

D.U.P. NO. 91-30

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

In the Matter of

MIDDLETOWN TOWNSHIP BOARD  
OF EDUCATION,

Respondent,

-and-

Docket No. CO-91-299

MIDDLETOWN TOWNSHIP  
EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses a charge brought by the Middletown Township Education Association against the Middletown Township Board of Education. The charge alleged a contract provision concerning the number of duty assignments a teacher may receive is not being complied with at one school although all other schools in the district are complying with the contract. The Director held this type of inconsistent application of the contract is not a repudiation within the meaning of Human Services, P.E.R.C. No. 84-149, 10 NJPER 419 (¶15191 1984).

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Appearances:

For the Respondent,  
Richard B. Holzman, Superintendent

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

REFUSAL TO ISSUE COMPLAINT

On May 9, 1991, the Middletown Township Education Association filed an unfair practice charge alleging that the Middletown Township Board of Education violated N.J.S.A. 34:13A-5.1, specifically 5.4(a)(1) and (5). It was alleged that the Board and the Association are parties to a collective negotiations agreement. That agreement limits the number of duty assignments a teacher may be assigned in one day. It is alleged that the contract is being complied with at four of the five schools in the district. At one school however, the Thomas Middle School, the contract has not been complied with. The charging party alleges that the contract is

being repudiated and therefore, the employer has committed an unfair practice.

In State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984), the Commission held that:

a mere breach of contract claim does not state a cause of action under subsection 5.4(a)(5) which may be litigated through unfair practice proceedings and instead parties must attempt to resolve such contract disputes through their negotiated grievance procedures.

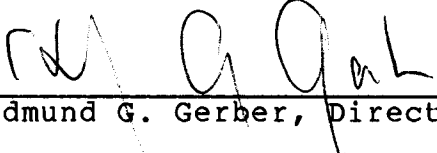
In that case, the Commission set forth some examples of situations where a breach of contract claim bears a sufficient relationship to an alleged violation of the Act so as to warrant the processing of a charge and the possible issuance of a complaint: (1) The employer repudiates an established term or condition of employment. (2) The employer decides to abrogate a contract clause based on its belief that the clause is outside the scope of negotiations. (3) The contract clause is so clear that an inference of bad faith arises from a refusal to honor it. (4) Factual allegations indicate that the employer changed the parties' past and consistent practice in administering the disputed clause. (5) Specific allegations of bad faith over and above mere breach of the collective negotiations agreement are present. (6) Breach of the agreement places the policies of the Act at stake.

Where a breach of contract claim is asserted in an unfair practice charge, we examine the allegations to determine whether there is a sufficient connection between the duty to negotiate in

good faith and the alleged contractual violation in order to determine whether to issue a complaint.

Here, the employer is complying with the contract at four other schools. The inconsistent application of a contract provision is not a repudiation within the meaning of Human Services. The charge is dismissed.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Edmund G. Gerber, Director

DATED: June 18, 1991  
Trenton, New Jersey