

other Police Officers all work regular shifts. That the Chief of Police may reassign Police Officers as they are needed.

10. That all the Police Officers work out of the same office and perform the same patrol duties.

11. That certain police problems may be submitted to the Borough Council for resolution.

12. That in hiring a new Police Officer, the Civil Service Commission of the Borough administers a written test and thereafter the names of the ten applicants receiving the highest scores are turned over to the Chief of Police for a background investigation. After completion of the background investigation additional tests are conducted and the names of the three highest scores are given to the Chief of Police for his evaluation. These names are then submitted to Borough Council who request the Mayor's opinion which is given after consultation with the Chief of Police.

13. That the background investigation of police applicants has been conducted by Police Officers other than the Chief of Police.

14. That disciplinary action against Police Officers is taken by the Mayor after consultation with the Chief of Police.

15. That grievances of Police Officers are initially taken to the Chief of Police who may adjust the grievances or may bring it to the attention of the Mayor.

16. That the Chief of Police makes daily reports to the Mayor concerning the quality of work of the individual Police Officers. That the Chief of Police submits monthly and annual reports concerning the operation of the police department to the Borough Council.

17. That in the absence of the Chief of Police the Sergeant and then the Corporal act in the Chief of Police's absence.

18. That the Sergeant is responsible for the police cars, and their maintenance and upkeep in addition to his patrol responsibilities.

DISCUSSION

The Employer has petitioned our Board for unit clarification and requests the Board to declare the unit appropriate for bargaining under the provisions of the Act of June 24, 1968, P.L. 237, No. 111, 43 P.S. §217.1-217.10 (Supp. 76-77) ("Act 111") as a unit comprised of all full-time and regular part-time police officers, excluding the Chief of Police and Sergeant. In light of our decision in *Lower Allen Township*, 8 PPER 376 (1977) we cannot agree.

The General Assembly in passing Act 111 granted collective bargaining rights to all policemen. We recognized in *Lower Allen Township* that it would be unreasonable to include employees who are "an essential or integral part of management" within an employe bargaining unit for such a result would interfere with the Employer's management of its operation. We thus concluded that employes "directly involved in the formulation and implementation of managerial programs and policies of the public employer" would be deemed "public employers" and not given rights to bargain collectively.

In determining whether either the Chief of Police or the Sergeant should be deemed "public employers" and thus excluded from the bargaining unit, we again examine *Lower Allen Township*. There, we excluded the Chief of Police from a bargaining unit after determining that:

"the chief directly formulates and assists in the formulation of policy, has overall responsibility for implementation of that policy, has acted on behalf of the employer in past informal discussions, has overall responsibility for police personnel administration, and prepares the police budget. These duties are indisputably managerial in nature and clearly require separation of the bargaining unit representing the interests of the labor

force. The chief is management's man in the police department and it would disrupt labor relations and personnel administration in the department to divide his existing allegiance to management by including him in this unit."

The record in the present case demonstrates that while the Chief of Police and Sergeant both perform duties not likewise performed by the other Police Officers, these duties cannot be said to be "indisputably managerial." The record reveals that the Chief of Police and Sergeant report directly to the Mayor and Borough Council on a frequent basis concerning the daily operations of the police department. Our review of the instant record discloses no facts which would support a finding that the chief here enjoys the authority that resided in the chief in *Lower Allen Township*. Instead the instant record demonstrates that the chief at best may at times exercise powers traditionally associated with the first level of supervision. Policy making authority and indeed even supervisory authority in certain areas is exercised not by the chief but with the Mayor or Borough Council.

We take note that in previous years the Chief of Police and Sergeant have bargained with Borough Council in a unit with the other police employes. This prior bargaining history would indicate that the interests of the Chief of Police and Sergeant are more closely aligned with the other Police Officers than they are with management.

We must therefore conclude that the Chief and Sergeant may be included in a bargaining unit with the other Police Officers.

CONCLUSIONS

The Board, therefore, after due consideration of the foregoing and the record as a whole, concludes and finds:

1. That the Borough of West Reading is an "employer" within the meaning of the Pennsylvania Labor Relations Act and Act 111.

2. That the Police Officers of the Borough of West Reading is a "labor organization" within the meaning of the Pennsylvania Labor Relations Act and Act 111.

3. That the Chief of Police and Sergeant are "employees" within the meaning of the Pennsylvania Labor Relations Act and Act 111.

