D.U.P. NO. 93-41

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

In the Matter of

MANALAPAN-ENGLISHTOWN BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-93-218

MANALAPAN-ENGLISHTOWN EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint and dismisses an unfair practice charge involving an alleged increase in the workload of teachers employed by the Manalapan-Englishtown Board of Education. Workload language is included in the parties' collective bargaining agreement. Interpretation of contract language should be addressed through the grievance procedure, not through an unfair practice charge pursuant to State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).

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Appearances:

For the Respondent,
Cassetta, Taylor & Whalen
(Raymond A. Cassetta)

For the Charging Party,
Klausner, Hunter, Cige & Seid, attorneys
(Stephen B. Hunter, of counsel)

REFUSAL TO ISSUE COMPLAINT

On December 21, 1992, the Manalapan-Englishtown Education Association filed an unfair practice charge alleging that the Manalapan-Englishtown 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/] by unilaterally

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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."

increasing the teachers' workload at the new Middle School (which opened in September 1992) when it added one additional instructional period to the teachers' workday. The new period is called a "Flex" period during which teachers must provide remedial and enrichment activities for students. Examples of Flex period activities include: assisting students with classwork, computer labs, mass media, writer's room, student government, cooperative learning, science projects, etc. The Association further alleges that the Flex period implementation was to occur in the 1994-95 school year, pursuant to a steering committee report adopted by the Board in the spring of 1992.

The Board asserts that increasing the teachers' workload from five periods to six periods per day is permitted by the current collective bargaining agreement. Article VII, Teaching Hours and Load, provides that:

> 7.15:1 Teachers at the Manalapan-Englishtown Middle School may be assigned (volunteers preferred) to a sixth teaching period instead of being assigned to supervise a study hall. This Section does not apply to those departments or teachers who have heretofore been assigned six (6) teaching periods.
>
> 7.15:2 The program or subject content of the sixth (6th) teaching period will not be used to either reduce staff size or class size. The sixth teaching period program will be in addition to the regular curriculum.
>
> 7.15:3 To the extent possible, teachers who are utilized in this sixth teaching period program in lieu of assignment to a study hall will be relieved of their homeroom

> or a.m./p.m. duty assignment on a one-for-one basis.

The Association claims this language is not applicable because of the opening of the new school. Further, the mandatory implementation of a sixth instructional period was not contemplated when the contract was negotiated. The Association asserts that the past practice had been that the sixth period was used as a study hall assignment or for teachers to voluntarily work with students on enrichment or remedial programs.

The extent of pupil-teacher contact time is mandatorily negotiable. See, e.g., Burlington Cty. College Faculty Ass'n v. Bd. of Trustees, 64 N.J. 10 (1973); Maywood Bd. of Ed. v. Maywood Ed. Ass'n, 168 N.J. Super 45 (App. Div. 1979), certif. den. 81 N.J. 292 (1979). Here, however, the employer argues that the increase in pupil contact time is authorized by the collective negotiations agreement. See Carlstadt Bd. of Ed., P.E.R.C. No. 91-72, 17 NJPER 153 (¶22062 1991).

The allegations raised in this charge involve the interpretation of Article VII in the parties' collective bargaining agreement. In State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984), the Commission held that where there is a claim of a contract violation, the Commission will not entertain an allegation of a violation of subsection (a)(5) if an employer reasonably relies upon contract language for its actions and does not repudiate the contract. Here, the Board relies on contract language which the Association claims does not apply due

to changed circumstances. Accordingly, there is a good faith dispute over the interpretation of contract language and it should be resolved through the contract's grievance procedure.

Accordingly, I have determined that the Commission's complaint issuance standard has not been met and I decline to issue a complaint in this matter. N.J.A.C. 19:14-2.1 and 2.3. The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES

Edmund G. Gerber, Director

DATED: June 3, 1993
Trenton, New Jersey