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LEWISTON EDUCATION ASSOCIATION/MEA,)	
)	
Petitioner,)	
)	INTERPRETIVE
and)	RULING
)	
LEWISTON SCHOOL DEPARTMENT,)	
)	
Petitioner.)	
_____)	

On September 20, 2008, the Lewiston Education Association and the Lewiston School Committee jointly filed a petition for an interpretive ruling on whether certain language in the parties' collective bargaining agreement constitutes educational policy within the meaning of 26 M.R.S.A. § 965(1)(C).¹ In describing the obligation to bargain, §965(1)(C) states "public employers of teachers shall meet and consult but not negotiate with respect to educational policies." The parties submitted briefs to the Board on November 10, 2008, and reply briefs on November 24, 2008. The School Department was represented by Daniel C. Stockford, Esq., and the Association was represented by Joseph A. Stupak, Jr. The Board, made up of Peter T. Dawson, Chair; Wayne Whitney, Employee Representative; and Karl Dornish, Employer Representative, met on December 15, 2008, to deliberate on this matter.

During the negotiations for the current 2006-2009 collective bargaining agreement, the Lewiston Education Association and the Lewiston School Department disagreed whether two specific provisions should remain in the agreement. The Lewiston School Committee's position was that both of the sections constituted

¹The parties initially filed this petition on August 23, 2007, but agreed to hold in abeyance. It was refiled on September 20, 2008.

educational policy and should be removed from the agreement; the Lewiston Education Association argued that the provisions were not educational policy and should remain in the collective bargaining agreement. The parties reached a compromise settlement in which the provisions remained in the 2006-2009 collective bargaining agreement and they agreed to submit the issue to the Maine Labor Relations Board for determination.

The two provisions at issue are Article VIII, Paragraph A, Sections 4 and 5 of the 2006-2009 collective bargaining agreement, which state:

4. Middle School and High School teachers shall not be assigned class loads requiring more than three (3) individual preparations at any one time; provided that two (2) or more sections of any course (such as academic biology and career biology) as a single course or French I (French speaking and French I non-French speaking) as a single course or college chemistry and vocational chemistry as a single course shall constitute a single preparation notwithstanding the fact that the sections may not be working on the same assignments at any given time; provided, however, that at the discretion of and with the concurrence of an individual teacher and administrator, a teacher may choose to accept an assignment that would require more than three (3) preparations as defined above.

5. Instructional time in the Middle School and High School shall not exceed 260 minutes per teacher, per day with the exception of those involved in block schedule teaching assignments such as vocational instruction whose assignments shall not exceed 290 minutes per day per teacher. Instructional time in the elementary schools shall not exceed 300 minutes, per teacher, per day; such minutes to include appropriate subject areas according to the Instructional Schedule as promulgated from time to time by the School Committee. Instructional time shall not include the periods in which a teacher is involved in supervising students during recess, lunch and other periods that are not clearly instructional in nature.

The parties' joint petition for an interpretive ruling presents the following explanation of the situation:

In the view of the School Committee, the language of these articles create practical difficulty in operating the School Department's educational program, and it remains an important priority of the School Department that these articles be removed from the Collective Bargaining Agreement. At the same time, the view of the Association is that the disputed language should remain in the Collective Bargaining Agreement. The Committee's insistence upon removal of the disputed language on the ground that it constitutes educational policy, and the Association's insistence on maintaining the language, are likely to lead to prohibited practice complaint proceedings in which one or both parties accuses the other party of a failure to bargain in good faith.

Although the statute is not very specific on this subject,² the Board has consistently held that interpretive rulings are a mechanism that enable a party to receive an indication from the Board on whether a contemplated course of action would violate the law. See, e.g., Lewiston School Committee, Petition for Interpretive Ruling, No. 06-IR-01 (April 20, 2006). Section 41 of the MLRB rules on prohibited practices deals specifically with requests for an interpretive rulings. The initial portion of §41 describes those circumstances for which an interpretive ruling is appropriate:

§ 41. Interpretive Rulings. An interpretive ruling is a means for determining specific questions as to the prospective rights, obligations, or liabilities of a party when controversy or doubt has arisen regarding the applicability of a specific statute, Board order or rule. A petition for an interpretive ruling may not be used to resolve factual disputes between adversaries and may not be used as a substitute for other remedies provided by the collective bargaining laws.