4. That the Pennsylvania Labor Relations Board has jurisdiction over the parties hereto.

5. That the unit appropriate for purposes of collective bargaining is a subdivision of the employer unit consisting of all full-time and regular part-time police employes of the Borough of West Reading including but not limited to the Chief of Police, Sergeant, Corporal, and Patrolmen; and excluding management level employes.

ORDER

The existing unit of police employes employed by the Borough of West Reading shall include but not be limited to all full-time and regular part-time Policemen, Corporals, Sergeant and Chief of Police.

¶9039

BUTLER AREA SCHOOL DISTRICT
Butler County Court of Common Pleas

Butler Area School District v. Butler Education Association, et al.

Case No. Eq. 78-002, January 26, 1978
Before Kiestler, President Judge

Charles E. Dillon, Esq., Thomas W. King, Esq. for the Plaintiff; Ronald N. Watzman, Esq., Daniel R. Delaney, Esq. for the Defendant

Strike Injunction — Constitutionally of Act 195 — 205.40, 205.501, 800.01

The strike provisions of PERA relating to public school teachers cannot be reconciled with the Public School Code and the Constitution of Pennsylvania; thus, the portion of PERA legalizing strikes by public school teachers is unconstitutional.

Strike Injunction — Clear and Present Danger — 805.03, 805.08

Strike by school district teachers is enjoined because it has created conditions under which clear and present danger or threat to the welfare of the public has developed. Among other things, the strike has caused: (1) disruption of family vacations due to the extended school calendar, (2) student deprivation of intramural sports and extra-curricular activities, (3) cancellation of driver education and adult education classes, (4) lack of help for the mentally retarded and emotionally disturbed children, (5) loss of wages for cafeteria workers, bus drivers, and teacher's aides, and (6) disruption of the community's economic life.

COMPLAINT SEEKING INJUNCTIVE RELIEF

OPINION

It is the constitutionally guaranteed right of every child to receive an education. This has been the fundamental law of Pennsylvania since 1790. The 1967 amendment (Art. 3, Sec. 14) provides:

"The General Assembly shall provide for the maintenance and support of a thorough and efficient system of public education to serve the needs of the Commonwealth."

The General Assembly fulfilled its constitutional obligation by adopting the Public School Code of 1949 as amended. The Public School System is governed by this voluminous School Code, together with a multitude of regulations promulgated by the Department of Education (formerly Department of Public Instruction). Under the provisions of the Code and the regulations a local Board of School Directors operates the public school system within each school district.

Prior to July 23, 1970 a strike by school employees was contrary to public policy and illegal. The Public Employee Relations Act (PERA) purports to change public policy in Pennsylvania by granting certain public employees including school employees a limited right to strike. In part PERA provides:

"The General Assembly of the Commonwealth of Pennsylvania declares that it is the public policy of this Commonwealth and the purpose of this act to promote orderly and constructive relationships between all public employers and their employes, subject, however, to the paramount right of the citizens of this Commonwealth to keep inviolate the guarantees for their health, safety and welfare. . . ."

This new legislative policy legalizing certain public employee strikes after the exhaustion of negotiation and mediation procedures provides for equitable relief when

" . . . a strike creates a clear and present danger or threat to the health, safety or welfare of the public. . . ."

1970, July 23, PL 563 Sec. 1003 (43 P.S. 1101.1003) underscoring mine

In the case before the Court the PERA procedures were followed, legalizing both the strike and the right to ask equitable relief therefrom.

Inasmuch as education is the constitutionally declared right of the child, and the Courts have repeatedly held that education is for the welfare of the child as well as the general welfare, it is difficult for the general public and this Court to reconcile such a basic principle with a statutory right of a teacher to disrupt and interfere with the mandated educational program.

Next to the parent the school teacher has the greatest influence on the child. This was my experience and I believe that this would be the conclusion of most citizens. I possess fond and vivid memories of Fannie Tebay, the first grade teacher at Institute Hill School, as well as all the other splendid teachers of the Butler School System to whom I was exposed. To the child the teacher is a pillar of knowledge, wisdom and strength. The parent and the teacher are the example to the developing and impressionable child.

