

D.U.P. NO. 96-17

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

In the Matter of

NORTH CALDWELL BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-96-132

NORTH CALDWELL EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge against the North Caldwell Board of Education where the North Caldwell Education Association alleges that the Board violated the Act when it unilaterally increased pupil contact time for kindergarten teachers without negotiating compensation. The Director determined that the Association's claim was not an unfair practice since it appeared to be a good faith dispute over the interpretation of contract terms.

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Appearances:

For the Respondent,
Sills, Cummis, Zuckerman, Radin,
Tischman, Epstein & Gross, attorneys
(Cherie L. Maxwell, of counsel)

For the Charging Party,
Balk, Oxfeld, Mandell & Cohen, attorneys
(Nancy Iris Oxfeld, of counsel)

REFUSAL TO ISSUE COMPLAINT

An unfair practice charge was filed with the Public Employment Relations Commission on November 6, 1995, by the North Caldwell Education Association against North Caldwell Board of Education alleging that the Board engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act,

N.J.S.A. 34:13A-1 et seq. (Act), specifically, N.J.S.A.

34:13A-5.4(a) (1) & (5).^{1/}

The Commission has authority to issue complaints if it appears that the allegations of the charging party, if true, would constitute an unfair practice within the meaning of the Act and that final proceedings with respect thereto should be instituted in order to afford the parties an opportunity to litigate relevant legal and factual issues. N.J.A.C. 19:14-2.1. The Commission has delegated its authority to issue complaints to me. The Commission's rules provide that I may decline to issue a complaint. N.J.A.C. 19:14-2.3.

For the reasons stated below, I believe that the Commission's complaint issuance standard has not been met.

The Association alleges that the Board violated the Act when it unilaterally increased pupil contact time for kindergarten teachers without negotiating compensation.

Article V, Section E of the parties' current collective negotiations agreement provides, in part:

Teachers shall be granted Preparation Time equal to 200 minutes per week. The Board shall make a good faith effort to schedule one preparation period per day within the existing resources of the district.

^{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."

Prior to September 1995, kindergarten teachers received more than one preparation period per day. In September 1995, the Board reduced the number of preparation periods for kindergarten teachers to one period a day (200 minutes per week).

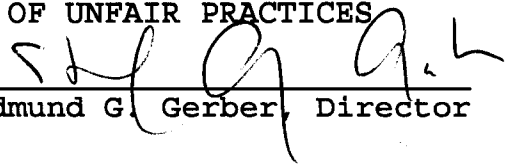
Although teacher-pupil contact time and preparation time are mandatorily negotiable, an employer will not be found to have violated its negotiation obligation if a reduction in preparation time and the resultant increase in pupil contact time are authorized by the collective negotiations agreement. See Carlstadt Bd. of Ed., P.E.R.C. No. 91-72, 17 NJPER 153 (¶22062 1991); Kittatinny Bd. of Ed., P.E.R.C. No. 93-34, 18 NJPER 501 (¶23231 1992); Manalapan-Englishtown Bd. of Ed., D.U.P. No. 93-41, 19 NJPER 292 (¶24151 1993); Bound Brook Bd. of Ed., D.U.P. No. 95-4. "Where the contract is sufficiently clear and unambiguous in respect to the issue that the mutual intent of the parties can be discerned with no other guide than a simple reading of the pertinent language," contract language will control over past practice. New Brunswick Bd. of Ed., P.E.R.C. No. 78-47, 4 NJPER 84 (¶4040 1978), motion for reconsideration denied, P.E.R.C. No. 78-56, 4 NJPER 156 (¶4073 1978).

Here, it appears that the contract permits the Board to reduce the kindergarten teachers' preparation time to 200 minutes per week. The contract makes no distinction between kindergarten teachers and other teachers employed by the Board.

The Association argues that the contract is silent as to pupil contact time, and the increase in contact time is separate from the decrease in preparation time. Their argument is one of contract interpretation. We 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, it appears that the Board reasonably relied on contract language to reduce preparation time. The increase in pupil contact time results directly from the Board's enforcing what it believes to be its contractual rights. Since the Board appears to be within its contractual rights to reduce the preparation time and the contract contains no provision regarding pupil contact time, this claim appears to be a good faith dispute over the interpretation of contract terms. Such a claim is not an unfair practice. State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).

Accordingly, I find that the Commission's complaint issuance standard has not been met and I refuse to issue a complaint. N.J.A.C. 19:14-1.5 and 2.1. The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: March 12, 1996
Trenton, New Jersey