²The last three sentences of §968, sub-§ 3, dealing with the Board's rulemaking power, simply state "The board shall also, upon its own initiative or upon request, issue interpretative rules interpreting the provisions of this chapter. Such interpretative rules shall be advisory only and shall not be binding upon any court. Such interpretative rules must be in writing and available to any person interested therein."

MLRB Rules, Ch. 12, §41.

In view of this situation, we agree that the circumstances in this case are appropriate for an interpretive ruling.

DISCUSSION

The Association's primary argument, as stated in its brief, is that "substantial changes in public education and the teaching profession over several decades warrant a contemporary consideration of the issue, and an interpretation that the language [at issue] constitutes teachers' working conditions." (Association Brief at 3). The Association argues that even if the Board previously concluded that similar language concerning preparation periods and instructional time constituted educational policy, thirty-five years of "dramatic changes in the delivery of education" supports its position that the Board should revisit the issue. The Association asserts that major federal and state policy developments have changed expectations for both school boards and teachers in terms of accountability and efficiency. Rather than issuing a ruling that reflects cases decided in the 1970s and 1980s, the Board should consider a "contemporary balance" between working conditions and educational policy.

The Lewiston School Department contends that the matter has already been addressed by the Board in various cases holding that preparation periods and instructional time are educational policy. Sanford Federation of Teachers v. Sanford School Committee, No. 84-13 (March 20, 1984), at 5 (teacher preparation periods are educational policy); MSAD #43 Board of Directors v. MSAD #43 Teachers Association, No. 79-36 (August 24, 1979) (daily preparation periods are educational policy); Lewiston Teachers Association v. Lewiston School Committee, No. 86-04 at 19 (June 30, 1986)(the length of teacher work days, the number of

preparation periods (if any), and the amount of instructional time are all matters of educational policy). The Employer also cites the Biddeford decision, even though the particular subjects at issue here were not discussed by the Law Court. In Biddeford, Justice Wernick stated,

Thus, the length of the teachers' working day is closely and heavily interwoven with judgments bearing upon the welfare of the students,--as reflected in the ultimate quality of their education and the extent to which it may be improved or weakened by use of various types of substitutes, technological or otherwise, for the living presence and active participation of teachers. Such foundational educational value judgments cannot reasonably be subordinated to the overlay of teacher "working conditions", and for this reason, the length of the teacher's working day must be held, fundamentally, that kind of "educational policies" subject-matter which was legislatively intended to remain outside the scope of mandatory collective bargaining[.]

City of Biddeford v. Biddeford Teachers Ass'n, 304 A.2d 387, 421 (1973). The School Department argues that both sections at issue restrict the school in scheduling classes and assigning teachers during the school day and consequently affect the length of the teacher workday.

The essence of the issue before us is whether it is appropriate to overrule long-standing precedent holding that preparation periods and instructional time are matters of educational policy. Beyond the obvious factors related to the non-binding nature of interpretive rulings generally, we conclude that it is not appropriate to overrule established precedent in these circumstances. The Association's argument rests on a bare assertion that there have been "dramatic changes" in the delivery of education. We do not doubt the truth of that assertion, as there have been major changes in all facets of our society in the past 35 years. We have not, however, had the opportunity to review any evidence supporting that claim nor how those changes

impact educational policy. The Association asserts that these changes will produce a different outcome when the Board finds the "contemporary balance" between educational policy and working conditions. Regardless of whether the Association intends to argue merely that the facts support a different outcome or that a different analysis should be used, it is not appropriate to address the matter through an interpretive ruling.

In summary, we agree with the School Department that MLRB precedent holding that the issues of preparation periods and instructional time are issues of educational policy which should not be overturned in this ruling.

Issued this 15th day of January, 2009.

MAINE LABOR RELATIONS BOARD

/s/ _____
Peter T. Dawson
Chair

/s/ _____
Karl Dornish, Jr.
Employer Representative

/s/ _____
Wayne W. Whitney
Employee Representative