

STATE OF CONNECTICUT  
LABOR DEPARTMENT

CONNECTICUT STATE BOARD OF LABOR RELATIONS

In the matter of

**BLOOMFIELD BOARD OF EDUCATION**

**-and-**

**BLOOMFIELD EDUCATION ASSOCIATION**

case No. TPP-11,419

Decision No. 2821

July 3, 1990

A P P E A R A N C E S :

Dr. Neil **Macy**  
for the School Board

Ronald Cordilico, Esq.  
for the Association

**DECISION and ORDER**

On June 16, 1988, and thereafter by amendment on November 25, 1988, the Bloomfield Educational Association (the Association) filed a complaint with the Connecticut State Board of Labor Relations (the Labor Board) alleging that the Bloomfield Board of Education (the School Board) had engaged in practices prohibited by the Act Concerning School **Board-Teacher** Negotiations (the **Act**). The respondent School Board was alleged to have refused to bargain in good faith following a timely series of demands, after having reduced by 15 the number of early release days for students for the 1987-1988 calendar year. **The** Association alleged that this unilateral change in calendar impacted teacher/student contact time, and violated a past practice established since 1971 of releasing students one hour early from the Bloomfield Public Schools each Wednesday in order to allow teachers that time to devote to necessary administrative duties associated with teaching. The **complainant** sought, among other things, an order from the Labor Board **compelling** the School Board to cease and desist from its refusal to negotiate, and the Association costs and attorney's fees as part of a comprehensive statutory remedy.

After the requisite administrative steps had been taken, the matter was brought before the Labor Board for hearing on December 12, 1988, at which time each of the parties appeared with their representatives. Full opportunity was given to adduce evidence, examine and cross-examine witnesses, and make argument.

Based on the whole record, the Board makes the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. **The** School Board is an employer within the meaning of C.G.S. Section **10-153a**.
2. **The** Association is the exclusive bargaining agent and representative for all certified personnel in the "teachers" bargaining unit as defined by C.G.S. Section **10-153a et.seq.**
3. **On** April 26, 1988, the School Board approved a new student calendar, which changed the early release **days. (Tr. p.6)**
4. The normal student day is a six hour day. An early release day in the Bloomfield school system is a five hour student day. **The** length of day for staff does not change on early release **days. (Tr. p.6)**
5. Prior to April 26, 1988, it was the practice of Bloomfield Public Schools to schedule each Wednesday during the regular school year as an early release day. (Tr. p.6)
6. When this early release plan began with the 1971 school year, the intention was to utilize the non-student contact time for teacher in-service training with activities to enhance or develop teacher skills or increase their knowledge on areas related to their professional position. (Tr. **p.13**), (Ex. 3, p.7)
7. Beginning in 1978, other activities began to take place on the early release Wednesdays including departmental activities, **completing** associated administrative work including skill cards, progress reports, meetings held by principals, department coordinators, and unit **leaders. (Tr. p.13, 52)**
8. Teachers prepare progress reports for students between report cards. At the high school, the Wednesday before progress reports were due, teachers were designated to work on their **reports. (Tr. p.17)**
9. In **some** schools, open house was held on an early student release day, and teachers were released at the early dismissal time with the expectation that they would return for open house later that evening. (Tr. **p.18**)
10. **The** calendar approved on April 26, 1988, scheduled one early release day per month for a total of 10 throughout the year. (Ex. 4) This action eliminated twenty-seven early release days from the school calendar.

11. By letter of May 9, 1988, the Union demanded bargaining over the calendar "including, but not limited to, the impact of the student calendar on staff meetings, parent conferences, staff development, and **completion** of High School progress reports." (Ex. 5)

12. **The** Superintendent of Schools responded by letter of May 25, 1988, to the Union President as follows:

This letter will summarize the Board's positions on the various issues raised by the **BEA** to Neil **Macy** and me at our meeting on Monday afternoon May 23, 1988.

As a result of the recently adopted School Calendar by the Board of Education, the number of Early Release Days for students will be reduced from 32 to 10 for the 1988-89 school year. **The** Association requested information **from** me as to the possible impact on the working conditions of the teaching staff. The following represents my answers to the concern of the Association on this and the collateral issues that were discussed at the meeting.

1. On the collateral issue of the day of the week on which teachers and other meetings are presently held, I am willing to move them to Wednesday from Tuesday by administrative decision so that they will be held on the same day as the Early Release Bays if the **BEA** wishes it. Otherwise, I will continue to hold them on **Tuesdays**. Although the day on which meetings such as these are held is the Superintendent's decision, I am willing to do what the teachers prefer.

