

D.U.P. NO. 2015-4

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

In the Matter of

ROXBURY BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-2013-068

ROXBURY CUSTODIAL ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by the Roxbury Custodial Association (Association) against the Roxbury Board of Education (Board). The charge alleges that the Board violated N.J.S.A. 34:13A-5.4a(1) and (5) by providing diminished benefits in a severance agreement for lead custodians, who were laid off after the 2011-2012 school year, as compared with the benefits provided to the custodians who were laid off in the prior school year. The Association claims that the diminished benefits in the severance agreement for the lead custodians constitute a repudiation of the terms and conditions set forth in the agreement covering the custodians laid off in the prior year. The Director determined that the unfair practice charge did not meet the complaint issuance standard because no facts demonstrated that the Board repudiated any contractual provision or failed to negotiate in good faith.

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Appearances:

For the Respondent,
Lindabury, McCormick, Estabrook & Cooper, P.C.,
attorneys
(Anthony P. Sciarriello, of counsel)

For the Charging Party,
Oxford Cohen, P.C., attorneys
(Sanford R. Oxford, of counsel)

REFUSAL TO ISSUE COMPLAINT OR DECISION

On September 18, 2012, Roxbury Custodial Association (Charging Party or Association) filed an unfair practice charge against Roxbury Board of Education (Respondent or Board). The charge alleges that the Board violated 5.4a(1) and (5)^{1/} of the

^{1/} These provisions prohibit public employers, their representatives or agents from "(1) [i]nterfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act" and "(5) [r]efusing 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."

New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq., by providing diminished benefits in a severance agreement for lead custodians, who were laid off following the 2011-2012 school year, as compared to the benefits provided to custodians who were laid off in the prior school year. It claims that the diminished benefits in the severance agreement for the lead custodians constitute a repudiation of the terms and conditions set forth in the agreement covering the custodians laid off in the prior year. The Board contends that the severance agreement covering the lead custodians provided greater compensation to the lead custodians than the agreement covering all other custodians in the earlier lay off.

The Commission has authority to issue a complaint where it appears that a charging party's allegations, if true, may constitute an unfair practice within the meaning of the Act. N.J.S.A. 34:13A-5.4; N.J.A.C. 19:14-2.1. The Commission has delegated that authority to me. Where the complaint issuance standard has not been met, I may decline to issue a complaint. N.J.A.C. 19:14-2.3. On January 10, 2013, we conducted an exploratory conference with the parties. By letter dated July 23, 2014, the Board filed a statement of position. A review of the parties' submissions reveals the following facts.

The Association is the recognized majority representative of "all custodians, groundskeeper-custodians, lead day custodians,

matrons, building maintenance employees, head mechanics and mechanic helpers" employed by the Board. The Board is a public employer within the meaning of the Act.

The most recent collective negotiations agreement extends from July 1, 2008 through June 30, 2011. On February 17, 2011, the Board and Association entered into a memorandum of agreement (MOA) that extended the duration of the contract from July 1, 2011 to June 30, 2014.

At the conclusion of the 2010-2011 academic year, the Board laid off and contracted out the work of all its custodians, with the exception of the lead custodians. The February 17, 2011 MOA addressed compensation for unused sick and vacation days for the custodians who were laid off. Specifically, the MOA provided that "unused sick leave payout upon leaving the District as set forth in the Contract will be extended to those who have worked in the District less than ten years for the purposes of the 2010-2011 school year only." The MOA also provided that the laid off custodians would receive payment for unused vacation leave as set forth in the contract.

Article 13 Section 1(c) of the contract addresses unused sick leave, while Article 11 Section 1(c) addresses unused vacation leave. Article 13 Section 1(b) provides that employees represented by the Association with ten years of service are entitled to the payment of unused sick days with a maximum payout

of \$6,300.00 per person. It also sets forth the various compensation rates for unused sick time. Article 11 Section 1C. identifies the number of vacation days an employee receives based upon years of service and prohibits vacation days from being carried over to the following year. The MOA modified the contract for the laid off non-lead custodians by waiving the ten-years service requirement for the payment of accrued sick time, but followed the contract for the payment of vacation time.

In the 2011-2012 academic year, only the lead custodians remained. On or around May 21, 2012, the Board approved the lay-off of the lead custodians. On June 11, 2012, the Board approved a Separation Agreement/Release (Separation Agreement) entered into by the Board, the Association, and individually by each of the lead custodians. The Separation Agreement established September 18, 2012, as the effective date for the termination of the lead custodians. It also placed all of the lead custodians on a paid leave of absence until the close of business on September 18, 2012. The Separation Agreement further provided that lead custodians were to receive payment for unused sick leave and unused vacation leave accrued during the 2010-2011 school year as set forth in the contract.

