In the Matter of TAUNTON SCHOOL COMMITTEE

and

TAUNTON EDUCATION ASSOCIATION

Case No. MUP-1632

16.1	*Impasse*
28.	*Relationship Between c. 150E and Other Statutes Not Enforced by Commission*
54.292	*teaching periods*
54.3	*management rights*
54.58	*work assignments and conditions*
54.8	*mandatory subjects*
67.44	*failure to consider proposals*
67.8	*unilateral change by employer*
82.3	*status quo ante*
82.4	*bargaining orders*

June 13, 2002
Helen A. Moreschi, Chairwoman
Mark A. Preble, Commissioner
Peter G. Torkildsen, Commissioner

David T. Gay, Esq.	*Representing the Taunton School Committee*
Ira Fader, Esq.	*Representing the Taunton Education Association*

DECISION[1]

Statement of the Case

The Taunton Education Association (the Union) filed a charge of prohibited practice with the Labor Relations Commission (the Commission) on September 20, 1996, alleging that the Taunton School Committee (School Committee) had engaged in a prohibited practice within the meaning of Sections 10(a)(1) and (5) of M.G.L. c. 150E (the Law). Following an investigation, the Commission issued a complaint of prohibited practice on May 28, 1997. The complaint alleged that the School Committee had violated Section 10(a)(5) and derivatively, Section 10(a)(1) of the Law by failing to bargain in good faith by implementing a proposed teaching schedule that required teachers to teach an extra period without bargaining with the Union to resolution or impasse over its decision and the impacts of its decision. The School Committee filed an answer on June 12, 1997.

On November 21, 1997, November 25, 1997, January 22, 1998, and March 25, 1998, Commissioner Mark Preble conducted a hearing at which both parties had an opportunity to be heard, to examine witnesses, and to introduce evidence. The Union and the School Committee filed post-hearing briefs on June 10, 1998, and June 11, 1998, respectively. The School Committee challenged portions of the Hearing Officer's Recommended Findings of Fact.

1. Pursuant to 456 CMR 13.02(1), the Commission has designated this case as one in which the Commission shall issue a decision in the first instance.

The Union did not oppose the School Committee's challenges. After reviewing those challenges and the record, we adopt the Hearing Officer's Recommended Findings of Fact, as modified where noted, and summarize the relevant portions below.

Facts[2]

Stipulations

1. When block scheduling was implemented in September of 1996, the parties met thereafter and agreed to disagree over whether the decision to implement block scheduling was a mandatory subject of bargaining. The parties continued discussions, however, in an effort to resolve impacts of the implementation of block scheduling, however they were not able to reach agreement.

2. On or about March 27, 1996, the School Committee adopted the minutes of a March 13, 1996 School Committee meeting.

The Union is the exclusive collective bargaining representative for all full-time and regular part-time teaching personnel and specialists employed by the Respondent. The Union and the School Committee were parties to a collective bargaining agreement effective September 1, 1992 through August 31, 1995 (prior agreement) and an agreement effective September 1, 1995 through August 31, 1998 (successor agreement). Section B, Paragraph 1 of Article 2 in both agreements contains a "zipper clause" that provides:

> The School Committee and the Union agree that each has exercised its right to bargain for any provision it wished to be included in this Agreement; that if either has made a proposal not included herein, such proposal has been withdrawn by mutual agreement in consideration of the making of this Agreement; and that this Agreement constitutes an acceptable agreement as to all matters upon which the School Committee and the Union have bargained. Accordingly, each expressly waives any right to seek to negotiate any further demand or proposal as long as this Agreement shall continue in effect.

Article 5 in both agreements is entitled "Work Year, Workday, and Workload." In the successor agreement, compensation for coverage of absent teachers is addressed in Section C, Paragraph 6(d) of Article 5:

> A regular teacher who volunteers or who is assigned to teach a class of an absent teacher (including teachers who teach two (2) classes simultaneously) shall be paid additional compensation in the amount of seventeen ($17.00) for each class period or portion thereof which equals 30 or more minutes.

In the prior agreement, Article 5, Section C, Paragraph 6(d) provides that teachers covering for an absent teacher were to be compensated fifteen dollars ($15.00) "for each class period or portion thereof."

Article 5, Section A, Paragraph 6, of the successor agreement addresses the work year of the Taunton High School (the High School):[3]

> If an employee is requested by the Superintendent to work additional days beyond the employee's contract year as defined herein, and the employee accepts these additional day(s), he/she shall be compensated at the employee's per diem rate.

Article 5, Section B, Paragraph 2 governs the workday. The provision is identical in both agreements:

> The workday of the classroom teacher shall begin twenty (20) minutes before the start of instructional time, and the workday, except as otherwise provided in this Agreement, shall not exceed six (6) hours and forty-five (45) minutes.

Article 5, Section C, of the successor agreement addresses teachers' workload. Paragraph 5 states:[4]

> Whenever feasible, secondary classroom teachers will not be required to teach more than two (2) subjects in any given school year, nor required to have more than three (3) teaching preparations within those subjects.

Paragraph 4 of Section C in the successor agreement states:[5]

> Whenever feasible, secondary classroom teachers will not be assigned more than five (5) teaching periods per day, and their schedule will be such to assure at least one (1) professional preparation period within the daily schedule. Teaching periods shall include Science Laboratory classes. Science laboratory classes shall include Biology, Chemistry, and Physics laboratories at the academic and honors levels.

The length of time of a "period," referred to in Article 5, Paragraph 4 of Section C in the successor agreement (Section D in the prior agreement) is not defined. Prior to the 1996/1997 school year at the High School, the school day consisted of seven (7) 47-minute periods.[6] A teacher's schedule in a school day consisted of five (5) teaching periods, one supervisory duty period and one professional preparation period.

Both agreements contain an exception in Article 5 that provides:[7]

> Exceptions to the provisions of C and D[8] above may be made only if the Superintendent (or his/her designee) determines, subject to a reasonableness standard, that it is in the best interest of the educational process. The President of the Association will be notified of each instance in which the Superintendent (or his/her designee) so determines.

Block Scheduling in the 1994/1995 School Year

During the 1994/1995 school year, the High School began to evaluate implementing changes to its school day schedule. In furtherance of that effort, in July 1994, the High School applied for

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2. The Commission's jurisdiction is uncontested.

3. This provision is identical to Article 5, Section A, Paragraph 5 in the prior agreement.

4. This provision is identical to Section D, Paragraph 5 of Article 5 in the prior agreement.

5. This provision is identical to Section D, Paragraph 4 of Article 5 in the prior agreement.

6. One of the periods (X block) was 49 minutes.

7. The provision is in Section E of Article 5 in the successor agreement and Section F of Article 5 in the prior agreement.

8. Sections D and E in the prior agreement.

and received a grant from the Massachusetts Department of Education for a project entitled the "Taunton High Coalition of Essential Schools" (Coalition or CES).[9] The High School applied for the grant to study, and eventually implement, the CES principles at the High School, and become a member of the Coalition.[10] The High School formed a CES group consisting of faculty and department heads, as well as a representative from the Commonwealth's Department of Education (DOE) to evaluate the High School's operations in light of CES' principles. The group studied several issues, including class size and the use of extended, or "block" teaching periods.[11] The Union was not involved in the development of the CES group. The CES group did not request any input from the Union regarding block scheduling at the High School.

In 1994, the DOE issued "Student Learning Time Regulations"[12] (the Regulations) following the passage of the Education Reform Act[13] by the Massachusetts Legislature in 1993. The Regulations established statewide minimum standards for the amount of "structured learning time"[14] in core subjects[15] for students in all Massachusetts public schools. The Regulations provided in part that "[n]o later than the 1997-1998 school year, all schools shall ensure that every secondary school student is scheduled to receive a minimum of 990 hours per school year of structured learning time. . . ."[16] The Regulations also required that certain times, including study periods and time spent passing between classes, could not count toward the 990-hour requirement.[17] The Regulations mandated that all public schools to develop a "Learning Time Implementation Plan" by June 30, 1996 to ensure full compliance with the requirements no later than September 1997.[18]

In an "End of the Year Report" dated June 12, 1995 to the DOE's CES grant supervisors, High School Principal Patrick Jackman (Jackman) reported that, after reviewing the findings of the CES study group on incorporating extended periods into the school, the High School would implement block scheduling as a trial project on Fridays during the 1995-1996 school year. At a meeting with High School faculty at the beginning of the 1995/1996 school year, the High School distributed a "Proposed Modified Block Schedule" prepared by Jackman. In the schedule, Jackman informed the faculty that, "in an attempt to provide an increase in 'time in learning' for the 1995/1996 school year, it is my proposed plan to schedule a modified block schedule one day per week." The memorandum listed two different alternating schedules identified as "A" and "B."[19] Both schedules consisted of three (3) blocks of 65 minutes and three (3) blocks of 35 minutes. Jackman explained the "Proposed Modified Block Schedule" as follows:

> This schedule will commence in the first week in October and will continue throughout the year. The present schedule of seven forty-seven minute periods will continue on the remaining four days of the week. Schedule A and B will alternate.
>
> This plan will provide the necessary data to determine to what degree the present schedule should be changed to accomplish all of the goals of the Education Reform Act of 1993. Specifically, it will identify any positive or negative concerns regarding a longer period. It should be noted that an increase in the present length of each period will be needed to fulfill the mandatory minimum of 990 hours.
>
> Finally, it is the high school administration's plan to institute some form of block scheduling for the 1996-97 school year. During the upcoming school year, visitations will be scheduled for high schools which have already implemented a block schedule. Comparing this information with the information we will receive from the modified schedule, it is felt that a more prudent decision will be made for the 1996-97 school year.

