

STATE OF DELAWARE

PUBLIC EMPLOYMENT RELATIONS BOARD

CHRISTINA SCHOOL DISTRICT, : DECISION OF THE
AND : BINDING INTEREST
: ARBITRATOR
:
CHRISTINA EDUCATION ASSOCIATION, DSEA/NEA : **BIA 19-08-1198**

Appearances

David H. Williams, Esq., Morris James LLP, for Christina School District
Patricia P. McGonigle, Esq., DSEA General Counsel for Christina Education Assn.

BACKGROUND

The Christina School District (“District”) is a public employer within the meaning of 19 Del.C. §4002(p) of the Public School Employment Relations Act (“PSERA”). 14 Del.C. Chapter 40 (1982).

The Christina Education Association, DSEA/NEA (“Association”) is an employee organization within the meaning of 14 Del.C. §4002(h). The Association is the exclusive bargaining representative of a bargaining unit of certificated non-administrative employees of the District. 14 Del.C. §4002(j).

The District and the Association were and are parties to a collective bargaining agreement which has a term of July 1, 2016 through June 30, 2019.

The parties entered into negotiations for a successor agreement in February 2019. Unable to reach a successful conclusion to their negotiations, the Association requested mediation on June 3, 2019. A mediator was appointed by the Public Employment Relations Board, who met with the parties on August 22, 2019. At the conclusion of this mediation session, the mediator advised PERB, “Based upon the proposals and responses of the

parties made throughout the day of negotiations, I am of the view that further mediation sessions will not be productive.” The mediator recommended the parties enter into binding interest arbitration in order to resolve their negotiations. Upon request from PERB, each party submitted its last, best, final offer for consideration.

PERB determined “a good faith effort had been made by both parties to resolve their labor dispute through negotiations and mediation and ... the initiation of binding interest arbitration would be appropriate and in the public interest”, without objection by either party. 14 Del.C. §4015(a). A prehearing conference was conducted on September 27, 2019.

The binding interest arbitration hearing was convened by the PERB Executive Director on October 28, 2019, at which time the parties presented testimony and documentary evidence in support of their respective positions. The record created by the parties consisted of six (6) exhibits submitted by the District and twenty-five (25) exhibits submitted by the Association. The parties also jointly submitted copies of the current collective bargaining agreements from the Appoquinimink (12/12/17 – 8/31/20), Brandywine (7/1/17 – 6/30/20), Colonial (9/1/17 – 8/31/20), Red Clay Consolidated (9/1/17 – 8/31/20), and New Castle County Vo-Tech (7/1/18 – 6/30/21) school districts.

Closing argument was provided in written post-hearing submissions. The record closed on November 8, 2019. The following discussion and decision result from the record thus created by the parties.

LAST, BEST, FINAL OFFERS OF THE PARTIES

Christina School District:

1. All tentative agreements as of May 30, 2019, shall be incorporated into the collective bargaining agreement between the Christina

School District Board of Education and the Christina Education Association Inc. (“the Agreement”), effective July 1, 2019.

2. The duration of the Agreement shall be July 1, 2019 to June 30, 2022.
3. There shall be no salary increase for the first year of the Agreement (July 1, 2019 to June 30, 2020).
4. In March 2020, the parties shall reopen collective bargaining as to salary increases (Section 25:1.1 of the Agreement) if any, for year 2 (July 1, 2020 to June 30, 2021) and year 3 (July 1, 2021 to June 30, 2022) of the Agreement.
5. If the reopener referred to above in paragraph 4 does not result in a salary increase for year 3 (July 1, 2021 to June 30, 2022), the parties shall reopen collective bargaining as to a salary increase, if any, for year 3 of the Agreement.
6. All other provisions in the Agreement which expired on June 30, 2019, shall remain in effect with the exception of revising the Preamble to delete July 16, 2016 [*sic*], and substitute July 1, 2019, and revising Section 33:1 and the cover page of the Agreement, to reflect the duration of July 1, 2019 to June 30, 2022.

