

D.U.P. NO. 95-1

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

In the Matter of

ORANGE BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-94-165

ORANGE EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses portions of an unfair practice charge filed by the Orange Education Association against the Orange Board of Education. The Director determined that a portion of the charge was untimely filed. Another portion of the charge involving an interpretation of the parties' collective negotiations agreement was dismissed under State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).

The Director issued a Complaint and a Notice of Hearing on an allegation that the Board unilaterally increased the work 1993-1994 school year without negotiating compensation for the increase.

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

In the Matter of

ORANGE BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-94-165

ORANGE EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Respondent,
Schwartz, Simon, Edelstein, Celso & Kessler, attorneys
(Nicholas Celso, III, of counsel)

For the Charging Party,
Bucceri & Pincus, attorneys
(Gregory T. Syrek, of counsel)

DECISION

On November 30, 1993, the Orange Education Association filed an unfair practice against the Orange Board of Education, alleging violations of subsections 5.4(a)(1) and (5)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. The Association alleges that the Board unilaterally (1) increased

^{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."

the 1992-93 work year from 185 days to 186 days; (2) added an additional two days to the 1993-94 work year for a total of 188 days and (3) assigned an additional teaching period to high school teachers for the 1993-1994 school year.

The Board denies that it engaged in any unfair practices. It asserts that the Association's first allegation is untimely filed pursuant to N.J.S.A. 34:13A-5.4(c). It also asserts that the parties' collective negotiations agreement permits it to increase the teachers' work year and their teaching work load.

N.J.S.A. 34:13A-5.4(c) prohibits any complaint issuing on "any unfair practice occurring more than six months prior to the filing of the charge..." unless the person was prevented from filing a timely charge. In its first count, the Association alleges that the Board acted "at a meeting in May, 1993" to unilaterally schedule an additional day for the 1992-1993 school year. This incident falls outside the statutory time limitation for issuance of a complaint. Absent an allegation that the Association was prevented from filing in a timely fashion, I dismiss this portion of the charge. N.J.A.C. 19:14-2.1.

The Association also alleges that the Board refused to negotiate additional compensation for "over half of the high school teachers" whose teaching assignments were increased from five to six teaching periods per day for the 1993-1994 school year.

The parties' collective negotiation agreement in Article IV, Teaching Hours and Teaching Load, provides that:

C. Teaching Load

2. All secondary (7-12) teachers shall teach a maximum of 25 periods per week. In the event that these teachers are assigned more than 25 periods per week, they shall have no homeroom or duty assignments except in extraordinary circumstances.

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).

However, this portion of the charge involves an interpretation of Article IV 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. The Association does not claim that the Board has assigned homeroom or duty assignments in addition to the extra teaching period.^{2/} The Board relies on Article IV of the parties' collective negotiations agreement.

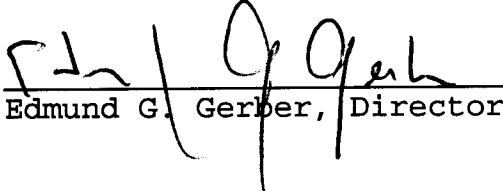
^{2/} The parties' agreement contains a sidebar agreement in settlement of previously filed unfair practice charge, CO-H-92-201. The sidebar agreement specifies a one-time lump sum payment of \$1,500 to those teachers who were required to teach more than 25 instructional periods a week, as well as a homeroom and duty assignment during the 1991-1992 school year. (Emphasis added.)

Accordingly, there is a good faith dispute over the interpretation of contract language which should be resolved through the parties' grievance procedure. See Carlstadt Bd. of Ed., P.E.R.C. No. 91-72, 17 NJPER 153 (¶22062 1991). Therefore, this portion of the charge is also dismissed.

Finally, the Association alleges in its second count that the Board unilaterally increased the 1993-1994 school year, without negotiating compensation for the increase. It asserts that the school year is presently three days longer than in past years.

The Board argues that it has a managerial and a contractual right to establish the school year. The Commission and the courts have found that the issue of compensation for increased workload is severable from the issue of the Board's right to establish the school calendar. See Woodstown-Pilesgrove Reg. H.S. Bd. of Ed. v. Woodstown-Pilesgrove Reg. Ed. Ass'n, 164 N.J. Super. 106 (App. Div. 1979), aff'd 81 N.J. 582 (1980; Maywood Bd. of Ed., P.E.R.C. No. 85-36, 10 NJPER 571 (¶15266 1984); Somerville Bd. of Ed., P.E.R.C. No. 87-128, 13 NJPER 323 (¶18134 1987). Accordingly, I will issue a Complaint and Notice of Hearing on this allegation only. The remainder of the charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: July 19, 1994
Trenton, New Jersey