On or about September 25, 1995 the High School Administration circulated ballots to faculty to vote on which school day would be appropriate to follow the proposed block schedule. The faculty voted to follow a block schedule on Wednesdays. The High School implemented Schedule A of the block schedule on Wednesday, October 4, 1995, and Schedule B the following Wednesday, October 11, 1995. However, beginning the second term of the first semester, the High School implemented Schedules A and B on consecutive Tuesdays and Wednesdays of the same week. The schedule for the other days of the school week consisted of three

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9. The Coalition of Essential Schools (CES) is an alliance of schools that adhere to educational principles, focusing on student mastery of achievements rather than curriculum, small class sizes, and multiple obligations for teachers and principals (i.e. teacher-counselor-manager). CES principles involve project-based learning, small group instruction, and cooperative activities with students.

10. As of the date of hearing, the High School was not yet a member of the CES.

11. However, block scheduling was not a pre-requisite to either becoming a member of the Coalition or to employing the Coalition's principles.

12. 603 CMR 27.00.

13. M.G.L. c. 71, as amended by St. 1993 c. 71, approved June 18, 1993.

14. Structured learning time is defined in 603 CMR 27.02 as time during which students are engaged in regularly scheduled instruction, learning activities, or learning assessments within the curriculum for study of the core subjects.

15. Core subjects as defined in 603 CMR 27.02 include math, science and technology, history, social science, English, foreign languages, arts, and approved vocational-technical education.

16. 603 CMR 27.04(2). Structured learning time is also known as "time in learning."

17. 603 CMR 27.04(2) provides that "[t]ime which a student spends at school breakfast and lunch, passing between classes, in homeroom, at recess, in non-directed study periods, receiving school services, and participating in optional school programs shall not count toward meeting the minimum structured learning time requirement for that student." Prior to the issuance of the Regulations, instructional time was based on the number of hours a school was in session.

18. See 603 CMR 27.07(5). The DOE Regulations required that every school district provide a "Learning Time Implementation Plan" to the DOE by June 30, 1996. The Plan was to include a description of changes that were being undertaken at the school and district level to ensure that every student receive the minimum amount of time in learning on or before September of 1997. In his testimony, Taunton School Superintendent Gerald Croteau (Croteau) stated that his understanding of the requirements of the Education Reform Act required that the High School comply with the 990-hour requirement by September of 1996. The School Committee requested a finding that Croteau testified that the School Committee implemented block scheduling in 1996/1997 in order to take advantage of the opportunity to work out any problems that would arise in a new schedule, and because the DOE would not accept any excuses from the School Committee for failure to comply with the mandatory hours of instruction. However, this finding is not supported by the record.

19. The High School alternated the schedules to allow all classes to meet for longer blocks of time within the time limits of the school day. Alternating schedules also allowed teachers to teach the same number of hours.

days of seven 47-minute periods. In February and March 1996, at the request of the High School Administration, faculty and department heads provided feedback regarding the trial block schedule. The faculty's feedback included both benefits and disadvantages of block scheduling.

Collective Bargaining

On or about March 29, 1995, the High School and the Union began negotiating for a successor collective bargaining agreement. The parties bargained on six occasions and reached a tentative agreement on or about June 29, 1995. During negotiations, the School Committee raised the issue of whether the High School's current school day schedule would be in compliance with the new requirement by the DOE that secondary level students receive 990 hours of instructional time over the course of the school year. The School Committee proposed amending Article 5 of the parties' prior agreement to increase the length of the workday from 6 hours and 45 minutes to 7 hours and thirty minutes, and to expand the school year to include an additional ten (10) professional days for teachers. The Union did not agree to lengthen the workday, but agreed to add professional days in the successor agreement.

During negotiations, the School Committee also proposed to eliminate release days in an effort to conform with the 990-hour time in learning requirement. In that regard, the School Committee provided a document to the Union that indicated that the requirement of 990 hours of time in learning could be achieved if release days were eliminated.[20] The Union agreed to eliminate release days in the successor agreement.

The School Committee did not raise the issue of block scheduling during negotiations with the Union for the successor agreement. Gail E. Irving (Irving), a member of the Union's bargaining team, participated in the negotiations for the parties' successor agreement.[21] Irving first learned of block scheduling in January 1996 from an article in the Union newsletter written by the previous Union president, Jim Moynihan (Moynihan).[22] In the article, Moynihan reported that he had met with Jackman and Assistant Headmaster Barbara Masterson (Masterson), and indicated that they had developed a proposal for block scheduling at the High School that was to be presented to the School Committee on January 31, 1996.[23] In relevant part, Moynihan described Jackman and Masterson's block scheduling proposal as follows:

> (1) Four 84-minute block periods, each of the two semesters. A semester will be considered a full year.
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> (2) One semester, teachers will teach three 84-minute periods, with an 84-minute prep period each day. In the other semester, teachers will teach two 84-minute periods, with an 84-minute prep time each day, and a non-teaching duty of 84 minutes. Both administrators believe an 84-minute prep time each day is imperative for a teacher to prepare for teaching multiple 84-minute teaching periods.

Further, under the block schedule proposal, teachers who taught three periods the first semester would teach two periods the second semester, (a 3/2 schedule) and vice versa, (a 2/3 schedule) for a total of five teaching periods per year.[24] Moynihan indicated in the article that he believed that the proposal as outlined by Jackman and Masterson did not violate the parties' collective bargaining agreement.

In January 1996, Jackman presented a proposal to the School Committee to obtain approval to implement block scheduling at the High School on a trial basis.[25] The High School did not contact the Union to inform them of the implementation of the pilot schedule. On or about January 16, 1996, the High School distributed a memorandum entitled "Block Scheduling Proposal" to faculty of the High School that included a proposed time schedule for the 1996/1997 school year. The schedule consisted of a 90-minute homeroom block, four 84-minute blocks, two 42-minute blocks, and three 22-minute lunches. In the proposal, instructional time for students was estimated at 342 minutes[26] per day, for a total of 1026 hours per year. In addition, the proposal stated that the High School's "Master Schedule"[27] would consist of the following:

- The school year is divided into two 90-day semesters;[28]
- The school day is made up of four 84-minute instructional periods;
- Students would take four courses each semester;
- Teachers would be assigned up to three instructional periods during each semester;
- Teachers would be assigned one preparation period daily.

Attached to the memorandum was a list entitled "Advantages of Block Schedule Proposal" that set out various benefits of block scheduling for both students and teachers.

At a School Committee meeting on March 13, 1996, Jackman and Masterson made a formal presentation to the Committee on block scheduling. Taunton High School Superintendent Gerald Croteau

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20. Although the parties offered conflicting evidence concerning whether the time in learning requirement could or could not have been met by eliminating the release days, there is no dispute that during the negotiations, the School Committee *provided the Union* with the document.

21. Irving is a special needs teacher at the Joseph A. Martin School in Taunton.

22. The Union newsletter was distributed to Union members, field representatives, and administrators of the High School.

23. In the article, Moynihan also asked teachers not to volunteer in response to requests by High School department heads to teach a sixth period in the upcoming school year, stating that volunteering for a sixth period could "weaken (the Union's) ability to negotiate successfully any new duties that the block schedule might encompass."

24. A 3/2 or 2/3 schedule will be hereinafter referred to as a "3/2" schedule.

25. Croteau testified that the School Committee's approval was necessary to implement block scheduling because it represented a significant change to the school schedule, which had been in place at the High School for about 100 years. In addition, Croteau testified that block scheduling significantly changed students' learning environment because it involved extended class time, different course loads and altered the manner in which students accrued credits for classes. Croteau also admitted on cross-examination by Union counsel that block scheduling had a substantial impact on teachers' schedules.

26. 342 minutes is equal to three instructional periods of 84 minutes each and a 90-minute homeroom period. One of the 84-minute periods was a teacher preparation period.

27. The Master Schedule is the schedule for all teachers for the entire school year.

28. Students would earn the same credits for a semester course under block scheduling as they would for a year course under the previous schedule.

(Croteau) was also present at the meeting. Croteau proposed to the School Committee that the High School follow a 3/2 plan, adding that a 3/2 schedule would not have to be negotiated with the Union. However, Jackman also indicated that the School Committee needed to keep the option of assigning teachers to 3/3[29] schedules if necessary.[30] Croteau informed the Committee that a combined 3/2 and 3/3 plan would be an ideal schedule, but that the impacts of a 3/3 schedule on teachers' conditions of employment would have to be negotiated with the Union.[31] The School Committee unanimously voted to approve the concept of block scheduling. However, because the School Committee met on March 13th as a "Committee of the Whole," any issues raised at that meeting had to be further presented to the School Committee as a standing committee for their official and final vote. At a subsequent School Committee meeting on or about March 27, 1996, the School Committee conducted an official and final vote to approve block scheduling at the High School. The Union was not notified of the School Committee meetings.[32]

Following the School Committee's vote, the High School Administration began to prepare a schedule to be implemented in September of 1996. In April 1996, the High School distributed a "Program of Studies" (Program) to students that listed course offerings for the 1996-1997 school year. The classes listed in the Program were based on the new block schedule. Under block scheduling, students were required to take eight (8) courses per year, divided into four classes per semester.[33] The overall maximum number of courses a student was eligible to take under block scheduling was 32.[34] The Program of Studies described the courses offered at the High School but did not contain any teachers' schedules.