Christina Education Association, DSEA/NEA:

- 4:3.4 If the District places an employee on administrative leave with pay pending investigation of an allegation of wrongdoing, the District shall notify the employee, in writing, of the nature of the alleged occurrence giving rise to the investigation (including the date(s), if known) within 24 hours of the administrative leave placement.
- 4:6.1.2 Employees in grades pre-K – 12 shall receive two (2) full days and two (2) half days for the purpose of fulfilling professional responsibilities as planned by each employee. These days shall be placed between the end of the marking period and the deadline for entering grades. The full day professional responsibility days will take place in the second and fourth marking periods. The half-day professional responsibility days will take place in the first and third marking periods. These days shall be designated for an employee’s individual professional responsibilities, such as to calculate marking period grades, exam grades, final grades, and computerized entry of said grades and data.
- 5:4.1 In order to maintain communication and foster the collaborative process between the Association and the Board,

In addition to the Tentative Agreements set forth below in Section B, CEA requests all other contract terms remain unchanged.

STATUTORY PROVISIONS

14 Del.C. §4015. Binding interest arbitration.

- a. Within 7 working days of receipt of a petition or recommendation to initiate binding interest arbitration, the Board shall make a determination, with or without a formal hearing, as to whether a good faith effort has been made by both parties to resolve their labor dispute through negotiations and mediation and as to whether the initiation of binding interest arbitration would be appropriate and in the public interest.
- b. Pursuant to §4006(f) of this title, the Board shall appoint the Executive Director or the Executive Director's designee to act as binding interest arbitrator. Such delegation shall not limit a party's right to appeal to the Board.
- c. The binding interest arbitrator shall hold hearings in order to define the area or areas of dispute, to determine facts relating to the dispute and to render a decision on unresolved contractual issues. The hearings shall be held at times, dates and places established by the binding interest arbitrator in accordance with rules promulgated by the Board. The binding interest arbitrator shall be empowered to administer oaths and issue subpoenas on behalf of the parties to the dispute or on the binding interest arbitrator's own behalf.
- d. The binding interest arbitrator shall make written findings of facts for the resolution of the dispute; provided, however, that the decision shall be limited to a determination of which the parties' last, best, final offers shall be accepted in its entirety. In arriving at a determination, the binding interest arbitrator shall specify the basis for the binding interest arbitrator's findings, taking into consideration, in addition to any other relevant factors, the following:
 - (1) The interests and welfare of the public.
 - (2) Comparison of the wages, salaries, benefits, hours and conditions of employment of the employees involved in the binding interest arbitration proceedings with the wages, salaries, benefits, hours and conditions of employment of other employees performing the same or similar services or requiring similar skills under similar working conditions in the same community and in comparable communities and with other employees generally in the same community and in comparable

communities.

- (3) The overall compensation presently received by the employees inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.
 - (4) Stipulations of the parties.
 - (5) The lawful authority of the public school employer.
 - (6) The financial ability of the public school employer based on existing revenues, to meet the costs of any proposed settlements; provided that, any enhancement to such financial ability derived from savings experienced by such public school employer as a result of a strike shall not be considered by the binding interest arbitrator.
 - (7) Such other factors not confined to the foregoing which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, binding interest arbitration or otherwise between parties, in public service or in private employment. In making determinations, the binding interest arbitrator shall give due weight to each relevant factor. All of the above factors shall be presumed relevant. If any factor is found not to be relevant, the binding interest arbitrator shall detail in the binding interest arbitrator's findings the specific reason why that factor is not judged relevant in arriving at the binding interest arbitrator's determination. With the exception of paragraph (d)(6) of this section, no single factor in subsection, shall be dispositive.
- e. Within 30 days after the conclusion of the hearings but not later than 120 days from the day of appointment, the binding interest arbitrator shall serve the binding interest arbitrator's written determination for resolution of the dispute on the public school employer, the certified exclusive representative and the Board. The decision of the binding interest arbitrator shall become an order of the Board within 5 business days after it has been served on the parties.
 - f. The cost of binding interest arbitration shall be borne equally by the parties involved in the dispute.
 - g. Nothing in this chapter shall be construed to prohibit or otherwise impede a public school employer and certified exclusive representative from continuing to bargain in good faith over terms and conditions of employment or from using the services of a

