

D.U.P. NO. 96-20

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

In the Matter of

KENILWORTH BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-95-233

KENILWORTH EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint on a charge alleging a unilateral reduction of compensation and hours of work for teachers employed by the Kenilworth Board of Education. The parties had negotiated about these subjects and had reached a side-bar agreement. The Director finds that it would not serve the purposes of the Act to continue to litigate this charge since the subsequent side-bar agreement renders the dispute moot.

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Appearances:

For the Respondent,
James P. Granello, attorney

For the Charging Party,
Balk, Oxfeld, Mandell & Cohen, attorneys
(Sanford R. Oxfeld, of counsel)

REFUSAL TO ISSUE COMPLAINT

On January 17, 1995, the Kenilworth Education Association filed an unfair labor practice charge alleging that the Kenilworth Board of Education violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act); specifically, subsections 5.4(a)(1) and (5).^{1/} The Association asserts that the Board unilaterally reduced the hours of work of the art and music

^{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 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."

teachers effective in the beginning of the 1994-95 school year. Additionally, the Association asserts that the Board refused to negotiate concerning their reductions in compensation and other conditions of employment.

The Board asserts that this charge should be dismissed because it is moot. Additionally, the Board claims that the charge is untimely filed; the subject involves a managerial prerogative, and that a fully bargained contract clause precluded the reopening of the contract over a subject which could have been raised in negotiations.

The Board and the Association were parties to a collective bargaining agreement covering the time period of July 1, 1993 through June 30, 1996. The contract does not address salaries for part time teachers.

In May 1994, the art and music teachers were advised that their hours and compensation would be unilaterally reduced with the beginning of the 1994-1995 school year. The Association requested negotiations in August 1994 due to this change. At that time, the Board refused to negotiate citing the contract's fully bargained clause.^{2/} When the 1994-1995 school year began, the teachers

^{2/} Article XXI C.:

This Agreement represents and incorporates the complete and final understanding and settlement by the parties of all bargainable issues which were or could have been the subject of

started working the reduced hours at a reduced compensation. The charge was filed in January 1995.^{3/}

After the charge was filed, the parties met several times and negotiated over several items including salary for the part time teachers. In July 1995, the parties' executed a side-bar agreement modifying the collective bargaining agreement.

The side-bar agreement included the following language:

The part time art teacher will be compensated at the rate of seventy-two (72%) percent of his full-time equivalent salary of \$67,735 for the 1995-1996 school year. The part time music teacher will be compensated at the rate of (80%) percent of her full time equivalent salary of \$47,821 for the 1995-1996 school year.

Accordingly, the parties thoroughly negotiated the salary, terms and conditions of employment of the part time music and art teachers for 1994-1995 and 1995-1996. Their negotiations resulted in the side-bar agreement. It would not serve the purposes of the Act to continue to litigate this charge since the subsequent side-bar agreement renders this dispute moot.

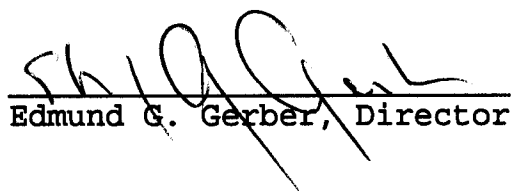
2/ Footnote Continued From Previous Page

negotiations. During the terms of this Agreement, neither party will be required to negotiate with respect to any such matter, whether or not covered by this Agreement, and whether or not within the knowledge or contemplation of either or both of the parties at the time they negotiated or signed this Agreement.

3/ It appears that this charge is timely since it was filed within six months of when the teachers hours of work were reduced. N.J.S.A. 34:13A-5.4(c).

Accordingly, I find that the Commission's complaint issuance standard has not been met and I will not issue a complaint on the allegations of this charge.^{4/}

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: April 4, 1996
Trenton, New Jersey