At a meeting in August 1996,[35] the School Committee voted to implement block scheduling at the High School for the 1996/1997 school year. No formal negotiations took place between the School Committee and the Union prior to the implementation of block scheduling at the High School. Croteau informed Union officials, however, that if they submitted a demand to bargain over the impacts of block scheduling, the School Committee would impact bargain, but that the School Committee was not obligated to bargain over the decision to implement block scheduling.[36]

Block Scheduling in the 1996/1997 School Year

Karen George (George) is a mathematics teacher at the High School[37] and a member of the Union's negotiating team.[38] In January 1996, George learned of the High School's intent to implement block scheduling from Moynihan's article in the Union's newsletter. In March 1996, George attended a faculty meeting at which Jackman informed teaching staff that the High School would be implementing a 3/2 block schedule for the upcoming 1996/1997 school year. At a Faculty Council meeting during the 1995/1996 school year,[39] Jackman informed the Council that block scheduling would likely consist of a 3/2 schedule, but that more research was needed before the schedule was presented to the School Committee for their approval.

In late June or early July 1996, Masterson spoke with curriculum supervisors to discuss staffing assignments for teachers. In the summer of 1996, the High School received students' course selections for the upcoming school year. After compiling information on staffing and students' course selections, the High School administration determined that in order to ensure that the selected courses would be available, some teachers would need to be assigned to a 3/3 schedule. The High School asked teachers to volunteer to teach a 3/3 schedule. The High School also assigned teachers to 3/3 schedules.[40]

In July 1996, Irving learned that the School Committee intended to implement block scheduling for the 1996/1997 school year. Irving also learned that most teachers would be teaching a 3/2 schedule for the upcoming school year, but that approximately 40 teachers would be assigned to teach a 3/3 schedule.

The Union did not object to a 3/2 block schedule. The Union believed that a 3/2 block schedule did not violate the parties' agreement because it only required teachers to teach five (5) classes over the course of a school year. The Union's position was that a 3/3 schedule, however, violated the parties' collective bargaining agreement because it added a sixth class to a teacher's teaching

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29. A 3/3 schedule is comprised of 3 teaching blocks the first semester and 3 teaching blocks the following semester, with a preparation block and no duty block.

30. Jackman indicated that he did not want to propose that a uniform 3/3 schedule be initially implemented because additional staff, including security personnel, needed to be hired to cover duty periods. Teachers with 3/3 schedules were not assigned to duty periods.

31. The School Committee requested a finding that Croteau's advice to the School Committee was that it would be required to negotiate over the impacts of a 3/3 schedule and not over the decision to adopt the schedule. The record supports this finding and the facts have been modified accordingly.

32. The School Committee requested a finding that the Union was given copies of all School Committee agenda prior to School Committee meetings on a regular basis. However, we determine that the record does not support this finding. Moreover, even if this finding were supported by the record, it is not relevant to the material facts of this case, because the School Committee is not arguing that the Union was on notice of the School Committee's approval of the concept of block scheduling by receipt of the School Committee meeting agenda.

33. Students were required to select two major courses and two electives per semester.

34. Under the previous 47-minute class schedule, students were required to select six (6) courses. The maximum number of classes a student could take was 28.

35. The record does not establish the exact date of the August 1996 School Committee meeting.

36. Croteau did not testify as to a date when he had this discussion with the Union.

37. George has taught mathematics at the High School for 14 (fourteen) years.

38. George is also the former Chair of the Faculty Council, a group consisting of teachers representing each department of the High School and members of the High School administration, including Jackman, Masterson, and two Associate Headmasters. The purpose of the Faculty Council is to communicate faculty's concerns to the High School administration.

39. George did not give an exact date of the meeting, but testified that it took place before the March 13, 1996 School Committee (Committee of the Whole) meeting.

40. Jackman testified that it was within the High School's rights to assign teachers to a 3/3 schedule, and that this assignment did not violate the parties' collective bargaining agreement.

schedule.[41] Prior to the implementation of block scheduling, if the Union learned that a teacher was required to teach six or more classes, it would file a grievance to compensate the teacher for teaching the additional class.[42]

In July 1996, Irving received a telephone call from Patrick McKenna (McKenna), a High School business teacher. McKenna informed Irving that he was concerned over having received a teaching schedule from the High School for the 1996/1997 school year that indicated that he would be teaching a 3/3 teaching schedule. The schedule, entitled "Proposed Business Technology Department's Teaching Schedules—1996-1997" (Proposed Business Schedule) listed a "5" or a "6" for the number of classes that Business Technology teachers were scheduled to teach for the 1996/1997 school year.[43] McKenna additionally informed Irving that department heads were asking teachers to volunteer to work a sixth period. McKenna also contacted George about his concerns. McKenna gave the Proposed Business Schedule to Virginia Fuller, (Fuller) a Union field representative.

In late June 1996, several teachers contacted George about their concerns over block scheduling for the upcoming school year. George received one call from a home economics teacher who informed George that she thought that the High School was going to implement a 3/2 block schedule for the 1996/1997 school year, however, she was scheduled to teach a 3/3 schedule. The teacher also indicated to George that her curriculum supervisor informed her that if she did not teach a 3/3 schedule, some courses would not be able to be offered and teachers could be laid off. Another home economics teacher approached George and also informed her that her curriculum supervisor asked her to teach a 3/3 schedule, otherwise teachers could be laid off. In July 1996, Patricia Rosa, (Rosa) the Union president,[44] also received telephone calls from two home economic teachers with non-professional status who informed her that they were afraid they were not going to be re-hired if they did not agree to teach a 3/3 schedule.

In July 1996, Raymond Lee, (Lee) a High School teacher and Union executive committee representative, received several telephone calls from teachers from the Home Economics Department, the Business Department, and the Technology Education Department who complained that they had believed they were going to teach a 3/2 schedule, but were informed by their curriculum supervisors that they were assigned to teach a 3/3 schedule. The teachers also indicated that they were being pressured to teach an extra class, and were informed by the curriculum supervisors that if they did not teach an extra class, teachers could be laid off. Lee, Rose, and Irving relayed the teachers' concerns to Fuller. Lee later spoke with Fuller, who indicated that she had met with Jackman and Counsel for the School Committee, David T. Gay, (Gay) and requested that the High School cease pressuring teachers to teach a 3/3 schedule.

On or about July 23, 1996, Fuller wrote to Croteau and demanded to bargain over the impact of block scheduling. Fuller's letter stated:

> The Union demands to bargain the impact of the changes in the High School schedule being developed for the 1996-1997 academic year.
>
> Any changes in the collective bargaining agreement (scheduling-block scheduling) are subject to collective bargaining and must be bargained *before* they can be implemented.
>
> We are disappointed that you are unable to meet on the evening of August 13, 1996. We must have a date to bargain as soon as possible to resolve the situation before school begins.
>
> Please respond with an agreeable meeting date.

(Emphasis in original).

Fuller met with Jackman on or about August 1, 1996, and wrote to him on August 6, 1996. Fuller's letter stated:

> As per our conversation August 1, 1996, scheduling at the High School is a subject of collective bargaining. The collective bargaining agreement between the Union and the School Committee covers all aspects of scheduling. Therefore, no one can be forced into volunteering for a sixth teaching period, nor should any teacher be assigned a sixth period.
>
> Also, Chapter 150E provides for *collective* bargaining. Therefore no agent of the School Committee or the School Committee can bargain an individual's work schedule.
>
> The Union has demanded to bargain the issue of scheduling at the High School and is willing to meet as soon as possible to resolve these issues.
>
> Please inform all involved in the scheduling that no one is to be assigned a sixth teaching period.

(Emphasis in original). Gay replied to Fuller by letter dated August 8, 1996. Gay's letter stated:

> Subsequent to our telephone conference of Wednesday, August 7, I met briefly with Jackman that evening and he indicated that the business department's schedule that was apparently delivered by the Department Head was not approved by his office and he has not as of this date taken any steps on the scheduling for the business department.

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41. The School Committee submitted teaching schedules from the High School for school years 1987/1988 through 1996/1997 that indicate that some teachers taught *more than five classes per year*. (School Committee Exhibit 21). For some of the teachers who taught more than five classes, the classes lasted one semester, and a new class with a different set of students started the second semester. In addition, the schedules reflect that for other teachers who taught more than five classes, their schedules contained two classes that met during a particular block on alternating days during the schedule's cycle. (A cycle runs six days, from Monday to Monday). As an example, the schedule for the 1987/1988 school year reflects that Teixeira, a teacher in the English Department who taught ten (10) classes that year, taught five Reading Lab classes on Mondays, Wednesdays and Fridays (days 1-3-5), and five different Reading Lab classes on Tuesdays, Thursdays, and Mondays (days 2-4-6). In addition, prior to block scheduling, some teachers volunteered to teach a sixth class. No teacher, however, taught more than five periods in a day.

42. Irving testified that she was not aware of any grievances during the 1995/1996 school year that were filed to compensate teachers for teaching six or more classes.