mediator at any time during the conduct of collective bargaining. If, at any point in the impasse proceedings invoked under this chapter, the parties are able to conclude their labor dispute with a voluntarily reached agreement, the Board shall be so notified, and all impasse resolution proceedings shall be forthwith terminated.

DISCUSSION

I. Resolutions reached by the parties prior to hearing

Prior to the binding interest arbitration hearing, the Association notified the arbitrator on October 15, 2019 that it had informed the District it was withdrawing its proposed modifications to Sections 5:4.1 and 8:2.2, and that the contractual language in these sections would remain unchanged from the predecessor agreement. The Association also stated it was withdrawing its proposal for a new Section 4:3.4. On October 16, the District responded by objecting to the partial agreement offered by the Association, arguing that "... while §4015(g) encourages the parties to continue bargaining in an attempt to reach an agreement which concludes the labor dispute, [it]... does not permit revisions to a last, best, and final offer in the absence of such an agreement."¹ The District asserted the parties were constrained by their last, best, final offers and could not modify them, in part, once they had been submitted.

By letter dated October 16, 2019, the binding interest arbitrator responded to the parties:

The binding interest arbitration provision of the statute makes it clear that the statute should not be construed to impede the parties from continuing to negotiate during the interest arbitration process:

(g) Nothing in this chapter shall be construed to prohibit or otherwise impede a public school employer and certified exclusive representative from continuing to bargain in good faith over terms and conditions of employment... 14 Del.C. §4015

¹ 10/16/19 letter from District counsel to PERB.

The District's objection has been previously addressed in the decision in *Laurel Education Association and Laurel School District* (BIA 13-12-934, VII PERB 6131 (2014)). In that case, the Association notified the arbitrator at the opening of the hearing that it accepted one of the District's proposals. In accepting that the issue was resolved and therefore removed from consideration in the binding interest arbitration process, the decision states:

...The purpose of the PSERA is to promote and support harmonious and productive relationships between management and labor in order to insure the orderly and uninterrupted function and operation of Delaware's public schools. The law specifically obligates public school employers and unions certified to represent their employees to enter into collective negotiations in order to resolve disputes and to thereafter reduce any such agreements to writing. 14 Del.C. §4001.

In this case, the District made a proposal concerning Addendum 2 which the Association has accepted. Consequently, tentative agreement has been reached and there is no need for further consideration of this provision in this proceeding. The collective bargaining agreement which results from this decision will include Addendum 2 as set forth in the District's last, best, final offer. *Laurel Education Assn. & Laurel School District*, BIA 13-12-934, VII PERB 6131, 6154 (2014).

The ultimate purpose of the binding interest arbitration hearing is to create a record on which the arbitrator can render a decision "... on unresolved contract issues". *PERB Binding Interest Arbitration Procedures*.

The Association has provided notification that the provisions of §§4:3.4, 5:4.1 and 8:2.2 are no longer in dispute. The District's proposal on §4:3.4² will be included in the successor agreement and there will be no changes to §5:4.1 and §8:2.2 from the predecessor agreement. Consequently, there is no need to present evidence or argument during the hearing on these matters because they are no longer unresolved. To find otherwise would be inconsistent with the express purpose of the statute, 14 Del.C. §4015(g) and PERB precedent.

While disagreeing with the arbitrator's conclusions and without waiving its right to appeal the decision to permit the Association to modify its last, best, final offer, in an email

² The District did not make a proposal or counter to the Association's proposal for a new §4:3.4; this statement was in error.