As indicated by Dr. Bourandas in his testimony the young child will be confused by the work stoppage. Older children will probably be influenced by the attitude of the parent. In the preparation of a child to enter a society that is hopefully orderly and democratic a strike of teachers in the public school system can have a negative and bad effect on the child. The message to the child is clear: When elected representatives and government employees fail to negotiate a contract it is proper to close down the system. Undeniably it is this kind of example that downgrades the profession and helps to promote disorder by young people inside and outside the classroom. The strike disrupts and interferes with the formal education of the student. It also encourages bad student citizenship.

The Legislatively declared policy of PERA is to resolve disputes. The stated purpose of promoting "orderly and constructive relationships" and "minimizing" "unresolved disputes" between the public employer and the employee is high sounding but specious language. As a practical matter under PERA school strikes have multiplied, with Pennsylvania having the worst record of school stoppages in the nation. The school child is the victim of this approach to the solution of labor disputes between the teachers and the School Board. The circumlocutory language of PERA cannot change the fact that a public school strike is contrary to the best interest and welfare of every child affected.

The statutory right of a public teacher to strike is unique. A brief review of the law elsewhere indicates that such strikes are generally contrary to public policy and/or illegal by statute.

It may be unpleasant to school teachers, school boards, and the Legislature. Nevertheless there must be found a method of resolving these disputes other than a plan that disrupts and interferes with the educational program. The teacher is entitled to fair and just compensation, but not at the expense of the student.

If the welfare of the child and the public were not adversely affected by a work stoppage, the teacher would not adopt such a drastic measure to enforce his demands. Without causing harm the strike would be ineffective. It is the clear and present danger to the general welfare, including the welfare of the child, that the teacher organization hopes will accomplish an acceptable settlement of the dispute. Even PERA provides for equitable relief when there is danger or threat to the public welfare. The strike provisions of PERA relating to public school teachers cannot be reconciled with the Public School Code and the Constitution of Pennsylvania. The portion of PERA legalizing strikes by public school teachers is unconstitutional.

I have found no appellate decision in which the issue of the

constitutional right of a public school teacher to strike under PERA has been specifically raised and decided. Courts should face the issue squarely and declare PERA unconstitutional in so far as it legalizes strikes by public school teachers.

If my conclusion is not sustained and it is determined that public school teachers under PERA do have a constitutional and legally permissible right to interfere with the education of children by a work stoppage, what are the circumstances that create a clear and present danger or threat to the health, safety or welfare of the public? (Sec. 1003)

HISTORY AND FINDINGS

The Butler Area School District on January 16, 1978 filed a complaint in equity seeking to enjoin the Pennsylvania State Education Association et al. from continuing a work stoppage or strike that had commenced on January 9, 1978. A hearing was scheduled and conducted on January 19, 20 and 23. The issues of fact and law were briefed and argued before the Court on January 24, 1978.

At the conclusion of plaintiff's case, on motion for counsel for the defendants, the Court entered an order removing Pennsylvania State Education Association, Jack I. Lenavitt and Michael Zobrak as defendants. The defendants in the case remain as above captioned.

On January 7, 1977 the parties had entered into negotiations for a new contract for the professional employees of the District for the period commencing July 1, 1977 which was the beginning of the fiscal school year 1977-78. Negotiating sessions between the parties have continued to the present time. The parties exhausted negotiation and mediation procedures required by the Public Employe Relations Act (PERA). The Butler Education Association (BEA) at 2:00 A.M. at a negotiating session on January 9, 1978 announced that a work stoppage of the members would commence that same date.

There are 540 teachers and professional employees, members of the BEA, who are participating in the strike or work stoppage. Affected are 11,300 students who constitute 21% of the estimated 53,893 population of the district. Of the school population approximately 900 students are seniors who are scheduled for graduation in June of 1978.

The calendar for the school year 1977-78 was adopted by the School Board on May 17, 1977. It provided for school to commence September 6, 1977 and end June 9, 1978. On January 9, 1978 the instruction days completed were 73 and 107 remained. Prior to January 9, 1978 five scheduled school days were lost due to litigation and delay involving bus contracts, plus weather conditions. One of these lost days was exchanged for an in-service day on January 27, 1978. The school administrator recommended that all remaining scheduled school holidays be utilized for instruction with the exception of Good Friday, Memorial Day, and an in-service day on the last scheduled day, June 9. This would allow four additional instructional days.

