the District unilaterally changed working conditions which, although not in violation of the contractual language, inconvenienced the employees and made the work environment less comfortable in retaliation for their choosing Association representation. It alleges that the posted memorandum which 1) prohibit employees from using the shop areas after hours; 2) prohibit personal use of the telephones except for emergencies; and 3) which limit break times to fifteen minutes, inclusive of travel time, all occurred immediately following certification of the Association. It further asserts that the District unfairly denied the Association representative access to the bargaining unit employees by refusing to allow her to meet with unit employees in the break rooms during break periods.

The Association alleges that the District unilaterally changed the summer work schedule and increased the number of hours employees were required to work during the summer of 1995 in retaliation for its certification. Finally, it alleges that the District terminated the collective bargaining agreement six weeks after agreeing to extend it to the Association in retaliation for the filing of this unfair labor practice charge.

District:

The District argues it did not intend to enter into an agreement which would require the collection of fair share fees for the newly certified Association. Because there was no meeting of the minds between the parties, there was no agreement to extend the contract in its entirety. The District maintains it intended only to extend the negotiated working conditions to the new representative, which did not include fair share provisions. It argues that the prior bargaining representative, AFSCME, negotiated the contractual

language authorizing the deduction of fair share fees, and that the Association cannot require the District to deduct fees without directly negotiating a similar provision.

The District argues its actions concerning telephone usage, break times, the summer schedule, and after hours shop use do nothing more than enforce existing contractual provisions and were not intended to have any impact on the Association or the statutory rights of bargaining unit employees. The District asserts it did not violate the statute in exercising its contractual right to terminate the agreement.

### **OPINION**

1. *Did the District and the Association enter into an agreement which would require the withholding of fair share fees?*

The correspondence of May 4 and May 11, 1995, between Ms. Yates-Lea, representing the Association, and Mr. DeShazor, representing the District at the direction of the Superintendent, is clear and unequivocal. Ms. Yates-Lea requested that the District agree "the collective bargaining agreement currently in force be assumed by DSEA," and Mr. DeShazor consented. The effect of the correspondence was that DSEA assumed the contract negotiated by AFSCME, in its entirety.

Thereafter, it is clear that the District continued to rely upon specific terms of the existing agreement. The Chief Custodian's communication of May 17 regarding "Scheduled Break Times" directly relies upon enforcement of Article 13:2 of the Agreement. The May 19 communication to bargaining unit employees from Personnel Director DeShazor unequivocally states, "We agreed to honor the contract currently in effect until such time as we negotiate a new contract, or reach an impasse...". Superintendent Loftus' letter of June 26 relies upon the specific requirements of Article 28 to "exercise its right to terminate" the collective bargaining agreement as of June 30, 1995.

Having voluntarily agreed to extend the existing agreement, the District could not selectively determine with which provisions of that contract it would comply. The contractual fair share provision found in Article 2, Union Security, cannot logically or legally be unilaterally excepted from the contract which the District extended to the Association. The District alleges that it received telephone calls from bargaining unit employees, who questioned whether the Association could enforce the fair share provision of the contract. Personnel Director DeShazor confirmed with Ms. Yates-Lea that the

Association had explained to bargaining unit employees that it intended to enforce the contractual fair share provision against employees who did not become Association members. Mr. DeShazor then issued the memorandum of May 19, 1995, to all custodial and maintenance employees, which stated (in relevant part):

Since DSEA is sending out information indicating that our custodial/maintenance employees must either join DSEA or be charged a fair share fee, or be subject to termination, we thought we would share with you the District's position on the issue....

... We agreed to honor the contract currently in effect until such time as we negotiate a new contract, or reach an impasse, but we do not believe DSEA has a right under the provisions that were negotiated by AFSCME and New Castle County Vocational Technical School District to insist that employees who decline to join DSEA pay a fee to DSEA as a condition of employment.

Mr. DeShazor did not simply respond to the individual employees who contacted him by explaining the District's interpretation or position on this issue. Rather, after confirming that the Association had told employees that a fair share fee would be assessed, the District then used its ability to reach every bargaining unit member by issuing a memorandum of general distribution stating that it would not collect fair share fees. By informing the bargaining unit employees that, contrary to the terms under which they had worked for at least the last five years (i.e., in an agency shop), there would no longer be any consequence or cost for not joining the Association, this notice could have no logical consequence other than to discourage membership in the Association, the newly recognized representative.