II. Consideration of the merits of the last, best, final offers

Turning to a consideration of the criteria set forth in 14 Del.C. §4015, each statutory factor was initially considered to be relevant. The interest and welfare of the public (§4015(d)(1)) in the State's public school system is the effective education of the youth residing in Delaware in order to prepare them for their future endeavors and to provide the opportunity for each child to become a productive adult. Instruction is delivered through paid professional staff (as supported by many others working in the public school systems). Having well-educated, experienced, and well-trained educators is an integral piece in educating students. Neither of the Association's proposals are contrary to the public interest in the schools in the Christina School District.

There was no argument by either party that either last, best, final offer exceeds the lawful authority of the public school employer; consequently, consideration of §4015 (d) (5) is not relevant to this binding interest arbitration determination.

Consideration of §4015(d)(6) is also not relevant to the determination of which of the parties' last, best, final offers shall be accepted in its entirety in this particular dispute. The District inquired as to the projected costs of the Association's remaining proposals in correspondence prior to the commencement of the hearing:

The District is in a position to establish an inability to pay for any increase in the costs of a proposed settlement based upon existing revenues. Unless CEA intends to argue that the District can accommodate the implementation of CEA's 4:6.1.2 proposal by paying all teachers to work an additional day beyond the State funded 188 work days, there are no costs associated with CEA's 4:6.1.2 and 19:5.3 proposals. Thus, if CEA confirms it does not intend to make such an argument, the District will not present evidence establishing the inability of the District to meet the costs of any proposed settlement based upon existing revenues. This issue may become relevant when the reopener is triggered if, at that point, the parties reach an impasse.

The Association affirmatively responded on October 17, 2019, that, "... its proposals for

4:6.1.2 and 19:5.3 do not require the expenditure of additional funds by the District. Accordingly, CEA does not believe there is a need for the District to present evidence regarding an inability to pay.”

As the parties have agreed that there are no costs associated with the two remaining issues in dispute, no evidence was received during the binding interest arbitration hearing concerning the financial impact nor did the District assert its inability to afford the two changes proposed by the Association.

Attached to each of the parties’ last, best, final offers was a copy of a document memorializing tentative agreements reached during the course of collective bargaining and mediation. The tentative agreements so reached are considered for purposes of the binding interest arbitration proceeding to be stipulations of agreement by these parties which will be included in the final agreement for the collective bargaining agreement which will have a term of July 1, 2019 through June 30, 2022, pursuant to §4015(d)(4). Any provision of the predecessor collective bargaining agreement which is not modified by the agreement of the parties or by this binding interest arbitration decision, shall remain as set forth in the July 1, 2016 – June 30, 2019 agreement.

The parties stipulated that the Appoquinimink, Brandywine, Colonial, Red Clay Consolidated and New Castle County Vo-Tech School Districts are appropriate for purposes of comparing, “... other employees performing the same or similar services or requiring similar skills under similar working conditions in the same community and in comparable communities and with the other employees generally in the same community and in comparable communities”, pursuant to 4015(d)(2). In conjunction with the Christina School District, these are the Delaware public school districts in New Castle County. A copy of the current collective bargaining agreement between each of these

school districts and the exclusive bargaining representative of its professional staff (all of which are DSEA/NEA affiliates) was admitted into the record as a joint exhibit.

There are only two issues which remain in dispute in this proceeding, each of which is a proposed change to existing language made by the Association. Each shall be considered severally; the ultimate decision, however, will be determined by consideration of these two proposals as a total package.

For the purpose of identifying the changes proposed to existing contract provisions, the current language is typed in black, portions which the Association proposes to eliminate are ~~struck through~~, and **new** provisions are identified in **red**.

1. Christina Education Association’s proposal for additional half-days as professional responsibility days at the end of the 2nd and 4th marking periods.