43. Six of the eight business teachers on the list were scheduled to teach a 3/3 schedule for the 1996/1997 school year. One teacher, Mrs. Rodier, was scheduled to teach three classes.

44. Rosa does not teach at the High School.

> Jackman reiterated what was discussed last week and agreed that bargaining would occur prior to block scheduling.[45]
>
> I believe that Jackman will be calling your office, however, if you do not hear from him, please call him directly on this matter.

A meeting between the Union and the School Committee was scheduled for August 13, 1996, but the School Committee canceled the meeting. At an August 22, 1996 meeting with the parties' bargaining teams, Croteau, and Fuller, the Union raised the issue of block scheduling. Croteau informed the Union that the School Committee had the authority to implement block scheduling, and that it was only required to bargain over any impacts of block scheduling.

On August 28, 1996 the parties met again. Gay, Jackman, Masterson, Croteau, Fuller and the parties' bargaining teams were present. At the meeting, the Union indicated that it wished to provide input into the process of block scheduling. The Union also expressed various concerns about block scheduling, including: class sizes, the scheduling of parent/teacher conferences, coverage for absent teachers who were scheduled to teach a 3/3 schedule, coverage for duty responsibilities for teachers who were teaching either a 3/2 or 3/3 schedule, and compensation for coverage of absent teachers if a substitute were not available. Croteau reiterated at the meeting that it was the School Committee's right to implement block scheduling under the purview of educational policy, and that the School Committee was not obligated to bargain over the decision to implement block scheduling, but that it would bargain over any impacts of the implementation of block scheduling.

At the meeting, the Union inquired whether the High School was planning to train teachers on block scheduling. The Union additionally questioned why the School Committee was implementing block scheduling in the 1996/1997 school year when the time in learning requirements under the Education Reform Act were not mandatory until September of 1997.[46] The School Committee did not answer the Union directly on these issues, but informed the Union that they would respond to them later. The parties discussed block scheduling at the meeting for approximately one hour, but did not reach any resolution. The parties agreed to meet to have further discussions on block scheduling in October and November 1996.

On September 5, 1996, the Union filed a class action grievance on behalf of several teachers who were scheduled to teach 3/3 schedules, alleging that the School Committee violated the parties' collective bargaining agreement by unilaterally implementing a change in the teaching schedule at the High School.[47] After the Union filed the grievance in September 1996, Rosa and Fuller met with approximately 40 High School staff to discuss the Union's position on block scheduling and to listen to teachers' concerns over teaching a 3/3 schedule. In October 1996, the Union held another meeting with High School staff. The Union then relayed the teaching staff's concerns over block scheduling to the Union's bargaining team.

The parties continued to bargain after the School Committee implemented block scheduling in September, 1996 in an attempt to reach an agreement on block scheduling. The parties scheduled two meetings in September 1996, however the School Committee cancelled the meetings. The parties met on October 30, and November 4, 1996, after the Union filed the instant charge of prohibited practice at the Commission. At the October 30th meeting, the Union provided a proposal to the School Committee regarding block scheduling. The proposal stated:

> The block scheduling at the High School shall consist of four eighty-four (84)-minute periods. The planning time shall be daily and an eighty-four minute period.
>
> All secondary professional employees at the High School shall have in addition to their lunch period no more than three teaching periods per day per semester or no more than five teaching periods (3 teaching periods one semester and two teaching periods in the other semester) per year.
>
> Class size regulations stated in the agreement (1995-1998) shall be adhered to.

The parties did not reach any resolution on the issue of block scheduling at the October 30, 1996 meeting. At the November 4th meeting, the Union provided a second proposal to the School Committee that provided:

> The block scheduling at the High School shall consist of four eighty-four (84) minute periods. The planning time shall be daily and an eighty-four minute period.
>
> All secondary professional employees at the High School shall have in addition to their lunch period no more than three teaching periods per day per semester or no more than five teaching periods (three teaching periods one semester and two teaching periods in the other semester) per year.
>
> When additional teaching periods are needed in any department, additional staff shall be hired to teach those periods.

The School Committee provided a counter-proposal to the Union at the November 4th meeting. The counter-proposal consisted of a package of documents. The first document was a memorandum entitled "Block Scheduling Proposal" dated January 16, 1996 from Jackman and Masterson to the "Taunton High School Parent/Teacher Partnership."[48] Attached to the memorandum was a

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45. The School Committee requested a finding that when Jackman referred to bargaining occurring prior to the implementation of block scheduling, he was referring to impact bargaining. However, we decline to amend this finding because Gay's August 8, 1996 letter does not reflect that Jackman stated that impact bargaining would occur.

46. The School Committee requested a finding that Croteau testified that the School Committee implemented block scheduling in 1996/1997 in order to take advantage of the opportunity to work out any problems that would arise in a new schedule, and because the DOE would not accept any excuses from the School Committee for failing to comply with the mandatory hours of instruction. However, the record does not support this finding and we decline to amend the facts as requested by the School Committee.

47. The grievance alleged a violation of Article 5, Section C, Paragraphs 4 and 5, and Article II, Section B, Paragraph 1. Initially, 34 High School staff signed the grievance. On September 16, 1996, approximately 80 additional Union members signed on to the grievance. The parties held the grievance in abeyance pending the outcome of this case.

48. This memorandum was the same memorandum that the High School had distributed to faculty on January 16, 1996 describing the block schedule that was to be implemented for the 1996/1997 school year.

document entitled "Taunton School Committee/Administration Response to Taunton Teachers' Association Concerns Regarding Block Scheduling" (Response) dated October 31, 1996. In its Response, the School Committee cited several provisions from the successor agreement in support of its position that changes to the schedule as a result of block scheduling did not violate the parties' agreement.[49] Also attached to the memorandum was a schedule dated September 1996. The schedule reflected a 3/2 schedule for some teachers and a 3/3 schedule for other teachers for the 1996/1997 school year. The School Committee did not submit any counter-proposals to the two contract language proposals submitted by the Union. The parties did not have any further meetings on block scheduling.[50]

Teaching Under a Block Schedule

In June 1996, George received a tentative schedule from the High School that indicated that she was scheduled to teach five classes on a 3/2 schedule for the entire year. The curriculum supervisor for the math department informed George that the High School could change the teaching schedule at any time.

In August 1996, the High School offered training for teachers regarding the transition from a seven-period schedule to a block schedule.[51] The High School informed staff of the training prior to the close of the 1995/1996 school year and posted a sheet for teachers to sign up. The training was scheduled on four separate days during weekends in the spring and summer of 1996. Staff who attended the training were not paid but received professional development points toward their teaching re-certification. Approximately 30 of the High School's 100 teachers attended.[52] George did not attend the training. The High School also held training on block scheduling after school on two days in February 1997. Another full day of training was offered in March 1997 that the entire staff of the High School attended.

George later learned that she would be teaching a 3/3 schedule.[53] When George inquired of the chair of the mathematics department why some teachers were assigned to a 3/3 schedule while others were assigned to a 3/2 schedule, he informed her that assignments to 3/3 schedules were based on what courses needed to be taught, what courses were already scheduled, which teachers were free to teach an extra class, and whether the particular teacher had taught the same class for the first semester.[54] In 1996/1997, 49 teachers out of approximately 100 teachers were assigned to 3/3 schedules. In 1997/1998, 74 teachers out of approximately 100 were assigned to 3/3 schedules.[55] The Union did not have any involvement in the assignment of teachers to 3/2 or 3/3 schedules.

Prior to the 1996/1997 school year, George's schedule consisted of five math classes,[56] one 47-minute preparation period, and one 47-minute duty period. Each of George's five classes was 47 minutes, for a total of 235 minutes of teaching time per day. Under a 3/3 block schedule, George taught three periods of 84 minutes each day, for a total of 252 minutes of teaching per day. Additionally, George's preparation period increased from 47 minutes to 84 minutes under block scheduling.[57] A teacher with a 3/2 schedule taught 168 minutes in the second semester, and had one 84-minute preparation period and one 84-minute duty period.

Because teachers were required to cover the same curriculum in 90 days on a semester schedule that was previously taught in 180 days on a year schedule, George revised her lesson plans to be able to teach an 84-minute class instead of a 47-minute class.[58] Due to the extended period and the need to cover multiple subjects within a block, George used new instructional techniques to reinforce the material she had just taught. Prior to block scheduling, George taught an average of 150 students per day over 180 days. Under block scheduling, George taught an average of 76 students per day over 90 days.

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49. The School Committee cited: 1) Article 5, Section A "Work Year," Paragraph 6, stating that no teacher would be required to work additional school days; 2) Article 5, Section B, "Workday," stating that no adjustment to the start or dismissal time would be implemented; and 3) Article 5, Section C "Work Load," stating that under block scheduling, each teacher would have a duty-free lunch period, one professional preparation period each day, and that no teacher would be assigned more than three (3) teaching periods per day.

50. The School Committee requested a finding that the parties' negotiations over block scheduling were at impasse because the Union refused to bargain on the impact of the block scheduling system until the School Committee agreed to withdraw block scheduling and bargain over the concept of block scheduling, arguing that the School Committee consistently maintained that the concept of a block schedule was within its purview as the policy-making body for the School Department and that the School Committee would bargain its impact, if any with the Union. However, because the issue of whether the parties reached impasse is a legal conclusion, we decline to amend the findings of fact as requested by the School Committee. Moreover, the evidence demonstrates that Croteau testified on cross-examination by union counsel that the parties were not at impasse when the High School implemented block scheduling in September 1996.