2. We will continue the practice of using four of the Early Release Days at the Bloomfield High School **to allow** teachers to prepare progress reports to parents on student work. I am prepared to discuss with the **BEA** the specific dates for this early release.

3. Although there will not be early release for students on the four days that parent conferences are held in the elementary schools, classroom teachers will be released from their teaching responsibilities one hour early in order to meet with the parents. **Their** students will become the responsibility of the school administration who will do the planning for the **period** of time that teachers are meeting with parents. Teachers will not be remaining beyond their regular work day. For this reason there is no impact on the teachers' working conditions.

4. The number of Early Release Bays will be dropped from 32 to 10. These days, except as noted above for high school classroom teachers, will be used as they have been during the past years, albeit there will be fewer of them during the year.

5. It is the position of the Board that changing the number of Early Release Bays and making them into regular school days for students without changing the length of the teacher work day or adding additional new duties does not constitute a change in working conditions and is, therefore, not a subject for impact bargaining. (Ex. 6)

13. Following the filing of an unfair labor practice complaint with the Labor Board on June 16, 1988, the Union renewed its demand to bargain by letter dated August 8, 1988, as follows:

**Dear Dr. Copes,**

I wish to reassert that the Association's position regarding the calendar is the same as it was prior to the Unfair Labor Practice Complaint, i.e., we wish to negotiate the impact of the Board's approved calendar for 1988-89.

As the Association has stated several times prior to filing the **ULP**, the change in the student calendar impacts on teachers' working conditions and is, under State **Labor** Law, a mandatory subject of bargaining.

I understand that you are on vacation until August 22. We would be willing to meet with you at your eariliest [sic] convenience. Please contact Vincent **Loffredo**, CEA Uniserv, and Ray F'roscio, Negotiations Chairperson, to determine meeting dates. I will be unavailable from August 22-26, however, Ray and Vinnie can represent the Association in my absence.

Sincerely,  
Paula B. Kuenzler  
President

(Exhibit 7)

14. The Superintendent responded to this letter with a reply dated August 25, 1988:

I have received your recent request to open negotiations on the issue of the school calendar because of the revisions voted by the Board on the number of early school closing days for students.

As of this date I can tell you that for the month of September I am reverting to last year's calendar. In other words, there will be no change in the early release days for students. This is being done since, at present, I have not received from the Assistant Superintendent, Mary Smith, a report of any **recommendations from the committee** established to review the present Bloomfield Professional Development Plan.

Once the Plan has been received by me, I will review it and then go to the Board with **recommendations** regarding any modifications of the Plan that either the Committee F&port or I deem is [sic] necessary. Whether my reconunendations will include a modification of the number of early closing days I cannot tell at this time. When and if the Board adopts a change in the number of early release days, the Bloomfield Education Association can then decide whether or not it feels the need to demand impact bargaining on that issue. The Board will then determine its position on the issue of negotiating with the Association.

(Exhibit 8)

15. **On** September 15, 1988, the School Board adopted a new calendar for the school year. **The** new calendar provided early release days for students every other month. The early release days were thus reduced by 15 for the 1987438 school year. (Ex. 9)

16. The Association renewed its request for bargaining after the new calendar was adopted by letter of October 20, 1988. (Ex. 10)

17. The School Board did not agree to negotiate the impact of the calendar, although some informal discussions were held between the School Board and the Association. (Tr. p.12)

18. **The** high school teachers were not given early release time to prepare progress reports and have thus had to prepare them on their own time. (Tr. p.17)

19. **The** new calendar does not add any more courses to the teachers' regular daily assignment. It does require the preparation of some additional instructional material for each class, since classes are **longer**. (Tr .p.42)

20. **The** undisputed purpose of the calendar change was to increase teacher-student contact hours in an effort to improve the schools. (Tr. p.50, 60)

21. Some activities that had formerly been **accomplished** on Wednesday early release days were rescheduled to Saturday workshops, after-school meetings, and evening meetings. Others were transferred to regular **Tuesday** after-school meetings. (Tr. p.20,64)

22. It was necessary to pay some teachers for additional time expended to accomplish the duties formerly performed on Wednesday. (Tr. p.64)

23. No administrative duties were removed from teachers to make time for the increased student-teacher contact time. (Tr. p.60)

## CONCLUSIONS OF LAW

1. The Hoard of Education's decision to modify the school calendar by eliminating student early release days in order to increase student-teacher contact time involved an educational policy decision and was not subject to the duty to bargain.