4:6.1.2 ~~One half day per marking period will be allocated for the purpose of reporting and grading with the other half dedicated to professional development. Such days shall be set by the District and will occur on in-service days between the first student day and the last student day in conjunction with the grade reporting window between marking periods. This will take effect for the 2017-2018 school year.~~

Employees in grades pre K – 12 shall receive two (2) full days and two (2) half-days for the purpose of fulfilling professional responsibilities as planned by each employee. These days shall be placed between the end of the marking period and the deadline for entering grades. The full day professional responsibility days will take place in the second and fourth marking periods. The half-day professional responsibility days will take place in the first and third marking periods. These days shall be designated for an employee's individual professional responsibilities, such as to calculate marking period grades, exam grades, final grades, and computerized entry of said grades and data.

The Association argues that the additional half day of professional responsibility time or “grading days” at the end of both the second and fourth marking periods is reasonable and necessary to reduce the amount of time bargaining unit employees spend

meeting their professional duties outside of their contracted work day. Specifically, it asserts that the additional day (comprised of two half days) would:

- Ensure additional dedicated, quality time to grade at the end of each semester and complete related work;
- Give elementary teachers additional time since much of their grading work is duplicative;
- Ensure teachers are not rushing when inputting grades, so that grades are input correctly, and less correction is needed after report cards issue; and
- Help reduce the stress placed on teachers at the end of the semester, which improves the overall well-being and performance of teachers, which in turn benefits students.³

The Association also argued that an “inadvertent error” was made in the last negotiations which gave four half days of grading time to all instructional employees, because it eliminated the reservation of half days during mid-term and final examination for grading at the high school level. The first time dedicated grading time language appeared in the collective bargaining agreements of these parties was in the 2013-2016 agreement. It provided “High School teachers only” with the “half day time period during midterm and final exam weeks to use for calculating marking period grades, exam grades, final grades and computerized entry of said grades.”⁴ This language was significantly changed in the successor 2016-2019 collective bargaining agreement. Teachers at all levels were provided with a half day at the end of each of the four marking periods (beginning in the 2017-18 school year) for grading.

Christina School District is one of the largest school districts in Delaware, educating more than 14,000 students each year. Only three of its schools are high schools.

³ Closing argument of the Christina Education Assn., November 8, 2019, p. 3.

⁴ Under the 2013-2016 collective bargaining agreement, §4:6.1.2 provided, “High School Teachers will have the half day time period during midterm and final exam weeks to use for calculating marking period grades, exam grades, final grades and computerized entry of said grades.” *CEA Exhibit 3, p.11*

Expanding the availability of grading days beyond six half days per year at its three high schools, to making the four half days per year available to the whole bargaining unit was a significant change. The Association's current proposal would not reinstate the additional days purportedly "lost" by the high school staff but would expand the number of days available to all professional staff to two full days and 2 half days each year.

Whether the existing language in the 2016-2019 collective bargaining agreement reflects an "inadvertent error" in prior negotiations is immaterial to this proceeding. If an error was made, there are subsequent negotiations in which to correct the purported error. In this case, the Association does not seek to correct the error but rather to expand the negotiated benefit for all bargaining unit employees.

The number of grading days guaranteed to Christina School District staff falls squarely in the middle of a comparison to the other school districts which the parties have stipulated are comparable. Brandywine School District's collective bargaining agreement provides four full days to its pre-K through 8th grade professional staff and 2 full days to its secondary school staff. *Joint Exhibit 2, §22.17*. Red Clay Consolidated School District's agreement provides three days to all of its professional staff. *Joint Exhibit 4, §17:16*. Colonial School District (like Christina) has negotiated two full days for grading. *Joint Exhibit 3, §10:6.10*. New Castle County Vo-Tech School District provides one grading day for its staff (*Joint Exhibit 5, §K11.7.2*) and Appoquinimink School District provides six hours for grading to its elementary school teachers (*Joint Exhibit 1, §21.10.4*). Review of the school calendars evidenced that half-day mid-term and final exams are common in many of the high schools in the comparator districts. Except for Brandywine, however, none of the other collective bargaining agreements addresses reservation of the other half of the exam days for professional responsibilities for the secondary teachers. If

