

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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Before the Atomic Safety and Licensing Board

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In the Matter of)
Philadelphia Electric Company) Docket Nos. 50-352
(Limerick Generating Station,) 50-353
Units 1 and 2)

OFFICE OF SECRETARY
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BRANCH

TESTIMONY OF DR. MICHAEL A. WORMAN
FOR THE COMMONWEALTH OF PENNSYLVANIA
ON LIMERICK ECOLOGY ACTION CONTENTION LEA-12

Q.1. Dr. Worman, please state your position.

A.1. I am Deputy Secretary for Administration,
Pennsylvania Department of Education.

Q.2. What is the purpose of your testimony?

A.2. The purpose of this testimony is to respond to
Contention LEA-12.

Q.3. What does LEA-12 state?

A.3. LEA-12 states:

The draft Montgomery, Chester, and Berks County
RERP's and the School District RERP's are not
capable of being implemented because there is not
reasonable assurance that there will be
sufficient numbers of teachers and staff required
to stay at school during a radiological emergency
if sheltering is recommended as a protective
measure, or that there will be sufficient numbers
of school staff available to evacuate with
children in the event of a radiological
emergency. Therefore, children are not
adequately protected by the draft RERP's.

Q.4. What is your response to LEA-12?

A.4. With regard to Pennsylvania public schools, I wish to make the following points:

Evacuation Plans: Public school districts do not have responsibility or authority to develop evacuation plans under the Pennsylvania Emergency Management Services Act. A school district is not defined as a political subdivision within the language of the Act (35 Pa. C.S. Section 7102, 7501(a)). Any evacuation planning done by the school district must be consistent with the encompassing political subdivision's controlling plan.

Public school districts do have express authority and duty to conduct fire and emergency evacuation drills pursuant to Section 1517 of the Public School Code, 24 P.S. Section 15-1517.

Local Authority to Regulate Employee Conduct Generally: Section 510 of the Public School Code, 24 P.S. Section 5-510, gives school districts the authority to adopt and enforce rules and regulations regarding the management of school affairs and the conduct and department of all employees as well as students. By the express language in this section the authority covers the period pupils attend the public schools as well as the time spent coming to and returning from schools. This period would include the evacuation from the schools because of an emergency. Therefore, a district can, if it chooses, adopt rules and regulations setting forth teacher responsibility during evacuation. The district may also include the intended discipline if the rules are not followed.

Department of Education Review of Local Authority Over Employees: If a district dismisses a teacher for violation of local district rules governing evacuation conduct, the professional employee has a right to have the dismissal reviewed by the Secretary of Education. The review would center on whether the district acted reasonably in the dismissal, i.e. whether substantial evidence supported the district's decision. Factors important to the decision are whether local rules are consistently applied, reasonable, and known to the professional employees. In situations as extreme as evacuation, the department has stressed the importance of any district rules being in written form and distributed to the employees. In view of the controlling nature of the local subdivision's evacuation responsibility and authority, it would also be important that local district rules be in harmony with the plan of the encompassing political subdivision.

Collective Bargaining Agreement Impact: Nothing in the Public School Code, 24 P.S. Section 1-101 et seq., or the Public Employees Relations Act (PERA, 43 P.S. Section 1101.101 et seq.) prohibits a collective bargaining agreement (CBA) from addressing employee responsibility during emergency evacuations. However, by Section 703 of PERA, 43 P.S. Section 1101.73, any provision depriving an employee of rights under the School Code would be unenforceable to the extent it violates the Code. It is

possible and legally permissible for the district to have both CBA and Section 510 rules regarding evacuation conduct. Needless to say, the two should be consistent. It is also possible to negotiate CBA provisions which expressly suspend the CBA during the period of an emergency evacuation. It is impossible to speculate as to specific district issues without knowledge of the language in the CBA and any local rules. The local solicitor can provide advice to the board on consistency of these documents. A local district does not, however, appear to have the authority to use either its CBA or local rules to override or alter the provisions of the evacuation plan promulgated by the political subdivision under authority of the Pennsylvania Emergency Management Services Act.

School District Authority to Respond to Emergency Closings: The Public School Code expressly recognizes that a district may be closed due to emergencies such as an evacuation, 24 P.S. Section 25-2523. In such situations the statute authorizes the Secretary of Education, in his discretion, to pay full state subsidy even though the mandatory instructional year may be shortened by the closing. Section 1501 of the Public School Code also recognizes the Secretary's authority to authorize subsidy reimbursement when a district makes a bona fide effort to offer a full instructional year despite emergency closings caused by severe weather conditions.

Emergency closings are reported to the Department of Education by local districts. Most commonly they occur due to severe weather, however, districts have also directed emergency closings and/or evacuations due to gas leaks, water supply contamination or shortages, power failures and buildings destroyed by fire. The decision to close or evacuate is made by local district officials frequently in concert with other local emergency personnel. It may involve only some buildings within the district or all buildings depending on the nature of the emergency.

Q.5. What about state-licensed private academic schools and/or nonpublic nonlicensed schools?

A.5. Regulations at 22 Pa. Code Section 51.12, addressing private schools, state that provisions for health, physical welfare, and safety of pupils shall be those prescribed and required by the governmental authorities having jurisdiction over such matters. In evacuation situations this would appear to be the local political subdivision having the responsibility to develop the evacuation plan.

No specific statutory or regulatory language addressing nonpublic schools speaks to the issue of student safety during evacuations nor to the staff responsibility during evacuation. It is therefore reasonable to argue that the general language in the Emergency Management Services Act should cover this class of schools. (See, also, the comment regarding public school responsibility when transportation is offered.)

Nonpublic schools and private schools including nurseries receive emergency evacuation planning information and assistance from the Pennsylvania Emergency Management Agency (PEMA) acting directly or through the Department of Education's Division of Nonpublic and Private School Services.

The greatest degree of legally imposed interaction under the Public School Code would be in those instances in which a public school district transports its own students and therefore has triggered the corresponding legal obligation to transport nonpublic school students (24 P.S. Section 13-1361). In evacuation situations, transportation responsibilities as planned by the local district would thus affect the nonpublic population as well.

Statutory provisions at 24 P.S. Sections 2231, 2741(4) and 2742 also address private academic schools. Section 2741(4) addresses safety requirements but the language is directed to physical premises and equipment rather than endangering situations such as emergencies leading to evacuation. The penalty imposed in the statute is loss of private licensure.

Statutes do not vest any authority in local public schools or the Department of Education to control conduct of teachers or other staff of private or nonpublic schools.