As of January 30, 1978 nineteen instruction days will have been lost: four attributable both to the delay in opening school and snow days, and fifteen days charged to the strike. There are fifteen school days available between June 9, 1978 and June 30, 1978, the end of the school district's fiscal year.

The School District would not be entitled to state reimbursement for instruction days extending beyond June 30, 1978. State reimbursement is computed on the basis of the student enrollment and 180 days of instruction. The current daily reimbursement is approximately \$40,000.00. For each instruction day less than 180 days the School District will lose that amount of state reimbursement, plus \$3,008.33 per diem Federal reimbursement. Inasmuch as the expenses of the School District exceed the reimbursement there is a net savings to the School

District of approximately \$14,000.00 for every day less than 180 days that school is not in session. The School District faces no financial loss by failing to complete the legally mandated calendar of 180 instruction days.

The school system for the most part operates on a five and one-half hour school day. There would be required an extra half hour of school each day for eleven days to provide the equivalent of another day of school at the secondary level. School Superintendent, Dr. Dimitro Bourandas, stated that there would be little or no value to the learner in extending the school day. In order to provide 180 days of school Dr. Bourandas would not recommend that the School Board adopt a longer school day.

As of January 30, 1978 the School Board cannot operate under the approved daily schedule as currently calendared and complete 180 instructional days by June 30, 1978, the end of the fiscal year.

FINDINGS OF FACT

The evidence establishes that Butler area students are being denied instruction at a time when the students would normally be in school; that regular school days and the statutory school year of 180 days cannot be completed by June 30, 1978; that teachers upon returning to the class room will be required to spend time in review work; that senior students will probably achieve lower scores in college aptitude tests; that a School Board decision to continue classes beyond June 9, 1978 may result in lost job opportunities for 80% to 85% of 900 seniors; that some students will be delayed in entering college and other training and educational programs; that an extended school calendar will disrupt family vacation plans; that cafeteria workers, bus drivers, and teacher's aides may lose wages and some will draw upon the Unemployment Compensation Fund to the detriment of the fund and the public; that the lack of programs during the strike will delay help for the 220 students who are mentally retarded, socially and emotionally disturbed, learning disadvantaged and physically handicapped, retarding their development; that students are deprived of intramural sports and the opportunity for various extra-curricular activities; that neither the driver education program nor the adult education program can be operated during the strike and part of both may be lost; that today's society with a substantial number of families having both parents employed either baby sitters must be employed or children left to their own devices, all to the detriment of the family and the community as a whole; that 2,000 students eligible for free or reduced (ten cents) nutritionally balanced lunches are not receiving the same; that for the duration of the strike teachers suffer from the loss of income, and likewise the economic life of the community is harmed.

The teacher's work stoppage has created the stated conditions and they are a clear and present danger or threat to the welfare of the public as a whole.

Under PERA the issue becomes the period of time that a strike can be tolerated. If what I have enumerated as facts that adversely affect the welfare of the child and the public should be considered by other authorities as mere inconveniences, all would still agree that at a certain point the inconveniences, combined with the failure to provide the child with a reasonably complete educational opportunity, requires equitable relief. I find that the point has now been reached.

The members of the School Board are elected representatives of the public with a sworn duty to represent the interests of the public. Based on my understanding of the numerous problems created by the strike it would seem that the School Board would have good reason and would not be abusing its discretion either in extending the school day or concluding school as originally calendared.

The facts in school strikes are usually similar. The findings

are generally the same. The Legislature has simply provided that the Court shall insure that the child's constitutional right to an education shall not be deprived by the teachers statutorily granted right to strike. These two rights are in direct conflict from the first day of a work stoppage. The interference and disruption of the school program are much more than an inconvenience to the student. It affects his best interest and welfare whether the stoppage is for one day or fifteen days as here. The welfare of the teacher is subordinate to the welfare of the student. The work stoppage will be enjoined. The teacher and student will return to the class room on January 30, 1978.

Inter alia this strike is enjoined under the general equitable powers of the Court. The issue presented by defendant that a lock out rather than a work stoppage occurred on January 9, 1978 is irrelevant. That matter need not be adjudicated in this proceeding.