51. From 1994 through 1997 the High School offered other in-service professional development programs organized by department that were designed to address strategies for teaching extended periods, or block schedules.

52. In his article dated January 31, 1996 in the Union newsletter, Moynihan stated that teachers were not under any obligation to attend the weekend workshops on how to prepare to teach an 84-minute class until the Union negotiated a settlement with the School Committee.

53. The record does not reflect the date George learned she would be teaching a 3/3 schedule for the 1996/1997 school year.

54. George testified that teachers with 3/3 schedules were resentful of those scheduled to teach a 3/2 plan because of the perceived disparity in workload. George also testified that the head of the math department indicated that he would attempt to alternate teachers' assignments to 3/3 and 3/2 schedules in the next school year to ensure that assignments were equitable.

55. The increase in numbers was due to the elimination of study periods for the 1997/1998 school year, and a decrease in the number of teachers assigned to duty periods. Prior to the implementation of block scheduling, students had one to two study periods per day.

56. When George was shown a schedule of courses taught by mathematics teachers dated August 28, 1995 on cross-examination by counsel for the School Committee, she admitted that the schedule reflected that she taught six classes for the 1995/1996 school year. Initially George was assigned to teach five classes for the 1995/1996 school year, but a sixth class was added to George's schedule within the first two weeks of the school year.

57. However, a preparation period could be cut short due to the fact that teachers either volunteer or are assigned by the High School to cover for absent teachers during preparation periods.

58. George testified that she could not combine two 47-minute periods' worth of material into one 84-minute block because students needed time to retain material they had just learned, and could not absorb too many concepts at one time.

Prior to block scheduling, the High School scheduled exams on half days and release time was given for teachers to correct the students' exams. After block scheduling, final exams were given during a regular class block. Before block scheduling, teachers gave progress reports only to those students who were receiving poor grades. As a result of block scheduling, teachers were required to give progress reports for all students. Under block scheduling, therefore, teachers were required to average grades twice as often as prior to the implementation of block scheduling. Under the new schedule, teachers were required to average grades half way through each term and at the end of each term, requiring the averaging of grades eight times per year instead of four times per year. Prior to block scheduling, parent teacher conferences were scheduled one afternoon and two evenings each year. After block scheduling, parent teacher conferences were scheduled on one afternoon and one evening per semester, thus requiring two evening meetings and two afternoon conferences per year.[59]

Opinion

The issue for the Commission's determination is whether the School Committee violated Sections 10(a)(5) and derivatively, Section 10(a)(1) of the Law by failing to bargain with the Union in good faith over its decision and the impacts of its decision to implement block scheduling, including a requirement that teachers teach a sixth period at Taunton High School.

At the outset, the Union maintains that although the Commission's complaint alleges that the School Committee unilaterally implemented a new teaching schedule, including a requirement that certain teachers teach a sixth period, the instant dispute additionally encompasses the change in working conditions for teachers as a result of the implementation of a block schedule. Relying on *Town of Norwell*, 18 MLC 1263, 1264 (1992) for the proposition that "conduct which has not been specifically pleaded in a complaint may still form the basis for an unfair labor practice finding when the conduct relates to the general subject matter of the complaint and when the issue has been fully litigated," the Union maintains that the parties have fully litigated various aspects of a block schedule and its impact on teachers' schedules. Thus, the Union summarizes the present dispute as not solely whether the School Committee refused to bargain over an increase in the number of courses a teacher must teach, but also whether the School Committee refused to bargain over the decision to implement the block schedule and the impacts of that decision. We agree that the issues for the Commission's decision include not only the School Committee's assignment of a sixth class, but also the decision to implement block scheduling and the impacts of that decision. Indeed, the requirement that some teachers teach an extra class was a direct result of the implementation of a block schedule. Moreover, the record reflects that the issue of block scheduling and its attendant impacts were fully litigated by the parties.

The Decision to Implement Block Scheduling

It is well-settled that public employers may not change a pre-existing condition of employment, or implement a pre-existing condition of employment, affecting a mandatory subject of bargaining without providing the exclusive bargaining representative with prior notice and an opportunity to bargain to resolution or impasse. *School Committee of Newton* v. *Labor Relations Commission*, 388 Mass. 557 (1983); *Town of Arlington*, 21 MLC 1125, 1129 (1994).

However, in the public education setting, school committees have the exclusive prerogative to determine matters of educational policy without bargaining. *Lowell School Committee*, 26 MLC 111 (2000). The Supreme Judicial Court has determined that certain decisions are within the zone of management prerogative over educational policy, *see* G. L. c. 71, §§ 37-38, and are therefore committed to the judgment of the school committee alone. *See e.g.*, *Boston Teachers Local 66* v. *School Committee of Boston*, 386 Mass. 197 (1982) (size of teaching staff); *Berkshire Hills Regional School Dist. Committee* v. *Berkshire Hills Education Ass'n.*, 375 Mass. 522 (1978) (appointment of principal); *School Committee of Danvers* v. *Tyman*, 372 Mass. 106 (1977) (tenure determinations); *School Committee of Braintree* v. *Raymond*, 369 Mass. 686 (1976) and *School Committee of Hanover* v. *Curry*, 369 Mass. 683 (1976) (decision to abolish positions). Similarly, decisions determining the level of services that a governmental entity will provide lie within the exclusive prerogative of the public employer. *Town of Danvers*, 3 MLC 1554 (1977). Also, when a third party over which the employer has no control exercises its authority to change employees' terms and conditions of employment, the public employer may not be required to bargain over the decision to make that change. *Higher Education Coordinating Council*, 22 MLC 1662 (1996).

The Supreme Judicial Court has also recognized, however, that other subjects are not so intertwined with educational policy as to be beyond the scope of collective bargaining. *See e.g.*, *School Committee of Watertown* v. *Watertown Teachers Association*, 397 Mass. 346 (1986) (granting of sabbatical leaves); *School Committee of Boston* v. *Boston Teachers Union*, 378 Mass. 65 (1979) (final school examination schedules); *Bradley* v. *School Committee of Boston*, 373 Mass. 53, 56-57 (1977) (transfer requests of principal); *Boston Teachers Local 66* v. *School Comm. of Boston*, 370 Mass. 455 (1976) (class size, teaching load, and the number of substitute teachers to be hired). In these cases, the courts and the Commission have determined that although the subjects at issue may affect educational policy, they impact significantly more on terms and conditions of employment and are thus subject to collective bargaining.

The analysis in cases where policy determinations confront collective bargaining rights is framed as "whether the ingredient of public policy in the issue subject to dispute is so comparatively heavy that collective bargaining, and even voluntary arbitration, on the subject

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59. Paragraph 2 of Article 5, Section D, ("After Work Day Requirements") addresses parent/teacher conferences: "[t]eachers may be required to attend one (1) evening meeting each year. Teachers may schedule appointments to meet with parents during these two (2) evening sessions. If the teacher has not scheduled appointments, attendance is not required. Attendance at all other evening meetings will be at the option of the individual teacher." Although George was questioned on cross-examination about this provision, she did not recant her testimony about the scheduling of parent/teacher conferences after the implementation of block scheduling.

is, as a matter of law, to be denied effect." *School Committee of Boston,* 378 Mass. 65, 71 (1979) *citing School Comm. of Boston* v. *Boston Teachers Local 66,* 372 Mass. 605, 614 (1977). This framework applies in unfair labor practice proceedings before the Commission, in actions to stay arbitration under G.L. c. 150C, § 2(b), and in actions to vacate or confirm arbitration awards. *School Committee of Boston,* 378 Mass. at 71. As the Supreme Judicial Court noted, underlying this development is the belief that, unless the bargaining relationship is carefully regulated, giving public employees the collective power to negotiate labor contracts poses the substantial danger of distorting the normal political process for controlling public policy. *Id., citing* Wellington and Winter, *The Limits of Collective Bargaining in Public Employment,* 78 Yale L.J. 1107 (1969).

Here, the School Committee argues that the decision to implement block scheduling at Taunton High School was within the non-delegable realm of the School Committee to make decisions about the delivery of educational services, relying on *School Committee of Watertown* v. *Watertown Teachers Association,* 397 Mass. 346 (1986). The School Committee argues that block scheduling substantially changed the method of delivering educational services, courses and materials. The School Committee maintains that while the effectiveness of the block schedule and its educational content is not directly germane to the Commission's decision in the present case, it asserts, consistent with its argument that the decision to implement block scheduling was within the purview of educational policy, that its decision was based on the belief that the results would be educationally sound and improve the delivery of educational services to students.