secondary teachers do receive the benefit of using half of exam days for grading, it is by practice and not by contract (except in Brandywine). The record in this case also established that the three high schools in the Christina School District did not use a half day format for exams in the 2017-18⁵ but returned to the shared format of half day for exams and half day for professional development in its high schools in the 2018-19 and 2019-2020 school years.⁶

The Association's proposal to modify §4:6.1.2 does not impact the overall compensation received by bargaining unit employees and does not implicate §4015(d)(3) because faculty is compensated for these days whether they are used for professional development or as grading days. The question raised is whether the purpose of the half days currently dedicated to professional development should be restricted by contract for use by the faculty to meeting their professional responsibilities at the end of each marking period. Although testimony was provided by Association witnesses that they personally spend 10 - 15 hours each week outside of their contract hours performing professional responsibilities, and that the demand for documentation has expanded in recent years (including the need to input the data into digital systems), the record does not support the conclusion that the recording of grades and related work has suffered since the implementation of two days for grading for all staff in the 2017-18 school year or that it has resulted in elevated stress which detrimentally impacted staff's ability to provide competent and effective instruction to students.

For these reasons, the Association's proposed modification to add an additional half day for professional responsibilities at the end of the first and third marking periods is

⁵ CEA Exhibit 13.

⁶ CEA Exhibits 14 and 15.

unsupported by this record.

2. Christina Education Association proposal for clarifying Planning and Preparation Time

19:5.3 Except in an emergency (such as, but not limited to, building closing, early dismissal, **manifestation determination meetings**,⁷ lack of substitutes, and/or conditions of health or unsafe working conditions), no employee shall lose his/her planning and preparation time. **A planned IEP meeting does not constitute an emergency. Employees will not be required to attend a meeting during planning/preparation time unless given 24 hours notification.** Group meetings shall not be regularly scheduled during the **employee's individual** 225 minutes per week planning and preparation time, i.e. Department meetings, Team meetings, grade level meeting.

Note: If an employee loses his/her planning and preparation time except as covered in this article, the employee **shall will** be provided planning time ~~outside of the student day by mutual agreement~~ **as mutually agreed to** with the building administrator **from the following options:**

- (a) Time from the two meetings referenced in 19:4.1(b);
- (b) Time provided during the contractual day (i.e., PLC time, time on a PD day, dropped duty) within one (1) week of the missed planning and preparation time; and
- (c) Time as otherwise agreed to by the employee and building administrator.

There is no dispute between the parties that manifestation determination meetings constitute emergencies for which an employee may lose planning and preparation time. Consequently, including manifestation determinations in an exemplary list (which is not exclusive) does not change the manner in which these meetings are required to be treated under §19:5.3. The record establishes that all concerned understand manifestation

⁷ Manifestation determination meetings are convened when a special needs student has committed an infraction of the student code of conduct. The purpose of the meeting is to review the incident or event in order to reach a professional determination as to whether the infraction was the student's fault or if it was a manifestation of their disability. Because discipline may result, these meetings are called quickly in response to an incident involving student conduct. *Testimony of Amy Cruz.*

determination meetings to be emergencies; the change proposed by the Association is unnecessary.

It is also undisputed that a planned IEP⁸ meeting does not constitute an emergency; consequently, if planning and preparation time is lost because an employee is called into an IEP meeting, that employee must be provided with “make-up” planning and preparation time. Testimony established that notice of an IEP meeting must be provided to parents, by law, at least ten days prior to the meeting. Again, including the sentence proposed by the Association does not change the status quo. If an employee loses planning and preparation time because of an IEP meeting, that employee is entitled to have the lost time restored. If that is not done, they have recourse to the grievance procedure.