The Separation Agreement covered all seven of the lead custodians. Of these seven, two lead custodians had less than ten years of service, and thus were unable to meet the contract's

ten year service requirement for the payment of accrued sick time.

ANALYSIS

The Association's charge alleges that the Board repudiated the terms of and conditions for severance in the initial agreement with the non-lead custodians by failing to provide the same benefits to the lead custodians when they were terminated. N.J.S.A. 34:13A-5.3 requires a public employer to "meet at reasonable times and negotiate in good faith with respect to grievances, disciplinary disputes, and other terms and conditions of employment." It also requires the parties to reduce agreements regarding terms and conditions of employment to a signed writing. Id. A mere breach of contract does not amount to a refusal to negotiate in good faith. State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419, 422 (¶15191 1984). However, the repudiation of clear contract language gives rise to an inference of bad faith that is sufficient to constitute an unfair practice. Id. at 423. Direct proof of bad faith is unnecessary to establish a violation. Bridgewater Tp., 21 NJPER 401, 402 (¶26245 App. Div. 1995), aff'g P.E.R.C. No. 95-28, 20 NJPER 399 (¶25202 1994). Repudiation of clear contract language constitutes both a failure to negotiate in good faith and interference with the rights guaranteed by our

Act. See Lakehurst Bd. of Ed., P.E.R.C. No. 2004-74, 30 NJPER 186, 187 (¶69 2004), aff'd 31 NJPER 290 (¶113 App. Div. 2005).

The Association's charge contains no facts that indicate the Board repudiated any clear contract language applicable to the severance of the lead custodians. The Board and the Association negotiated over the impact of the reduction in force in March 2011 for the non-lead custodians, who were laid off at the end of the 2010-2011 school year. These terms were memorialized in the MOA. The parties engaged in negotiations again for the lay-off of the lead custodians the following school year, and memorialized those terms in the Separation Agreement.

The Board adhered to the clear severance provisions in each of the agreements. The severance provisions in the MOA applied only to the non-lead custodians who were the subject of the first lay-off because the MOA explicitly addresses unused sick and vacation leave payout "for the purposes of the 2010-2011 school year only." The MOA provides that unused sick and vacation leave should be paid "as set forth in the Contract" with the exception that "unusuad sick leave . . . will be extended to those who have worked in the District less than ten years." Consequently, the Board paid unused sick leave to non-lead custodians regardless of whether they satisfied the contract's pre-condition that they worked in the district for ten years.

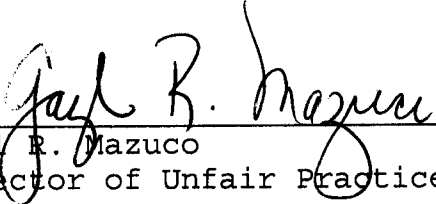
The Separation Agreement expressly applies to the lead custodians. As per the Separation Agreement, the Board paid the lead custodians for an one-hundred twenty (120) day leave of absence, plus unused sick and vacation days in accordance with the contract. Unlike the MOA, the Separation Agreement did not waive the ten year service requirement for the payment of unused sick days. Consequently, the Board complied with the Separation Agreement's directive to pay unused sick days to the lead custodians in accordance with the contract.

In short, the Board did not violate our Act because no bad faith inference can arise where the facts show that a public employer complied with, rather than repudiated, clear contractual language negotiated by the parties. That the Board did not waive the ten-year service requirement for the payment of accrued sick time with respect to the lead custodians, as it did for the non-lead custodians in the previous lay off, does not demonstrate a failure to negotiate in good faith; the terms of the Separation Agreement did not provide a waiver. I note however, that the Board agreed to a paid leave of absence with the lead custodians that it did not provide to the non-lead custodians. The charge offers no facts indicating either a repudiation of a contractual provision or a failure to negotiate in good faith.

Therefore, I find that the Commission's complaint issuance standard has not been met and refuse to issue a complaint on the allegations of this charge.

ORDER

The unfair practice charge is dismissed.



Gayl R. Mazuco
Director of Unfair Practices

DATED: September 24, 2014
Trenton, New Jersey

This decision may be appealed to the Commission pursuant to
N.J.A.C. 19:14-2.3.

Any appeal is due by October 8, 2014.