The School Committee asserts that its authority to implement educational policy decisions is derived from M.G.L. c. 71 § 37, which authorizes school committees "to establish educational goals and policies for the schools . . . consistent with the requirements of law and statewide goals and standards established by the Board of Education."[60] The School Committee maintains that while block scheduling may have impacted teachers' schedules, it asserts that "[t]he mere characterization of a feature of collective (bargaining) or an arbitration award as 'compensation' or 'terms or conditions of employment' or some other subject conventionally or by law within the scope of either process, will not save the provision if in substance it defeats a declared legislative purpose." *City of Lynn* v. *Labor Relations Commission,* 43 Mass. App. Ct. 172 (1997) *citing Watertown Firefighters, Local 1347, IAFF AFL-CIO* v. *Watertown,* 376 Mass. 706, 714 (1978). Relying on this proposition, the School Committee argues that the fact that teaching load, class size, or similar conditions of employment are involved in the decision to adopt block scheduling does not make the decision subject to the bargaining or arbitration process. To do so, the School Committee claims, would divest it of its main statutory function to establish policy for the direction of the schools. Thus, while class size, teaching load, and similar school-related activities may be subject to the collective bargaining process, the School Committee argues, any agreement that affects that process would not be enforced by the courts of the Commonwealth if to enforce that agreement would directly infringe upon the changing and developing educational policy decisions of the School Committee.

The Union argues, however, that in evaluating the respective interests of the School Committee in making educational policy and of the Union in bargaining over the terms and conditions of its bargaining unit members' employment, the balance must tip in favor of bargaining. The Union reasons that the decision to implement block scheduling is not a level of public services decision, but a means by which the services will be delivered, which itself is a mandatory subject of bargaining, and which affects multiple related subjects of bargaining, relying on *Town of Dennis,* 12 MLC 1027, 1030 n.4 (1985); *Peabody School Committee,* 13 MLC 1313, 1320 n. 20 (1986) *aff'd Peabody Federation of Teachers, Local 1289, AFT, AFL-CIO* v. *Peabody School Committee,* 26 Mass. App. 1107 (1988). The Union asserts that the ingredient of public policy inherent in block scheduling is not "so comparatively heavy that collective bargaining is to be denied effect," citing *School Committee of Boston,* 378 Mass. at 71. On the contrary, the Union maintains that given the integral relationship between the teacher's work day and the student schedule, any educational decision to fundamentally revamp the daily classroom schedule for students inevitably required bargaining over the ingredients of working conditions directly tied to the daily classroom schedule. The Union asserts that block scheduling has impacted numerous terms and conditions of teachers' employment, including: instructional time, course load, lesson plans, teaching methodologies, compensation, workload, training and professional development, disciplinary implications, standard of performance, and assignments.

The Union acknowledges that, like a managerial decision to reduce the level of services, the obligation to comply with the instructional time requirement is itself not bargainable. However, the Union asserts that the method for implementing the instructional time requirement, like other managerial decisions, is clearly bargainable, citing *Peabody School Committee,* 13 MLC 1313 (1986) (school committee's decision to exceed contractual class size limits violated Chapter 150E where the decision was motivated by economic rather than purely educational factors). Thus, the Union argues, to the extent that the School Committee's motivation in adopting block scheduling was to comply with the time in learning requirements rather than pure educational policy, it had a duty to bargain over how it intended to do so. Moreover, the Union asserts that the parties did bargain over achieving time in learning requirements in their successor negotiations in 1995 and arrived at an accommodation that satisfied the law and that was acceptable to both sides. However, the Union maintains that the School Committee's desire to ascertain other ways to implement time in learning pursuant to the DOE's Regulations should have been subject to collective bargaining.

Here, we recognize that the School Committee's decision to comply with the DOE's Regulations mandating time in learning standards

60. The School Committee argues that although the language of Chapter 71 § 37 prior to the passage of the Education Reform Act was substantially broader, the Act did not reduce or eliminate the control of the School Committee over educational goals and policies.

was not a subject over which it was obligated to bargain with the Union. The DOE's "Student Learning Time Regulations" required all public schools to ensure that no later than the 1997-1998 school year, every secondary school student receive a minimum of 990 hours per school year of structured learning time.[61] The DOE's stated goals in increasing time in learning were to provide high quality learning opportunities and to stimulate changes in the use of school time to improve the quality of student learning experiences. Therefore, because the DOE provided a specific mandate that secondary schools provide students with 990 hours of time in learning, the School Committee was not obligated to bargain with the Union over its decision to adhere to the time in learning requirement. *See Lowell School Committee*, 26 MLC 111 (2000); *Higher Education Coordinating Council*, 22 MLC 1662, 1668 (1996).

The Impact Bargaining Requirement

However, even if a decision lies outside the sphere of collective bargaining because it is determined to be a matter of public policy or a managerial decision, a public employer is still required to bargain over the impact of that managerial decision if it affects employees' wages, hours, and other terms and conditions of employment. *School Committee of Newton* v. *Labor Relations Commission*, 388 Mass. 557, 564 (1983); *Higher Education Coordinating Council*, 22 MLC 1662, 1668 (1996); *Springfield School Committee*, 20 MLC 1077(1993). Thus, in cases where an employer is excused from the obligation to bargain over a decision made by a third party, that employer is still required to bargain with the union representing its employees about how to implement the decision, as well as the impacts of the decision on mandatory subjects of bargaining, before it implements that decision. *Lowell School Committee*, 26 MLC 111, 113 (2000) *citing Higher Education Coordinating Council*, 22 MLC 1662, 1670-1671 (1996). Likewise, employers must bargain over the impacts of decisions based on core governmental decisions, *School Committee of Newton* v. *Labor Relations Commission*, *supra*, and school committees must bargain over the impacts of decisions based on educational policy. *See Groton School Committee*, 1 MLC 1221 (1974).

While M.G.L. c. 71 gives the School Committee the inherent management right to establish educational policy, it does not relieve the Committee of its duty to bargain pursuant to Chapter 150E. *Springfield School Committee*, 20 MLC 1077, 1082 (1993). Therefore, for the reasons cited below, we conclude that the School Committee was obligated to bargain over the impact of its decision to adhere to the time in learning requirement on teacher's wages, hours, and terms and conditions of employment, *Higher Education Coordinating Council*, 22 MLC 1662, 1668 (1996) *citing City of Springfield*, 12 MLC 1021 (1995) as well as the means, methods, and mechanisms of implementing that decision. *Higher Education Coordinating Council* 22 MLC at 1671 *citing Commonwealth of Massachusetts*, 18 MLC 1220, 1225 (1994).

We reach this decision for several reasons. First, the facts establish that block scheduling was not the only manner of re-organizing the High School schedule to achieve the required amount of time in learning. In fact, during successor collective bargaining negotiations, the School Committee proposed that release days be eliminated in an effort to comply with the time in learning mandate, a proposal that the Union accepted. Further, the record demonstrates that the School Committee was considering options other than block scheduling to comply with the time in learning requirement. Croteau testified that the School Committee considered a schedule comprised of six periods to achieve the requisite time in learning, and that either a six-period schedule or a block schedule would have placed the High School in compliance. Therefore, the evidence in the record establishes that other schedules and means were available to the School Committee to ensure conformity with the 990-hour time in learning mandate. Accordingly, the School Committee's decision to select block scheduling as the method that it would employ to adhere to the 990-hour requirement of time in learning was a decision over which it had a duty to bargain with the Union. Thus, we do not agree that educational policy concerns over block scheduling are so comparatively heavy that the School Committee's obligation to bargain with the Union is to be denied effect. *School Committee of Boston*, 378 Mass. at 71 *citing School Committee of Boston* v. *Boston Teachers Local 66*, 372 Mass. 605, 614 (1977).

Further, we do not find that the School Committee's obligation to bargain with the Union about the implementation of block scheduling will defeat a declared legislative purpose. G.L. c. 71 § 37 provides a general grant of authority to the School Committee to establish educational goals and policies for its schools consistent with the requirements of law, as well as statewide goals and standards established by the Board of Education. In assessing legislative grants of authority, courts have recognized that in the range of cases where the governmental employer acts pursuant to broad, general management powers, the danger is presented that to recognize school committees' statutory authority as exclusive would substantially undermine the purpose of Chapter 150E § 6 to provide meaningful collective bargaining as a general rule with respect to compensation and other terms and conditions of employment. *City of Lynn* v. *Labor Relations Commission*, 43 Mass. App. at 182, *citing School Committee of Newton* v. *Labor Relations Commission*, 388 Mass. at 564-566. Thus, in *City of Lynn*, the court distinguished between those cases in which the employer acts pursuant to a broad grant of authority, as in the present case, and those cases in which the employer acts pursuant to a specific, narrow, statutory mandate. *Id.* at 182. *See also School Committee of Natick* v. *Education Assn. of Natick*, 423 Mass. 34, (1996) (statutory power to contract with athletic coaches for limited term supercedes just cause provision in collective bargaining agreement). Therefore, given the general grant of authority conferred upon school committees by the legislature through G.L. c. 71, we do not find that bargaining over block scheduling would defeat a declared legislative purpose.

Moreover, neither the Education Reform Act nor the DOE Regulations require that public schools adopt a block schedule to achieve

61. 603 CMR 27.04(2).

the requisite time in learning standards set forth by law. In fact, the DOE Regulations contemplate that schools would employ varied scheduling methods to comply with time in learning standards, because the DOE required each public school district to submit a plan to propose how it would provide 990-hours of time in learning to students. Because the DOE Regulations gave considerable discretion to devise plans for compliance with time in learning standards, there is no mandate from the DOE that schools specifically adopt a block schedule to be in compliance. Lastly, as discussed fully above, the School Committee itself initially proposed to the Union that release time be eliminated to achieve time in learning requirements. Therefore, this evidence further supports our decision that bargaining over block scheduling will not conflict with any legislative mandate, or any requirement by the DOE.