2. **The** increase in teacher-student contact time by one hour per day for fifteen teaching days without relieving the administrative workload previously accomplished during non-student contact time was not de **minus** and impinged sufficiently upon working conditions so as to require negotiations over mandatory subjects of bargaining.

3. The increase in teacher-student contact time involved a change in an existing past practice because the existing practice for many years had been for teacher-student contact time to be shortened by one hour every Wednesday in order for teachers to accomplish other administrative tasks.

4. The reduction in the time available for the accomplishment of administrative teaching responsibilities did constitute a change in past practice.

5. The School Hoard **committed** a prohibited practice under the Act when it refused to negotiate the impact of its unilateral increase in **teacher-** student contact time and corollary increase in work load.

## DISCUSSION

The parties agree that the primary question presented by this case is whether the unilateral change made by the School Hoard of reducing the number of early release days in the school calendar for 1987-88, and thereby increasing the student contact time, increased the workload of teachers so substantially as to require the School Hoard to bargain the impact.

We have consistently held that an employer's unilateral change in the conditions of employment involving a mandatory subject of bargaining made during the term of a collective bargaining agreement will constitute an illegal refusal to bargain and a prohibited practice unless the employer establishes an appropriate defense. NLRB v. Katz, 369 U.S. 736 (1962); Greenwich Hoard of Education, Decision No. 1580 (1977); Bethel Hoard of Education, Decision No. 1926 (1980); City of Meriden, Decision No. 1925 (1980). If the contract permits the employer to make the change and where there has been bargaining to impasse, no violation of the Act will be found. West Hartford Education Association v. DeCourcy, 162 Conn. 566 (1972); Town of East Haven, **Decision No. 1279 (1975)**; City of Willimantic, Decision No. 1455 (1976).

However, not all unilateral changes made by an employer constitute a refusal to bargain. If a change is de **minus** or insubstantial in its impact upon a major term or condition of employment, we will decline to find a prohibited practice has occurred. State of Connecticut, Decision No. 2663 (1988); City of Stamford, Decision No. 2677 (1988). Further, where the collective bargaining agreement provides express or implied consent to the

type of unilateral action involved, we will find an appropriate defense. Town of Newington, Decision No. 1116 (1973). Finally, when a change concerns a matter fundamental to the operation of the public agency and falls within the realm of sole managerial discretion necessitating the need to decide free of any duty to bargain, we have relieved the employer of any such duty. Town of Guilford, Decision No. 1829 (1979).

A change may be incidental to management decisions which themselves are not subject to bargaining. In DeCourcy, supra, our Supreme Court determined that boards of education have the right to determine educational policy and unilaterally implement such policy decisions, but where this implementation impinges in some substantial way upon a major term or condition of employment, there arises a duty to bargain the impact. See also City of Bridgeport, Decision No. 1319-A (1975), and Town of Winchester, Decision No. 2259 (1983).

It is agreed between the parties to this case that the School Board's unilateral decision to change the calendar by eliminating 15 early release days was a decision within its sole managerial discretion in the legitimate furtherance of educational policy. As the Superintendent testified at the hearing on the merits, early release Wednesdays were substantially reduced expressly to increase the teacher-student contact time. The parties' point of departure commences with the secondary impact of this change upon working conditions.

It is the Association's initial burden to make out a prima facie case establishing that a change in existing working conditions **has in fact** occurred, for if no change is proven, no further inquiry is warranted. City of Torrington, Decision No. 2172 (1983); Town of Clinton, Decision No. 2168 (1982); City of Norwich (Police), Decision No. 1968 (1981). Since the School Board denied the existence of a fixed practice of early release days, it is essential that the Union establish its existence by custom or contract prior to the alleged change.

According to the testimony adduced at the hearing, the School Board began the 1971 school year by establishing **system-wide** that each Wednesday was to be an early release day. On an early release day, students were released from school one hour early. Teachers were required to remain for the same amount of time, but were expected to devote their time to various administrative tasks associated with teaching. These activities varied from school to school (see Findings of Fact **6-9**), but the early release of students remained uniform throughout the school system. This practice remained constant until April 26, 1987, when the School Board approved a calendar which removed 27 of these days for the following school year. Finally, the early release policy is clearly memorialized at page 7 of Exhibit 3, thereby removing any remaining doubt concerning the existence of this system-wide practice.

