

D.U.P. NO. 95-8

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

In the Matter of

WAYNE PUBLIC LIBRARY,

Respondent,

-and-

Docket No. CO-94-362

WAYNE PUBLIC LIBRARY EMPLOYEES ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge alleging that the employer "altered" a contract term by directing the staff to take a 30-minute lunch period, notwithstanding the practice of employees skipping lunch to leave early. The employer claims the lunch period is contractually mandated.

The Director finds that the employer did not repudiate the contract, but that the parties essentially have a good faith dispute concerning the interpretation of a contract clause, which is not appropriate to litigate through unfair practice proceedings. State Dept. of Human Services, P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).

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Appearances:

For the Respondent,  
Lawrence Giblin, Chairman of Library Board Personnel Committee

For the Charging Party,  
Patricia Padden, Association Vice President

REFUSAL TO ISSUE COMPLAINT

On June 3, 1994, the Wayne Public Library Employees Association filed an Unfair Practice Charge against the Wayne Library Board of Trustees. The Association alleged that the Board violated the New Jersey Public Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4(a)(1) and (3)<sup>1/</sup> when it directed staff to take "at least a 30-minute lunch period." The Association argues that this change in the past practice of permitting employees to work

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<sup>1/</sup> These subsections prohibits 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, and (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."

through their lunch period and leave 30 minutes earlier amounts to an attempt to "alter" the current collective agreement between the parties.

At the heart of the dispute is Section 2 of Article IX, "Work Schedules, which provides in pertinent part that,

The workweek...shall consist of thirty-five (35) hours, as scheduled by the Library Director with the following modifications:....(B) The immediate supervisor will be responsible for the approval of the hours, vacations, sick-time, holidays, and flex-time on each time sheet...(D) After not more than 5 consecutive hours of work, at least 1/2 hour off must be made available for lunch or dinner...(F) Flex time: Association members must work their scheduled hours as set by supervisory staff. At the end of four weeks they must have accumulated a total of 140 hours. A credit or debit of 7 hours may be carried indefinitely. Association members may "flex" their time in any combination of hours subject to assigned schedules (and within the provisions listed above), between the hours of 8 a.m. to 10 p.m.. Persons may arrange to exchange assigned schedule hours with other qualified staff members, subject to supervisory approval....(emphasis added).

Prior to the Board of Trustees April 1994 directive, staff enjoyed the ability to forego their lunch period and leave early. The Board argues that, notwithstanding the prior practice, the above-cited contract language requires employees to take a break of at least 30 minutes. The Association argues that this clause permits the employee (at his or her option), to take a lunch period, but does not mandate it. The Association further argues that the flextime portion of this contract article guarantees employees the right to schedule their own hours in a flexible manner except as specified elsewhere in the agreement.

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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 a mere breach of contract claim cannot be litigated through unfair practice proceedings where the employer reasonably relies upon contract language for its actions and does not repudiate the contract. Although the Association asserts in its charge that the Library Board "altered" Section 2, Article 18, its alleged facts do not support a claim of contract repudiation; the Board argues this same contract provision gave it the right to take the disputed action.

Here, there is a mere dispute over the interpretation of contract terms. Such a claim is not an unfair practice, even if the Association's reading of the language ultimately proved to be correct. Human Services; Hardystown Tp. Bd. of Ed., D.U.P. No. 94-46, 20 NJPER 266 (¶25132 1994). I find that this charge does not allege a violation of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. I decline to issue a complaint and I dismiss the charge.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Edmund G. Gerber, Director

DATED: October 7, 1994  
Trenton, New Jersey