The Impacts of Block Scheduling on Teachers' Terms and Conditions of Employment

Having determined that the implementation of block scheduling is not a *per se* matter of educational policy and that the School Committee was obligated to bargain with the Union over its decision to implement block scheduling and the impacts of its decision, we next consider which impacts of the decision require bargaining. Recognizing that the parties are in the best position to identify those aspects of the time in learning requirement that impact on wages, hours, and working conditions, we do not attempt to compile an exhaustive list of negotiable issues. *See Higher Education Coordinating Council*, 22 MLC at 1670, n. 6.

The evidence in the record establishes that block scheduling significantly impacted numerous terms and conditions of teachers' employment. Of particular note is the impact on teachers' workload. Article 5, Section C of the parties' successor collective bargaining agreement provides that whenever feasible, secondary classroom teachers will not be assigned more than five teaching periods per day. The School Committee presented evidence, however, that prior to the implementation of block scheduling, some teachers were assigned to teach more than five classes per year, in an attempt to demonstrate that assigning teachers to teach a sixth class under block scheduling was not a change from past practice. However, we decline to find that the assignment of teachers to teach an additional 84-minute block period under a 3/3 schedule is equivalent to assigning teachers to teach six or more classes under the prior schedule.[62] First, the teachers assigned to teach six or more classes did so during a particular period with a different set of students on different days. Often, these teachers taught the same classes to different students. Further, there are inherent differences in teaching six 84-minute block periods and six 47-minute periods. George, a teacher who had previously been assigned to teach six classes in the 1995/1996 school year, and who was subsequently assigned to a 3/3 schedule under block scheduling, testified that she was required to adopt new instructional techniques and prepare for classes differently because she had to develop a lesson plan for 84 minutes instead of 47 minutes, which is the equivalent of almost two periods under the previous schedule. Moreover, George testified that she could not merely combine two 47-minute periods' worth of material into one 84-minute block because students were not able to absorb that amount of material in one lesson.

Moreover, there is a sizeable difference in comparing the minutes a teacher was required to teach under the previous school schedule and under a block schedule. Under the previous five-period school day, teachers taught 235 minutes per day. Teachers assigned to teach three block periods are required to teach 252 minutes per day, while teachers assigned to teach two block periods are required to teach 168 minutes per day. We decline to find, therefore, that teaching six block periods is equivalent to teaching six classes under a five-period schedule. Thus, we find that the assignment to a 3/2 or a 3/3 schedule and the cognizable differences between teaching a block period and a class period are subjects over which the School Committee was obligated to bargain with the Union.

The record demonstrates that block scheduling impacted other conditions of employment, including the requirement that teachers average grades twice as often and hold parent/teacher conferences more frequently. Moreover, the fact that teachers were required to cover the same curriculum in 90 days on a semester schedule that had been previously taught over 180 days on a year schedule, combined with the demands of teaching an 84-minute block period, demonstrates that teachers' workloads were significantly affected by the demands of the block schedule. Further, in addition to workload, other terms and conditions of employment are necessarily implicated by the implementation of block scheduling, including: training,[63] compensation, job performance, and discipline.

Having decided that the decision to implement a block schedule and the attendant impacts of that schedule were mandatory subjects of bargaining, we turn now to the issue of whether the parties bargained to impasse over the decision to implement block scheduling.

Impasse

A public employer violates Section 10(a)(5) and, derivatively, Section 10(a)(1) of the Law when it unilaterally changes an existing condition of employment or implements a new condition of employment involving a mandatory subject of bargaining without first affording its employees' exclusive collective bargaining representative prior notice and an opportunity to bargain to resolution or lawful impasse. *Commonwealth of Massachusetts* v. *Labor Relations Commission*, 404 Mass. 124, 127 (1989); *School Committee of Newton* v. *Labor Relations Commission*, 388 Mass. 557, 574 (1983); *City of Boston*, 16 MLC 1429, 1434 (1989).

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62. Irving testified that the Union was opposed to assigning teachers to any more than five classes because it considered that to be a violation of the collective bargaining agreement, and that if the Union learned that a teacher was assigned to teach more than five classes in a year, it would file a grievance on his or her behalf to compensate the teacher for additional teaching time.

63. Although the record demonstrates that the High School offered training for teachers on block scheduling issues, there is no evidence that the School Committee provided notice to the Union and an opportunity to bargain over various aspects of the training, including the time, place, and compensation. Moreover, the training was offered during teacher's off-duty time on weekends, a fact that implicates other mandatory subjects of bargaining.

To determine whether impasse has been reached, the Commission considers the following factors: bargaining history, the good faith of the parties, the length of the negotiations, the importance of the issues to which there is disagreement, and the contemporaneous understanding of the parties concerning the state of the negotiations. *Town of Weymouth*, 23 MLC 70, 71 (1996). Further, the Commission focuses specifically on whether the parties have negotiated in good faith on bargainable issues to the point where it is clear that further negotiations would be futile because the parties are deadlocked. *Commonwealth of Massachusetts*, 22 MLC 1039, 1051 (1995) *citing Town of Brookline*, 20 MLC 1570, 1594 (1994).

Thus, to fulfill its responsibility to bargain in good faith, the School Committee was obligated to: 1) make itself available at reasonable times and places for the purpose of negotiating over the decision and impacts of block scheduling, *City of Chelsea*, 3 MLC 1169 (H.O. 1976), *aff'd* 3 MLC 1384 (1977); 2) participate in such negotiations in good faith, *King Philip Regional School Committee*, 2 MLC 1393 (1976); and 3) refrain from unilaterally establishing block scheduling until impasse had been reached on all mandatory aspects of the block scheduling decision. *Melrose School Committee*, 3 MLC 1299 (1976). *Newton School Committee* 5 MLC 1016, 1024 (1978) *aff'd School Committee of Newton* v. *Labor Relations Commission*, 388 Mass. at 572 n.9.

Applying the above-enumerated factors to the record before us, we find that the parties had not bargained to impasse prior to the implementation of block scheduling. First, the School Committee implemented block scheduling at the High School in September 1996, a year before they were required to comply with the DOE's Regulations on time in learning. Although the School Committee urges us to find that the School Committee implemented the trial block schedule during the 1996-1997 school year to work out any problems that would inevitably arise in a new schedule, even if we were to find that the School Committee believed it had a good reason to implement block scheduling a year early, there was no mandate from the DOE that schools actually begin implementing time in learning until September of 1997. Moreover, when the Union inquired of the School Committee at a meeting between the parties on August 28, 1996 why it was implementing block scheduling a year early, the record establishes that the School Committee did not provide any justification to the Union. An employer who declares that it must implement changes at a certain time must establish as an affirmative defense that due to circumstances beyond its control it had to implement a change by a particular time and that imposition of a deadline in the negotiations was reasonable and necessary. *New Bedford School Committee*, 8 MLC 1472, 1478 (1981). Here, because the School Committee failed to provide any reason to the Union to explain why it was implementing block scheduling a year prior to the DOE's mandate, it has not met this standard.

Moreover, when the School Committee decided to implement block scheduling, it failed to provide sufficient notice to the Union of its decision and the opportunity to bargain over any impacts of the decision. It is well-settled that a public employer must notify the union of a potential change before it is implemented so that the bargaining representative has an opportunity to present arguments and proposals concerning the proposed alternatives. *Town of Hudson*, 25 MLC 143, 148 (1999). Notice of a change in terms and conditions of employment is adequate under the Law when it is sufficiently clear to allow the union to make a judgment about an appropriate response and when it is made far enough in advance of implementation to allow effective bargaining to occur. *Boston School Committee*, 4 MLC 1912 (1978). Here, the School Committee knew as early as June 12, 1995 that it planned to implement block scheduling during the 1996-1997 school year, as demonstrated by Jackman's distribution of the "End of the Year Report" to the DOE's grant supervisors. Jackman's report states that the High School intended to implement block scheduling as a trial project on Fridays during the 1995-1996 school year. Yet during the parties' successor negotiations in March 1995 through June 1995, which took place almost simultaneously with Jackman's report, the School Committee never raised with the Union the issue of block scheduling.

Similarly, there was no attempt by the School Committee to provide notice to the Union of the fact that teachers would be assigned to 3/3 schedules for the 1996-1997 school year. The evidence demonstrates that the School Committee knew that teachers may be assigned to 3/3 schedules as early as March 13, 1996, as demonstrated by Croteau's testimony that he informed the School Committee on that date that it needed to consider assigning teachers to 3/3 schedules. Croteau also testified that he advised the School Committee that a combined 3/2 and 3/3 plan would be ideal, but that the School Committee would have to bargain with the Union over the impacts of a 3/3 plan on teachers' schedules. Thereafter, at a meeting in August 1996, the School Committee unanimously voted to implement block scheduling at the High School. However, despite the School Committee's knowledge that some teachers would be assigned to a 3/3 schedule, and further recognizing that they would be obligated to bargain with the Union over the impact of those assignments, the School Committee took no action to provide notice to the Union of this eventuality.