There is also ample evidence on the record to support the Association's charge that by directly communicating to bargaining unit employees its intention not to deduct fair share fees, the District interfered with the Association's rights as the exclusive bargaining representative of the employees in the unit and in the administration of the labor organization, in violation of §4004(a), §4007(a)(1) and (a)(2). Superintendent Loftus testified, "We fight agency fee in the legislature and we would intend to fight it at the table." [Transcript, p. 95]. It is clear that the District perceived that an opportunity existed as a result of the bargaining unit's decision to make a change in its exclusive bargaining representative and that it

intended to set the stage to exclude fair share provisions from the agreement it was required to negotiate with the Association.

II. *Did the District engage in conduct which interfered with the rights of the employees and/or the administration of the labor organization in violation of 14 Del.C. §4007(a)(1), (a)(2), and/or (a)(3)?*

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The Association charges the District engaged in a pattern of actions which interfere with the rights of the employees and the administration of the Association. Where an (a)(1) and/or (a)(2) violation is alleged, direct evidence of actual intimidation, coercion or restraint is unnecessary for finding that an unfair labor practice occurred. Sussex Vo-Tech Teachers Association v. Bd. of Education, Del.PERB, U.L.P. 88-01-021 (1988). The application of an objective standard determines whether the conduct in question could reasonably be construed to interfere with the free exercise of employee rights or the administration of the union. Wilmington Firefighters Association v. City of Wilmington, Del.PERB, U.L.P. 93-06-085 (1994)(“WFFA I”).

In the absence of substantial evidence establishing the presence of protected activity and retaliatory motive, union animus cannot be considered as the underlying motive for an employer’s actions. Wilmington Firefighters Association v. City of Wilmington, Del.PERB, ULP 93-10-093 (1994) (“WFFA II”). While reasonable inferences may be drawn from both direct and circumstantial evidence, those inferences may not be compounded in order to find a violation of the statute. WFFA II, (Supra., p. 1053). Substantial evidence supporting an inference must be adequate to a reasonable mind to support the conclusion reached. Standing alone, the time proximity of protected activity and adverse employment actions alone is not sufficient to support the inference that the employer intended to interfere with the rights of employees or the administration of a labor organization. WFFA I, (Supra., p. 984).

The Association asserts that the totality of the circumstances and the timing of the actions make it clear that the District’s actions were designed to interfere with the Association’s representation of the bargaining unit. The specific incidents occurring in the six or seven week period following its certification which the Association alleges violated the statute are considered below.

### Termination of the Collective Bargaining Agreement

Having determined the District entered into an agreement with the Association to continue the existing collective bargaining agreement, it, like the District, cannot pick and choose which provisions are binding. Ms. Yates-Lea, in her June 28 letter to Dr. Loftus, acknowledged the District's contractual right to terminate the agreement. Despite the fact that the Superintendent's "clean slate" comment may have irritated the Association and the timing of the termination of the agreement may have been less than convenient for the Association which was attempting to recruit members, it was within the District's authority to exercise its contractual right.

### Association Access to Employees during Working Hours and on School Premises

The record fails to establish that the District's restrictions on the Association's access to employees in the work place during working hours is illegally motivated. While the exclusive bargaining representative must be afforded reasonable access to information necessary to carry out its representative functions, the employer has the right to reasonably control its property and operations. Wilmington Firefighters Association v. City of Wilmington, Del.PARB, ULP 93-10-093 (1994) ("WFFA II"). The District's concerns regarding disruption and safety in the workplace are reasonable in light of the fact that the maintenance shops contain numerous machines, equipment, chemicals and other safety hazards. Further, public schools have a heightened responsibility to ensure the safety of their physical facilities.

The District did not deny the Association's representative access to the employees, but rather placed reasonable limitations on the Association's request. The Association failed to establish why it was necessary to meet with these employees in the work areas during working hours, rather than off site where other referenced Association meeting were held. The Association also chose not to pursue Director Sharp's offer to arrange for alternative meeting locations either before or after working hours.

Further, nothing on the record suggests that any labor organization had previously been permitted to meet with these employees under the conditions proposed by the Association. While the District may not interfere with the rights of employees to organize or with the formation and/or administration of a labor organization, proposing alternative times and locations for meeting with bargaining unit employees

at the work site does neither. The District's response reflects a reasonable attempt to reasonably balance the employer's legitimate safety concerns with the Association's access to bargaining unit members.

