

D.U.P. NO. 91-5

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

EATONTOWN BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-90-192

EATONTOWN TEACHERS ASSOCIATION,
SECRETARIAL & CLERICAL UNIT,

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint filed by the Eatontown Teachers Association, Secretarial and Clerical Unit, NJEA against the Eatontown Board of Education alleging that the Board committed an unfair practice when it reassigned photocopying duties to a clerk-typist without prior negotiations. The clerk-typist had previously performed some photocopying and there was no change in hours or days of work. The Director found that the party's contract provided for involuntary transfers and reassignments by the Board, and that the assignment of specific duties is, subject to limited exceptions not present here, a non-negotiable managerial right.

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Appearances:

For the Respondent,
Apruzzese, McDermott, Mastro & Murphy, attorneys
(Robert T. Clarke, of counsel)

For the Charging Party,
Marc Abramson, Field Representative

REFUSAL TO ISSUE COMPLAINT

On January 3, 1990, the Eatontown Teachers Association, Secretarial & Clerical Unit ("Association") filed an unfair practice charge against the Eatontown Board of Education ("Board") alleging that it violated subsections 5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act")^{1/} when it reassigned photocopying duties to Mary Gardner.

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (5) Refusing to

The Commission has delegated its authority to issue complaints to me and established a standard upon which an unfair practice complaint may be issued. The standard provides that a complaint shall issue if it appears that the charging party's allegations, if true, may constitute unfair practices within the meaning of the Act.^{2/} If this standard has not been met, I may decline to issue a complaint.^{3/}

I find that the Commission's complaint issuance standard has not been met.

The charge alleges that Ms. Gardner, a clerk-typist employed by the Board for twenty-six years, was told on September 6, 1989 that she would commence a daily rotation among three different schools and that her primary duty would be to photocopy assigned materials. Previously, Gardner had been assigned to perform various clerical duties at one school. Gardner's hourly and daily work schedule remains the same. The charge admits that Gardner's prior job duties included some photocopying.

1/ Footnote Continued From Previous Page

negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

2/ N.J.A.C. 19:14-2.1.

3/ N.J.A.C. 19:14-2.3.

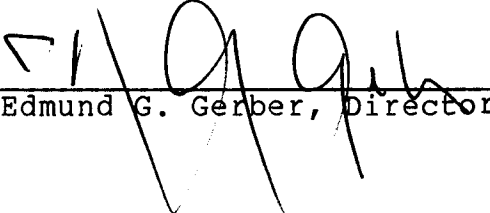
The Board had employed office aides for each school building until the end of June 1989. The aides' primary responsibilities were photocopying materials for teachers. The Board asserts that a reduction-in-force of all office aides at the end of the 1988-89 school year necessitated the reassignment of photocopying duties to Ms. Gardner.

Article X of the contract between the Board and Association provides for involuntary transfers and reassignments. Moreover, subject to limited exceptions, the transfer of employees and assignment of specific duties are non-negotiable managerial rights. Ridgefield Park Bd. of Ed. v. Ridgefield Park Education Ass'n, 78 N.J. 144 (1978); Deptford Tp. Bd. of Ed., P.E.R.C. No. 80-82, 6 NJPER 29 (¶11014 1980) (Board's involuntary transfer of custodial staff between schools held non-negotiable); Kearny, P.E.R.C. No. 83-42, 8 NJPER 601 (¶13283 1982) (employer has managerial right to determine when new juvenile bureau will be staffed and to assign staff to bureau); Union Tp. Bd. of Ed., P.E.R.C. No. 89-50, 14 NJPER 692 (¶19295 1989) (Board has non-negotiable, nonarbitrable right to assign supervisory personnel to cafeteria/hall supervision duty). Here, the Board has the right both to assign Gardner to rotate among the three schools and to assign her photocopying duties for her entire workday. The charge acknowledges that Gardner's responsibilities previously included photocopying.

The charging party argues that the Board improperly transferred unit work outside the unit.^{4/} Although such an allegation, if true, might constitute an unfair practice, no such allegation is contained in the Association's charge. Assuming this issue is now raised, the photocopying work assigned to Mrs. Gardner was previously performed primarily by office aides. The right to bring a charge concerning the preservation of unit work is held by the organization representing office aides, not the Association.

Based upon the foregoing, I conclude that the Commission's complaint issuance standard has not been met and decline to issue a complaint. The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: August 15, 1990
Trenton, New Jersey

^{4/} On June 14, 1990, I wrote to the parties indicating my intent to dismiss the charge. On July 9, 1990, the Association responded objecting to our findings/analysis claiming that I failed to consider the issue of shifting unit work out of the unit without negotiations.