Testimony established that there was only one grievance filed under the 2016-2019 collective bargaining agreement for a violation of §19:5.3. It was a class action grievance at Newark High School which resulted from a change to the school schedule which did not allow teachers the guaranteed 225 minutes of planning and preparation time weekly. The grievance was resolved by modifying the duties of the staff (they were no longer required to be in the halls when students were “passing” between classes) and lost time was restored by releasing faculty from identified meetings, prospectively.

The Association raised concerns in both 2017 and 2018 in liaison meetings⁹ with the District about loss of planning and preparation time. The liaison process addressed concerns about lost planning and preparation time for IEP meetings in Marshall and Brader Elementary Schools. The District was unequivocal that all faculty are guaranteed the 225

⁸ Individualized Education Program

⁹ Article 5, Employee -Administration Liaison. Both the Association and the District provided liaison meeting agendas and notes, as well as testimony from individuals who were present at the meetings.

minutes weekly and Ms. Keller¹⁰ testified building administrators were reminded of this obligation whenever a concern was raised. She also confirmed that the District has not received or processed grievances (other than the one from Newark High School) related to infraction of §19:5.3.

The Association also proposes to change the word “will” to “shall” as it relates to the obligation to provide make-up time for planning and preparation minutes for anything other than an emergency. Both “will” and “shall” are future tense verbs and they each create a duty or obligation. Ms. Cruz testified the proposed change is necessary “to show that it is mandatory that if you lose that time it needs to be made up.” Replacing “will” with “shall” does not make the obligation any more mandatory. The existing language has been in the collective bargaining agreements between these parties for more than a decade.¹¹ There is no dispute that lost planning and preparation time for non-emergency reasons must be made up.

The Association also proposes to modify §19:5.3 to provide more guidance as to when lost planning and preparation time can be rescheduled. It would remove the requirement that restored planning time be found outside of the school day and provides a list of options. The collective bargaining agreement currently provides in §19:5.1 that a building administrator may use time from the meetings identified in §19:4.1(b).¹² Consequently, Option (a) is redundant and unnecessary. Option (c) is similarly redundant. The existing language in this section requires that rescheduled planning and preparation

¹⁰ Karen Keller currently serves as a Human Resources Director. She has previously served as a Human Resources Supervisor, an elementary school principal, an academic dean and as a teacher in the District.

¹¹ It was included in the 2007-2010 at §19:5.5 and has been included as §19:5.3 since the 2010-2013 agreement.

¹² 19:4.1(b) Two professional meetings per month; e.g., building faculty, department, building committee, or grade level meetings. Such meetings shall be held on the same day of the week as established by the Superintendent.

time be arranged by “mutual agreement with the building administrator”.

The substantive change to the provision is found in Option (b) which would 1) allow for lost planning and preparation time to be rescheduled during the contractual day (rather than “outside the student day”) and 2) that lost time be rescheduled within one week. Testimony established that lost planning and preparation time is currently scheduled during the student day, in some schools, where colleagues cover extra assigned duties¹³ in order to allow lost time to be made up.

It is clear from the evidence presented that when planning and preparation time is lost for non-emergency reasons, how it is rescheduled depends upon the circumstances in individual schools and that it is not limited to “time outside of the student day.” Whenever it is rescheduled, it must be mutually agreeable by both the employee and the building administrator. It is equally apparent that the District values student instructional time and is reasonably hesitant to open the door to allow for that time to be eroded. Testimony established the teachers share this concern and it was posited that they may prefer to lose planning and preparation time to losing student instructional time.

