

STATE OF DELAWARE
PUBLIC EMPLOYMENT RELATIONS BOARD

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

At a public meeting on March 25, 1996, the Public Employment Relations Board ("Board") considered the request of the New Castle County Vocational Technical School District ("NCCVTSD") to review the decision of the Hearing Officer in this matter. Present at this meeting were David H. Williams, Esquire (Morris, James, Hitchens & Williams), representing the District, and Omar McNeill, Esquire (Young, Conaway, Stargatt & Taylor), representing the New Castle County Vo-Tech Custodial and Maintenance Association, DSEA/NEA ("Association"). Sitting for the Board were Acting Chairman Henry E. Kressman and Member John D. Daniello.

This Unfair Labor Practice charge was filed by the Association. It alleges that the District engaged in a number of activities which interfered with the administration and formation of the labor organization and which

were in derogation of its duty to bargain in good faith with the Association under the Public School Employment Relations Act ("PSERA"), 14 DeI.C. Ch. 40.

The Hearing Officer held in the decision below that the District did not violate the statute or otherwise commit unfair labor practices by:

- Restricting personal use of the telephones by bargaining unit employees to emergency situations.
- Notifying bargaining unit employees that the 15 minute break period established by contract would be strictly enforced.
- Posting notices that after hours use of the shop areas was prohibited except with permission from the Director of Building and Grounds.
- Terminating the contract which the District had allowed the Association to assume in conformance with the contractual provisions for termination.
- Placing reasonable limits upon the Association's request to meet with bargaining unit employees on the work site.

The Hearing Officer did find, however, that the District did commit unfair labor practices and violated §§1407(a)(1) and (a)(2) by communicating directly with bargaining unit employees its intention not to deduct fair share fees from employees who choose not to become members of the Association, after the District had extended the terms of the prior collective bargaining agreement to the Association. That agreement included a fair share provision. The District was held to have further violated its duty to bargain in good faith with the Association by unilaterally altering the 1995 summer work schedule of

bargaining unit employees without first negotiating with the Association, in violation of 14 Del.C. §4007(a)(5).

On appeal, the District requested a limited review of the Hearing Officer's decision that it violated §4007(a)(5) of the PSERA by changing the summer work schedule. The District argues that Article 13.2 of the collective bargaining agreement establishes a 40 hour work week. It further asserts that Article 13.1 grants to the District the contractual right to unilaterally alter the summer work schedule. Article 13.1 provides in relevant part:

The Board agrees that uniform shift work and schedules will be made throughout the District upon the signing of this agreement, however, the shift time and work schedule may be changed to meet the needs of the school and the season of the year.

The Association responded that the Hearing Officer correctly concluded that Article 13.2 establishes an hourly rate for the purpose of computing overtime premium rates and does not define a "normal work week." It disputes the District's characterization of Article 13.1, asserting that the language does not constitute a clear and unmistakable waiver by the Association to negotiate the mandatory bargaining subject of hours of work. It argues that the language clearly does not establish a right for the District to unilaterally implement changes in hours, even in response to the needs of the school or the season of the year.

We concur with the Hearing Officer's decision up to the point of the appeal. We do not find in the record, however, that the Hearing Officer considered either the impact of Article 13.1 of the agreement or whether the Association had waived its right to negotiate changes to the summer work schedule. Consequently, the Board is being asked to rule on issues in the first instance without the benefit of a record on these arguments below. This is not the purpose of the Board or its procedures on review.

Therefore, by a 2-0 vote, the Board remands this matter back to the Hearing Officer to receive the testimony and arguments deemed necessary to rule on the impact of Article 13.1 and whether the Association has waived the right to negotiate changes to the summer work schedule.

IT IS SO ORDERED.

/s/Henry E. Kressman
Henry E. Kressman, Acting Chairman

/s/John D. Daniello
John D. Daniello, Member