Notices Regarding After Hours Shop Use, Breaks and Telephone Usage

The record fails to establish that the District interfered with the rights of the employees or the Association by posting a notice which required that employees get permission from the Director of Buildings and Grounds for after hours use of the shop area.<sup>3</sup> With the exception of the one employee who testified regarding his personal use of the DelCastle shop area after working hours at some unspecified point within the two year period prior to the notice, no evidence was offered to establish that employees had been permitted unrestricted use of the shops after hours. Consistent with the safety concerns it expressed regarding access to the shop areas, it is reasonable that the District would similarly limit unsupervised use of these areas. Further, there is no evidence that the alleged change in after hours usage disproportionately impacted employees who had or were engaging in protected activity. In short, requiring that the Building and Grounds Director grant permission for employees to use work areas after hours does not constitute an adverse employment action which violates the statute.

Similarly, neither does the restriction of personal telephone usage or the enforcement of contractual break periods adversely impact employees in violation of the PSERA. There is no evidence on the record that these actions were motivated by other than legitimate business concerns. The fact that these notices were posted after the Association was certified is insufficient in and of itself to support the inference that the District acted in retaliation for the election of the Association, particularly in light of the fact that there was no adverse or disparate impact on employees.

The record contains insufficient evidence upon which to conclude that the District acted in any of these instances on prohibited motives or with the intent to discredit the Association or otherwise interfere with its administration and operation.

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<sup>3</sup> The Hearing Officer takes judicial note of the fact that this Notice was posted and personally observed in the Break Room at DelCastle High School on May 3, 1995, the date on which the final balloting was conducted in the decertification process.

III. *Did the District act in derogation of its duty to bargain in good faith in violation of 14 Del.C. §4007(a)(5)?*

The employer and the exclusive bargaining representative have a statutory obligation to negotiate in good faith with respect to terms and conditions of employment. “Terms and conditions of employment” are mandatory subjects of bargaining and include “... matters concerning or related to wages, salaries, hours, grievance procedures and working conditions.” 14 Del.C. §4002(r). The parties are required to maintain the status quo with respect to the terms and conditions of employment unless and until changes are negotiated in those terms. A unilateral change in a mandatory subject of bargaining constitutes a per se violation of the obligation to negotiate in good faith. Appoquinimink Ed. Assn. v. Bd. of Education, Del.PERB, ULP 1-2-84A (1984); Brandywine Affiliate, NCCEA/DSEA/NEA, v. Bd. of Education, Del.PERB, ULP 1-9-84-6B (1984); New Castle County Vo-Tech Fed. of Teachers, AFT v. NCC Vo-Tech School District, Del.PERB, D.S. No. 88-12-031 (1988); see also NLRB v. Katz, 369 US 736 (1962).

*Fair Share Fees*

The Association argues that the District violated its duty to bargain in good faith by communicating to the employees that it would not withhold fair share fee deductions from bargaining unit employees who did not become members of the Association. Had the Association submitted a list of non-members and requested that fair share fees be withheld, and the District then refused to withhold these fees, this matter would have been ripe for both a grievance and possibly an unfair labor practice charge. However, there was no request for and subsequent refusal of the fair share fee deduction; therefore, the question of whether fair share provisions must be negotiated under the PSERA is not ripe for resolution. The present circumstances do not support a finding that the District violated its duty to bargain in good faith with respect to fair share fees.

Summer Work Schedule:

It is undisputed that the number of hours bargaining unit employees were required to work during the summer of 1995 was increased beyond what those same employees had worked during the summer of 1994. It is also undisputed that the summer schedule these employees worked in 1994 was the same as that worked for an unspecified number of years before 1994. Buildings and Grounds Director Sharp testified that the revised summer schedule was further altered after its implementation in June, 1995. The District "shortened their [*bargaining unit employees*'] day by a half hour", (*Transcript, p. 129*) and additionally gave the employees an unscheduled day off during the summer of 1995.

The Public School Employment Relations Act clearly establishes that hours of work are a term and condition of employment which must be negotiated between the employer and the exclusive bargaining representative. This record provides no evidence that the change in summer hours was ever discussed with the certified exclusive bargaining representative. The discussion between Superintendent Loftus and Local President Tielleman occurred after the work hours had been changed and clearly did not constitute negotiations. Despite repeated, albeit conflicting, testimony concerning instructions from the State Department of Public Instruction ("DPI") regarding the number of hours custodial and maintenance employees are "required to work", no corroborating documentation and/or statutory or regulatory citations were introduced by either party to remove summer hours from the scope of mandatory bargaining.

The District argues that it changed the summer work schedule in June, 1995, out of consideration for its employees. Director Sharp testified he became aware during the summer of 1994 that these employees were working less than the required number of hours. Director Sharp asserts that he waited until June, 1995, to bring the summer hours into compliance with the collective bargaining agreement in order not to disrupt the summer 1994 schedule.