The record does not establish that loss of planning and preparation time is a big problem or one that has not been effectively addressed by existing provisions of the collective bargaining agreement. The existing language of §19:5.3 is similar and not inconsistent with that in the comparable districts. The standard under all comparators is 225 minutes of planning time weekly. In Appoquinimink, instructional employees are guaranteed 45 minutes of planning time daily, “... except in case of an abbreviated day, due to inclement weather, an emergency drill, or evacuation. *Joint Exhibit 1, §21.10.1*. The

¹³ Examples of times when lost planning and preparation time might be made up during the student day included lunch, recess, bus and hallway monitoring duties. Testimony of *Cruz, Parey and Keller*.

Brandywine agreement guarantees employees at least 25 minutes per day, with a commitment to make every reasonable effort made to insure planning and preparation time is scheduled in 45 minute increments. Except in case of an emergency,¹⁴ “... no employee shall lose his/her professional planning/preparation time” *Joint Exhibit 2, §22.9.1*. In the Colonial School District, employees may not lose their planning and preparation time except in the case of an emergency.¹⁵ *Joint Exhibit 3, §10:6.2*. The New Castle County Vo-Tech School District agreement provides only that employees will receive 45 minutes of planning time and a 30-minute duty-free lunch daily, during the normal student day. *Joint Exhibit 5, §K7.12*. Neither Appoquinimink, Brandywine, Colonial, nor New Castle County Vo-Tech school districts provide a contractual guarantee to reschedule any lost planning and preparation time. This is consistent with the agreement between the Association and the District because planning and preparation time can only be lost in those districts in the case of an emergency.

The collective bargaining agreement between Red Clay Consolidated School District and its faculty states that except in an emergency,¹⁶ no employee will lose his/her planning and preparation time. It then states, “Employees will not be required to attend a meeting during planning and preparation time unless given 24 hours notification...” *Joint Exhibit 4, §17:5.4*. This language is identical to the second sentence of §19:5.3 of the existing Christina agreement. Again, there is no provision for rescheduling planning and preparation time which is lost under the Red Clay collective bargaining agreement. Only

¹⁴ An emergency is defined in §1.2.11 to mean, “... a sudden unexpected happening; an unforeseen occurrence or condition; a complication of circumstances as a result of events not regularly scheduled or planned.” *Joint Exhibit 2*.

¹⁵ Emergencies are defined in §2:2.9 of the Colonial School District collective bargaining agreement to mean, “unexpected, unplanned or unscheduled events.” *Joint Exhibit 3*.

¹⁶ “Emergency” as used in this agreement shall mean a sudden unexpected happening; an unforeseen occurrence or condition. *Joint Exhibit 4, §1:2.6*.

the Christina School District agreement provides that employees who lose their planning and preparation time for anything other an emergency will have the lost time rescheduled.

Consequently, a comparison of the existing language of §19:5.3 to provisions in the comparable school districts does not support the changes proposed by the Association. For this reason and given that most of the proposed modifications are not precluded by the existing language, are redundant rather than substantive, and that the record does not support the conclusion that this provision has been consistently or pervasively misapplied, the record does not justify or support the Association's proposed modification.

DECISION

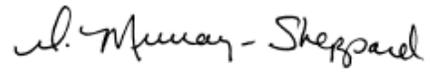
For the reasons discussed above, based on the record created by the parties in this proceeding, the last, best, final offer of the District is determined to be the more reasonable based upon the statutory criteria set forth in 14 Del.C. §4015.

The relative merits of the last, best, final offers were considered in their entirety and balanced according to the statutory criteria. All of the exhibits, testimony, and arguments of the parties were considered in reaching this decision.

WHEREFORE, the parties are directed to implement the tentative agreements, including the District's agreement to accept the Association's proposal for §25:1.1, and for modification of Article 33.1. All references to the term of the Agreement should be updated. All other terms of the predecessor agreement shall remain unchanged. The parties are directed to notify the Public Employment Relations Board of compliance with this Order within sixty (60) days of the date below.

IT IS SO ORDERED.

DATE: January 6, 2020



DEBORAH L. MURRAY-SHEPPARD
Executive Director
Del. Public Employment Relations Bd.