In fact, the Union learned from its own members that the High School was assigning, and in some cases, pressuring, teachers to teach a 3/3 schedule by the High School. The Union learned from several teachers that they were assigned to 3/3 schedules in July 1996, only two months prior to the School Committee's planned implementation date for block scheduling. It was at that time that the Union submitted a demand to bargain over the impact of block scheduling on teachers' terms and conditions of employment. The Union reiterated in a subsequent letter to Jackman that the parties' collective bargaining agreement covered all aspects of teachers' schedules, and that no one should be forced or assigned to teach a sixth period. These facts lead us to the conclusion that even if the School Committee believed that it had no obligation to bargain over the decision to implement block scheduling and was only required to bargain over any impacts, it made no attempt to provide notice to the Union and a sufficient opportunity to bargain over any impacts of the new schedule prior to its implementation, including the assignment of teachers to 3/3 schedules.

Once the Union made its demand to bargain, the parties met twice before the School Committee implemented block scheduling in September 1996. In the two meetings between the parties prior to implementation, the Union raised several issues concerning the

impact of block scheduling on teachers' working conditions, and further inquired of the School Committee why it was implementing block scheduling a year prior to the date required by the DOE. However, the evidence demonstrates that the School Committee did not respond to the Union's concerns. Moreover, the School Committee never moved from its original position that it was not required to bargain over the decision to implement block scheduling. An analysis of whether the parties are at impasse requires an assessment of the likelihood of further movement by either side. *Woods Hole, Martha's Vineyard and Nantucket Steamship Authority*, 14 MLC 1518, 1529 (1988). However, there can be no impasse justifying unilateral action if the cause of the deadlock is the failure of one of the parties to bargain in good faith. *School Committee of Newton* v. *Labor Relations Commission*, 388 Mass. at 574, *citing New York Printing Pressmen and Offset Workers, Union No. 51* v. *NLRB*, 538 F. 2d 496, 501 (2d. Cir. 1976) (citations omitted).

The term "good faith" implies an open and fair mind as well as a sincere effort to reach a common ground. *School Committee of Newton*, 388 Mass. at 572 (citations omitted). Indeed, the very concept of collective bargaining presupposes a desire to reach ultimate agreement. *Id.* While such an obligation does not compel either party to agree to a proposal or make a concession, it does require that each party enter into discussions with an open and fair mind, have a sincere purpose to find a basis of agreement and make reasonable efforts to compromise their differences. *Id.; King Phillip Regional School Committee*, 2 MLC 1393, 1396 (1976). The employer is obliged to make some reasonable effort in some direction to compromise differences with the Union if the good faith requirement imposes any substantial obligation at all. Agreement by way of compromise cannot be expected unless the one rejecting a claim or demand is willing to make a counter suggestion or proposal. *City of Chelsea*, 3 MLC 1048, 1050 (H.O. 1976) *citing NLRB* v. *Polling & Son Co.*, 119 F2d. 32 (1941).

In assessing the totality of the circumstances, we conclude that the parties were not at impasse because the School Committee failed to bargain with the Union in good faith. This determination is based on several factors, including: the School Committee's failure to provide sufficient notice to the Union that it intended to implement block scheduling and potentially assign teachers to teach a sixth block under a 3/3 schedule, the limited number of bargaining sessions, the School Committee's continued denial that it had any obligation to negotiate with the Union over the implementation of a block schedule, its lack of response to the Union's concerns over the impact on teachers' terms and conditions of employment, and the fact that the School Committee implemented a block schedule a year prior to the date mandated by the DOE without explanation to the Union. There is no evidence that the School Committee had a sincere purpose to resolve its differences with the Union prior to implementation of the block schedule in September 1996.

Further, we find that the School Committee did not bargain for a sufficient amount of time to even approach deadlock. In *School Committee of Newton*, 388 Mass. at 574, the court affirmed the Commission's decision that the School Committee could not refuse to bargain for a period of over four months, negotiate for two days prior to the implementation of a change, and then contend that it had fulfilled its bargaining obligation. An employer may not artificially shorten the time available for the bargaining process to operate by delaying announcement or notice of proposed changes until the last minute. *Newton School Committee*, 5 MLC 1016, 1026 (1978) *citing Boston School Committee*, 4 MLC 1912, 1916 (1978). Here, as in *Newton School Committee*, the School Committee could not delay bargaining, meet two times with the Union and subsequently implement a change to the school schedule on a date that it had unilaterally determined was an appropriate date to start a block schedule at the High School.[64]

CONCLUSION

Accordingly, we find that the School Committee failed to provide notice to the Union and an opportunity to bargain in good faith over the decision or the impacts of the decision to implement block scheduling, including assigning teachers to teach an additional sixth class, in violation of Sections 10(a)(5) and derivatively, 10(a)(1) of the Law.

REMEDY

The traditional remedy for violations of the duty to bargain in good faith is an order restoring the status quo ante until the bargaining obligation has been fulfilled. *Natick School Committee*, 11 MLC 1387 (1985). Here, however, a return to the status quo ante cannot be achieved because the School Committee has changed the structure of the school schedule of Taunton High School, which is established on a school year basis. Therefore, we order the School Committee to: 1) bargain in good faith to impasse or resolution with the Union over the decision to implement block scheduling and the impacts of that decision on bargaining unit members' terms and conditions of employment; 2) if the parties have not completed their negotiations over the decision to implement block scheduling and the impacts of that decision on bargaining unit members' terms and conditions of employment, as well as the assignment of teachers to 3/2 or 3/3 schedules, by the 2002/2003 school year, refrain from implementing block scheduling, or assigning teachers to 3/2 or 3/3 schedules for the 2002/2003 school year until the parties have bargained to resolution or impasse; 3) make whole any bargaining unit member who has suffered a monetary loss as a result of the School Committee's unilateral decision to implement block scheduling at Taunton High School. *See City of Gardner* 10 MLC 1218 (1983). Any uncertainty about which employee or employees suffered economic harm can be resolved either by the parties themselves or, if necessary, by a compliance proceeding. *Id.* at 1223. This remedy attempts to place the Union and the affected employees in the position they would have been in absent the School Committee's unlawful conduct.

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64. The Union and the School Committee met after the implementation of block scheduling in 1996 to discuss the impacts of block scheduling, but were similarly not able to reach agreement on the impacts of block scheduling on teachers' conditions of employment.

ORDER

WHEREFORE, based upon the foregoing, IT IS HEREBY ORDERED that the Taunton School Committee shall:

1. Cease and desist from:

a. Failing and refusing to bargain in good faith with the Union over the decision to implement block scheduling and over the impacts of that decision on bargaining unit members' terms and conditions of employment.

b. Failing and refusing to bargain in good faith with the Union about the decision to assign teachers to a 3/3 or a 3/2 schedule.

c. In any like or related manner, interfering with, restraining or coercing employees in the exercise of their rights under the Law.

4. Take the following affirmative action which will effectuate the purposes of the Law:

a. Upon request of the Union, bargain in good faith to impasse or resolution with the Union over the decision to implement block scheduling and the impacts of that decision on bargaining unit members' terms and conditions of employment.

b. Upon request of the Union, bargain in good faith to impasse or resolution with the Union over the assignment of teachers to 3/2 or 3/3 schedules.

c. Make whole any unit member who suffered economic losses as a direct result of the School Committee's decision to implement a block schedule at the Taunton High School.

d. Pay interest on all sums owed at the rate specified in *Everett School Committee*, 10 MLC 1604 (1984), up to the date the School Committee complies with this Order.

e. If the parties have not completed their negotiations over the decision to implement block scheduling and the impacts of that decision on bargaining unit members' terms and conditions of employment, and the assignment of teachers to 3/2 or 3/3 schedules by the 2002/2003 school year, refrain from implementing block scheduling, or assigning teachers to 3/2 or 3/3 schedules for the 2002/2003 school year until the parties have bargained to resolution or impasse.

f. Sign and post in all conspicuous places where bargaining unit employees usually congregate and where notices to employees are usually posted, and maintain for a period of thirty (30) days thereafter, copies of the attached Notice to Employees; and take reasonable steps to ensure that these notices are not altered, defaced or covered by any other material.

g. Notify the Commission in writing of the steps taken to comply with this decision within thirty (30) days after the date of receipt of this decision.

SO ORDERED.

NOTICE TO EMPLOYEES

The Massachusetts Labor Relations Commission has held that the Taunton School Committee violated M.G.L. c.150E, Sections 10(a)(5) and (1) when it failed or refused to bargain with the Taunton Education Association (the Association) to resolution or impasse over the decision to implement block scheduling, the impact of that decision on bargaining unit members' terms and conditions of employment, and the assignment of teachers to 3/2 or 3/3 block schedules.

1. WE WILL NOT refuse to bargain in good faith with the Union over the decision to implement block scheduling and the impact of that decision on bargaining unit members' terms and conditions of employment.

2. WE WILL NOT refuse to bargain in good faith with the Union about the decision to assign teachers to 3/2 or 3/3 block schedules.

3. WE WILL NOT, in any like or related manner, interfere with, restrain or coerce employees in the exercise of their rights under the Law.

4. WE WILL, upon request of the Union, bargain in good faith to agreement or impasse about the decision to implement block scheduling and the impacts of that decision on bargaining unit members' terms and conditions of employment.

5. WE WILL, upon request of the Union, bargain in good faith to agreement or impasse about the assignment of teachers to 3/2 or 3/3 block schedules.

6. WE WILL make whole any employees represented by the Association for any loss of earnings suffered as a result of the School Committee's unlawful unilateral change in implementing a block schedule, plus interest on all sums owed at the rate specified in *Everett School Committee*, 10 MLC 1604 (1984), up to the date the School Committee complies with this part of the order.

[signed]
For the Taunton School Committee

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