D.U.P. NO. 95-27

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

In the Matter of

BOROUGH OF MIDLAND PARK,

Respondent,

-and-

Docket No. CO-95-219

PBA LOCAL 79,

Charging Party.

SYNOPSIS

The Director of Representation declines to issue a complaint in a matter brought by PBA Local 79 against the Borough of Midland Park. The PBA contends that the Borough unilaterally altered the work schedule without negotiations. The Employer argued that the collective negotiations contract gave it the right to make the change. It was found that the charge concerned the contract interpretation and does not allege an unfair practice.

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Appearances:

For the Respondent,
Robert T. Regan, attorney

For the Charging Party,
Loccke & Correia, attorneys
(Joseph Licata, of counsel)

REFUSAL TO ISSUE COMPLAINT

On January 4, 1995, PBA Local 79 filed an unfair practice charge alleging that the Borough of Midland Park violated N.J.S.A. 34:13A-5.4(a)(1), (3), (5) and (7)[1/] when on December 29, 1994, the Borough rescinded the existing 4 days on 2 days off (4-2) work

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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. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage 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. (7) Violating any of the rules and regulations established by the commission."

schedule and instituted a 5 days on 2 days off (5-2) work schedule. The charge alleges that in the agreement between the parties, which expires on December 31, 1995, the parties agreed to an experimental change from a 5-2 work schedule to a 4-2 work schedule for 1994. It was understood that if the Borough wished to change the work schedule, the parties would meet to discuss the pros and cons of maintaining the 4-2 work schedule prior to any change. However, on December 29, 1994, without notice, the mayor and council met at closed session and unilaterally imposed the 5-2 schedule.

The Borough maintains it had a right to alter the contract pursuant to the terms of the contract and had no obligation to negotiate this clause.

Article IX of the collective negotiations agreement between the parties provides:

> The parties agree to participate in a one (1) year experimental work chart based on a 4/2 system at the end of which the employer may terminate the 4/2 work schedule and revert to the prior scheduling system. Under the 4/2 work chart system overtime shall be defined as work in excess of the basic eight (8) hour work day or work on a regular day off (RDO) as is defined by the 4/2 system. The 4/2 schedule shall be four (4) days of like tours, followed by two (2) days off, followed by four (4) days of like tours, followed by two (2) days of time off, and so on. It is understood that the employer may terminate the work schedule at the end of said one year. The experimental work year shall commence January 1, 1994. (emphasis supplied)

Contrary to the PBA's charge, Article IX does not obligate the employer to negotiate prior to reverting to a 5-2 contract at the end of the year. In general, a contract article which expressly addresses a term and condition of employment acts as a waiver of a majority representative's right to further negotiations over that

issue. An employer can refuse to negotiate over what has already been bargained and reduced to writing in the agreement. Passaic Cty. Reg HS Dist. No. 1, P.E.R.C. No. 91-11, 16 NJPER 446 (¶21192 1990). When collective negotiations agreements are reached, they must be reduced to writing. These written agreements set terms and conditions of employment for the life of the contract, unless the parties mutually agree to change them. Middlesex Bd. of Ed., P.E.R.C. No. 94-31, 19 NJPER 544 (¶24257 1993); Passaic. The PBA is seeking to reopen negotiations mid-contract, although there is no obligation on the Borough to do so.

Assuming there is merit to the PBA's argument, this dispute is at best a dispute over contract language and as such is not an unfair practice. State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).[2/]

Accordingly, I decline to issue a complaint and the unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES

Edmund G. Gerber, Director

DATED: February 24, 1995
Trenton, New Jersey

2/ The PBA also alleged that the Borough, as of January 4, 1995, refused to provide the PBA with minutes of the December 29, 1994 council meeting in violation of the Right-to-Know Law. The Commission lacks jurisdiction over such claims. This portion of the charge is also dismissed for lack of jurisdiction.