

P.E.R.C. NO. 2023-59

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WARREN HILLS REGIONAL BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-2023-112

WARREN HILLS REGIONAL EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission sustains the refusal of the Direct of Unfair Practices to issue a complaint on an unfair practice charge filed by the Warren Hills Regional Education Association. The charge alleges that the Warren Hills Regional Board of Education violated section 5.4a(5) and, derivatively, 5.4a(1) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. when it changed the schedule to include a new "zero" period, which requires teachers to meet with students for twenty minutes beginning at the start of the school day. The Association claims that teachers need to be at school earlier as a result of the scheduling change and that student contact time has increased, and that the Board implemented this unilateral schedule change after promising during contract negotiations that there would be no change in schedules for the 2022-2023 school year. The matter is currently proceeding in arbitration, and the Commission dismisses the charge as the breach of contract claims raised by the Association do not warrant the exercise of its unfair practice jurisdiction.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Respondent, Schenck, Price, Smith & King, LLP,
attorneys (Joseph L. Roselle, of counsel)

For the Charging Party, Oxfeld Cohen, P.C., attorneys
(Randi Doner April, of counsel)

DECISION

On March 30, 2023, the Warren Hills Education Association (Association) filed an appeal of the Director of Unfair Practices's (Director) decision, D.U.P. NO. 2023-20, dismissing the Association's unfair practice charge (UPC), Docket No. CO-2023-112, and deferring the Association's charge to the parties' contractual grievance procedure. The Association's UPC alleges that, in September 2022, the Warren Hills Board of Education (Board) violated section 5.4a(5) and, derivatively, 5.4a(1) of the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq., when it changed the schedule to include a new "zero" period. The Association claims the teachers need to be at school earlier as a result of the scheduling change and that

student contact time has increased. In support of its appeal, the Association filed a letter brief, and the Board filed a letter brief in opposition to the Association's appeal.

We incorporate the Director's Findings of Fact in his decision and set forth the following facts, in pertinent part. The Association is the exclusive majority representative of teaching staff members and other classifications of employees employed by the Board. The Board and Association are parties to a collective negotiations agreement (CNA) with a term of July 1, 2021 through June 30, 2024. Prior to the start of the school year in September 2022, the Board consolidated certain periods and added a period "zero," which requires teachers to meet with students for twenty minutes beginning at 7:25 a.m., the start of their contractual day. Prior to the change, teachers were not required to meet with students beginning at 7:25 a.m. The Association claims that the Board implemented this unilateral schedule change after promising, during contract negotiations in Spring 2022, that there would be no change in schedules for the 2022-2023 school year. The Board denies any such promise was made.

Article VIII of the parties' CNA provides:

Article VIII, Time Requirements

A. Certificated Instructional and
Certificated Non-Instructional Staff- WORKING
HOURS

As professionals, staff are expected to devote to their assignments the time necessary to meet their responsibilities. Staff shall indicate his/her presence at the beginning and end of the workday according to the procedure established by the Board of Education.

1. The Certificated Instructional Staff and Certificated Non-Instructional Staff school day shall be no more than 7 hours and 20 minutes in length. The members day may be extended under stipends for assignments provided for in this agreement and agreed to voluntarily by the teacher and administration. The teachers who extend their day by their own volition will not be compensated.

2. Certificated Instructional Staff student contact time shall be no more than 267 minutes per average day and no less than 190 minutes per day.

3. Certificated Instructional Staff student contact time includes but is not limited to: classroom instruction, homeroom, study hall duty supervision, lunch duty supervision, and library duty supervision.

On January 9, 2023, the Association filed a grievance that states the following:

Issue: The District has unilaterally implemented a new high school schedule increasing the length of the school day, the amount of student contact time, and the number of duty/preparatory periods violating the negotiated agreement.

Remedy: The District shall follow the negotiated agreement and, anything else the arbitrator deems appropriate to make all impacted members whole.

The parties were scheduled to arbitrate the grievance, Docket No. AR-2023-301, on May 22, 2023.

In the Director's decision, he found that the sole issue in the Association's UPC is the contractual interpretation of the CNA's Article VIII(A), and thus, dismissal of the UPC was appropriate. In its appeal of the Director's decision, the Association argues that the Board's unilateral schedule change, following its promise not to do so during negotiations, is a repudiation of the CNA and therefore a violation of the Act. In response, the Board argues that the sole issue before the Commission is whether the Board's schedule change violated the parties' CNA by increasing student contact time, which is presently pending before an arbitrator.

Allegations setting forth mere breaches of contract claims do not warrant the exercise of the Commission's unfair practice jurisdiction. However, if a breach of contract claim is sufficiently related to specific allegations that an employer has violated its obligation to negotiate under 5.4a(5) of the Act, our unfair practice jurisdiction may be triggered. State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984). To determine whether an unfair practice charge is predominately related to a to 5.4a(5)'s obligation to negotiate in good faith or is an unrelated breach of contract claim which does not warrant the exercise of our unfair practice

jurisdiction, it is necessary to look closely at the nature of the charge and all the attendant circumstances. Ibid.

We agree with the Director's decision to dismiss the unfair practice charge as the breach of contract claims herein do not warrant the exercise of our unfair practice jurisdiction. This matter is currently proceeding in arbitration, with an arbitration hearing that was scheduled for May 22, 2023. Arbitration is the proper forum for the issue raised by the Association. The arbitrator will consider the Association's allegations that the Board's unilateral schedule change violated the CNA by increasing student contact time as well as its claim that the Board promised not to change schedules for the 2022-2023 school year.

ORDER

The unfair practice charge is dismissed.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Papero and Voos voted in favor of this decision. None opposed. Commissioner Ford recused himself.

ISSUED: June 29, 2023

Trenton, New Jersey