

D.U.P. NO. 97-31

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

In the Matter of

BURLINGTON TOWNSHIP BOARD
OF EDUCATION,

Respondent,

-and-

Docket No. CI-97-28

ANTOINETTE HORNER,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint on a charge filed by an individual employee alleging that her work schedule violated the collective negotiations agreement. The Director finds that an individual lacks standing to bring this (a) (5) charge and dismisses that part of the charge.

However, the Director issues a complaint with regard to the employee's allegation that the work schedule was assigned in retaliation for her pursuit of an earlier grievance.

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Appearances:

For the Respondent
David M. Serlin, attorney

For the Charging Party
Rand, Algeier, Tosti & Woodruff, attorneys
(Robert M. Tosti, of counsel)

DECISION

On October 17, 1996, Antoinette Horner, a media specialist employed by the Burlington Township Board of Education, filed an unfair practice charge with the Public Employment Relations Commission alleging that the Board violated subsections 5.4(a)(1), (3), (4), (5) and (7) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.^{1/} Horner alleges that the Board

^{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

Footnote Continued on Next Page

changed her terms and conditions of employment when it failed to provide her with contractually guaranteed teacher preparation time, and that it retaliated against her when she pursued her contract claim through advisory arbitration.

The Commission has authority to issue complaints if it appears that the allegations of the charging party, if true, may constitute unfair practices within the meaning of the Act and that formal proceedings 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 the 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.

Horner's terms and conditions of employment are covered by a collective negotiations agreement in effect for the period July 1, 1994 through June 30, 1997. Article 7(A)(3) of that agreement provides that high school teachers involved in the "Intensive Block

1/ Footnote Continued From Previous Page

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. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under 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" will be given a daily 80-minute preparation period. When Horner's schedule for the 1995-96 school year did not include an 80-minute preparation period, she grieved this schedule through her majority representative, the Burlington Township Education Association. The Association pursued the grievance on her behalf to advisory arbitration, the terminal step in the parties contract. On April 15, 1996, Arbitrator Lawrence Hammer issued an advisory opinion, sustaining Horner's grievance and finding that she was contractually entitled to the 80-minute preparation period.

Horner alleges that in May, 1996, the Superintendent advised her that the Board would not follow the arbitrator's opinion, and that her preparation period would be limited to 40 minutes, but that she would be given discretion to schedule it, as well as her lunch period, based upon the flexibility in her workday.

At the start of the 1996-97 school year, the high school principal gave Horner a schedule which included a lunch period^{2/} set after the school cafeteria closes, and three and one-half hours of continuous duty time, which Horner asserts exceeds the contract's 160 minute maximum. Horner contends that the Board's high school principal assigned her this schedule in retaliation for grieving the preparation period issue to arbitration. This allegation meets the Commission's complaint issuance standards, and a Complaint will

^{2/} The break period scheduled was initially set for 24 minutes; after Horner complained to the principal, it was increased to the contractual minimum of 30 minutes.

issue on the alleged retaliation claims. In re Bridgewater Tp., 95 N.J. 235 (1984).

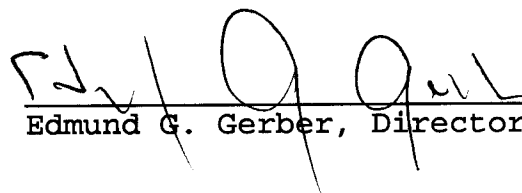
Horner further contends that the Board's violations of the contract -- by failing to afford her an 80-minute preparation period and assigning her three and one-half hours of continuous duty-- "constitute[s] a unilateral modification of her terms and conditions of employment without negotiations in violation of the Act."

An individual employee normally does not have standing to assert a violation of subsection 5.4(a)(5) of the Act, as the employer's duty to negotiate in good faith runs only to the majority representative. N.J. Turnpike, P.E.R.C. No. 81-64, 6 NJPER 560 (¶11284 1980). An individual employee may pursue a claim of an (a)(5) violation only where the charging party has also asserted a viable unfair practice claim of a breach of the duty of fair representation against the majority representative. N.J. Turnpike, D.U.P. No. 80-10, 5 NJPER 18 (¶10268 1979). Further, a mere breach of contract does not constitute an unfair practice within the meaning of the Act. N.J. Dept. of Human Services, P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984). Accordingly, I find the Commission's complaint issuance standard has not been met with regard to the alleged violations of subsection 5.4(a)(5).

Finally, Horner alleges a violation of subsection 5.4(a)(7), but fails to state a Commission rule which she asserts was violated.

Based upon the above, a Complaint will issue on the allegations of retaliatory treatment in violation of subsections 5.4(a)(1), (3) and (4). The remaining allegations are dismissed.^{3/}

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: January 22, 1997
Trenton, New Jersey