FINAL DECREE

Now, this 26th day of January, 1978, Plaintiff having presented its Complaint in Equity in open court and having moved for an Injunction, upon consideration thereof and after a full and complete hearing thereon wherein all parties have been afforded an opportunity to be heard, it is the finding of this Court that the strike of the Dependents, and each of them, against the Plaintiff interferes with and disrupts the constitutional right of the student to an education and creates a clear and present danger or threat to the health, safety, or welfare of the public, and that the Plaintiff is entitled to equitable relief including but not limited to an appropriate final injunction decree.

Based upon the findings of this Court as aforesaid, it is hereby ORDERED, ADJUDGED and DECREED that the Defendants and each of them, all persons in active concert or participating with them, and all members of the Butler Education Association be, and they hereby are, enjoined from any further strike or work stoppage of any find whatsoever.

FURTHER, it is ORDERED and DECREED:

(a) that the Defendant associations shall direct their members to return to their teaching and professional duties and the said teacher members are hereby ORDERED to so return effective upon the start of the school day January 30, 1978;

(b) that the Defendants and all others in active concert or participating with them are enjoined from ordering, directing or taking any action calculated to cause any person employed by Plaintiff to fail or refuse to report for duty, to be willfully absent from work, to engage in any work stoppage or to abstain in whole or in part from the full, faithful and proper performance of his duties of employment;

(c) that such persons are enjoined from picketing the premises of Plaintiff or in any other manner, by themselves or in concert with others, from impeding, obstructing, hampering or interfering with the efficient and orderly operation of the schools;

(d) that they are so enjoined from preventing or attempting to prevent, in any manner whatsoever, any employee, or other person, from entering or leaving any of the facilities of Plaintiff;

(e) that both Plaintiff and Defendants proceed, with all reasonable dispatch, with negotiations directed toward resolving the disputes now existing between the parties;

(f) that nothing in this restraining order shall be deemed to excuse or relieve the parties hereto of any other duty, responsibility or obligation under the Public Employee Relations Act.

(g) that, for the purpose of insuring so far as possible the orderly resumption of the employer-employee relationship between the parties upon the return of the teachers and professional employees to their respective duties, it is ordered that

the said employees shall return to duty under the terms and conditions of the agreement made February 12, 1976 as modified by any subsequent agreements of the parties.

This Court retains jurisdiction of this matter to insure compliance by the parties with the terms herein contained.

¶9040

CITIZEN CARE, INC.
Decision of PLRB

In The Matter of The Employes of Citlzen Care, Inc.1/

Case No. PERA-R-10,174-W, February 1, 1978
Before Kahn, Chairman; Licastro, Member

Public Employer — Non-Profit Health Institution — Reimbursement — Itemized Bill of Services — 101.50, 101.80, 101.95

Non-profit health institution is a public employer under the Act since (1) the funding it derives from the Commonwealth on a monthly basis is its sole source of income, (2) its employees are paid out of Commonwealth funds, (3) all of its facilities are leased with Commonwealth money, (4) its monthly funding is allocated on the basis of an annual budget drawn up after consultation with state hospital and Department of Public Welfare, and (5) it received advance funding from the Commonwealth with which to begin its operations. PLRB therefore dismisses employer contentions that it is not a public employer because it only receives reimbursements from the Commonwealth on the basis of an itemized bill for services rendered to its individual patients.

DECISION AND ORDER FOR PRE-ELECTION CONFERENCE

[Text] A Petition for Representation, pursuant to Section 603 of the Public Employee Relations Act, Act of July 23, 1970, P.L.563, 43 P.S. §1101.101 et seq. (Act), was filed with the Pennsylvania Labor Relations Board (Board), on May 27, 1977, by District Council 84, AFSCME, AFL-CIO, (Union), alleging that a question has arisen concerning the representation of the employes of Citizen Care, Inc. (Employer), and asking the Board to investigate the matter and have the collective bargaining representative chosen by the employes duly certified. Pursuant to the petition, the Board issued an Order and Notice of Hearing on June 6, 1977, setting the hearing for 10:00 A.M. on July 6, 1977 at the State Office Building, Pittsburgh, Pennsylvania.

The hearing was held on July 6, 1977, and continued for further hearing on July 22, 1977, at which times all interested parties were afforded an opportunity to offer testimony and other evidence and examine and cross-examine witnesses.

The Board, on the basis of the testimony and evidence presented at the hearing, and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. That Citizen Care, Inc., is a Pennsylvania non-profit corporation, with its principal address at Clever Road, McKees Rocks, Pennsylvania 15136.