The contract establishes neither a specified number of hours nor a specified schedule for summer work.<sup>4</sup> The summer schedule prior to June, 1995, is not disputed. It is also undisputed that both the

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<sup>4</sup> Article 13:2: To provide a basis for computing overtime premium pay, and not to be construed as a guarantee of hours of work per day or per week, the regular scheduled working day is eight (8) hours per day with an additional unpaid duty free luncheon period of one-half hour and the regular scheduled working week is forty (40) hours, Monday through Friday, inclusive. [*emphasis added*]

schedule and the number of hours to be worked were unilaterally changed in June, 1995, without prior consultation and negotiation with the Association. This admitted unilateral change in a mandatory subject of bargaining constitutes a per se violation of the District's duty to bargain in good faith and violates §4007(a)(5) of the PSERA.

This violation was repeated when the District, through its Director of Buildings and Grounds further altered the schedule during the 1995 summer by reducing the number of hours of required work without negotiating this change with the exclusive representative of the affected employees. Assuming that the Association would not object to either this change or an unscheduled day off does not alleviate the District's responsibility to negotiate these changes in hours with the Association.

The Public School Employment Relations Act is intended to maintain a stable and supportive environment for collective bargaining. It was not intended, nor can it effectively act, as a substitute for good faith negotiations. These parties are encouraged to lay aside the suspicions and ill will this charge may have generated and proceed, as they have each indicated their desire, with all deliberate speed to negotiate a collective bargaining agreement for this unit of employees who have continued to work without an agreement for over two and a half years.

#### **CONCLUSIONS OF LAW**

1. The New Castle County Vocational Technical School District is a public school employer within the meaning of 14 Del.C. §4002(n).
2. The New Castle County Vo-Tech Custodial and Maintenance Association, DSEA/NEA is an employee organization within the meaning of 14 Del.C. §4002(h), and is the exclusive representative of the bargaining unit of custodial and maintenance employees within the meaning of 14 Del.C. §4002(i).
3. By the exchange of letters of May 4 and May 11, 1995, the District and the Association entered into an agreement to extend the existing collective bargaining agreement to the newly certified representative.

4. By its May 19, 1995 memorandum to all bargaining unit employees stating intention not to deduct a fair share fee from employees who chose not to become members of the Association, the District interfered with the rights of the employees and interfered with the administration of the Association, in violation of 14 Del.C. §4004(a), §4007 (a)(1) and (a)(2).

5. The memorandum issued by the DelCastle High School Chief Custodian on or about May 17, 1995, which restricted personal telephone use to emergencies does not violate the PSERA.

6. The memorandum issued by the DelCastle High School Chief Custodian on or about May 17, 1995, which notified bargaining unit employees that the fifteen minute break time would be strictly enforced in compliance with the collective bargaining agreement does not violate the PSERA.

8. The posted notice which restricts after use of the maintenance shops after hours without the permission of the Director of Buildings and Grounds does not violate the PSERA.

9. The District did not violate the Public School Employment Relations Act by terminating the collective bargaining agreement, effective June 30, 1995.

10. The District did not interfere with the rights of the employees or the Association by placing reasonable limitations on the Association's request to meet with unit employees at the work site.

11. By unilaterally altering the summer work schedule for the 1995 summer season without negotiating with the Association, the District violated its duty to bargain in good faith and violated 14 Del.C. §4007 (a)(5).

WHEREFORE, pursuant to 14 Del.C. §4006(h)(2), the New Castle County Vocational Technical School District is ordered to:

- A. Cease and desist from interfering with the rights of the employees and their exclusive bargaining representative by communicating directly with bargaining unit employees the District's intent not to deduct fair share fees during the term of the collective bargaining agreement which so provided.

- B. Cease and desist from unilaterally altering the hours of summer work, a mandatory subjects of bargaining, without first negotiating with the exclusive bargaining representative of the employees.
- C. Take the following affirmative actions:
1. Return the summer schedule to the 1994 status quo unless and until changes to that schedule are negotiated with the Association.
  2. Post the attached Notice of Determination for a period of thirty days in all areas where notices affecting bargaining unit employees are normally posted.

**IT IS SO ORDERED.**

*/s/Deborah L. Murray-Sheppard*  
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**DEBORAH L. MURRAY-SHEPPARD**  
Principal Assistant  
Delaware Public Employment Relations Bd.

*/s/Charles D. Long, Jr.*  
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**CHARLES D. LONG, JR.**  
Executive Director  
Delaware Public Employment Relations Bd.

DATED: 16 February 1996