**The** Association argues that the increase in teacher-student contact time occasioned by the change, coupled with no reduction in the administrative duties required, constituted a substantial impact requiring the School Board to bargain. In essence, the Association asserts that there has been a substantial change in work load. We have previously determined

that teacher workload is a mandatory subject of bargaining. An increase in teacher-student contact time directly affects teacher workload and this constitutes a mandatory subject of bargaining. Redding Board of Education, Decision No. 1922 (1980). In City of Bridgeport (Fire), Decision No. 1485 (1977), we held, that, for a change in workload made during the term of a collective bargaining agreement to require bargaining, it must be shown to have a substantial impact. If this is shown, the change in workload will concern a mandatory subject of bargaining and will require bargaining. Under the evidence submitted, we conclude the Association established a prima facie case of a unilateral change in a fixed and determinable past practice engaged in continuously by the School Board since 1971, and that the change was sufficiently substantial so as to require bargaining.

The School Board asserts that while the purpose of the change was to increase teacher-student contact time, the impact upon teacher workload was de **minimus** and that no bargaining should be required. In support of this defense, the School Board asserted that first, the curriculum was not expanded along with the increased contact time, thereby relieving teachers of providing any additional instructional subject matter; and second, that each class was shortened by 10 minutes each day on early release days rather than eliminating the last class period, thereby spreading the shortened time over the entire day. At the close of the hearing, the parties elected not to present post-hearing briefs. In the alternative, each presented a closing argument. The Association placed primary reliance upon our decision in Redding Board of Education, supra, and argued the congruence of the current facts to the legal conclusions we reached in that case. The School Board presented a list of our prior decisions by number only which it asserted support its position that managerial prerogative permits certain unilateral changes which are de **minimus**, and which do not either lengthen the work day, or add new duties. When citing our prior decisions by number only, we will not **assume** the burden of fashioning a litigant's arguments. However, a cursory examination of the decisions cited lead us to conclude that these arguments miss the mark. They fail to consider the additional workload occasioned by the continuing expectation that administrative responsibilities continue to be fulfilled during times exclusive of early release days. **The** evidence at the hearing disclosed that the principals' meeting had to be rescheduled to other times due to the change. (Findings of Fact 21) Furthermore, some teachers (though not all), received additional **compensation** because of the extra time involved in the accomplishment of these tasks. (Findings of Fact 22) In light of these facts, we believe the impact to be substantial and not de **minimus** and therefore order the School Board to bargain the impacts.

The Association urges us to award attorney's fees based upon the frivolous and non-debatable defenses raised by the School Board. In Killingly Board of Education, Decision No. 2118 (1982), we held that we have the authority and discretion under the Act to award reasonable attorney's fees and other costs related to the processing of a case if we conclude that such an order will serve the purposes of the Act. As we have noted above, the casual citation of authority by number only is not a technique which we find to be persuasive advocacy. **The cavalier** manner in which an argument is made is not the appropriate standard. We must look to its substance. Nevertheless, the argument made that an increase in student-teacher contact time without a corollary increase in the length of the teaching day, and



which is so insubstantial that it does not require bargaining, cannot in fairness be characterized as frivolous or non-debatable. It merely overlooks the increase in workload occasioned by the expectation that administrative duties, which were previously accomplished at the end of early release days, must be performed during additional time. Accordingly, we determine that the purposes of the Act would be best served by denying the request for attorney's fees.

ORDER

By virtue of and pursuant to the power vested in the Connecticut State Board of Labor Relations by the Teacher Negotiation **Act**, it is hereby,

ORDERED, that the Bloomfield Board of Education;

I. Cease and desist **from** implementing a change in the teacher-student contact time instituted by its decision of September 15, 1988, or any other such program having a substantial impact on the working conditions of teachers unless such impacts have been negotiated with the Association or until final impasse is reached in negotiations;

II. Take the following affirmative action which the Board finds will effectuate the purposes of the Act:

a) Negotiate with the Association upon request over the impact occasioned by the increase in workload of teachers retroactively to September 15, 1988;

b) Post immediately in a conspicuous place where members of the bargaining unit customarily assemble, and leave posted for a period of sixty (60) days from the date of posting, a copy of this Decision and Order in its entirety;

c) Notify the Connecticut State Board of Labor Relations at its office in the Labor Department, 200 Folly Brook Blvd., **Wethersfield**, Connecticut, within thirty (30) days of the receipt of this Decision and Order, of the steps taken by the Bloomfield Board of Education to comply therewith.

**CONNECTICUT STATE BOARD OF LABOR RELATIONS**

By s/Patricia V. Low  
Patricia V. Low, Chairman

s/Craig Shea  
Craig Shea

s/Susan Meredith  
**Susan Meredith**

**TO:**

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