

D.U.P. NO. 88-8

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

In the Matter of

SAYREVILLE BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-87-275

SAYREVILLE EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Respondent

Hutt, Berkow & Jankowski, Esqs.  
(Michael Kaebler, of counsel)

For the Charging Party

Oxford, Cohen & Blunda, Esqs.  
(Arnold Cohen, of counsel)

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint on a Charge which makes the bare assertion that the employer repudiated a term of the contract by the assignment of six teaching periods to certain academic teachers. Noting that the contract permits such assignments under certain circumstances, the Director finds that the parties merely had good faith differences concerning the interpretation of the contractual provision. Finding that the Charge merely asserts a breach of contract, and none of the exceptions listed in State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, are present, the Director dismisses the Charge.

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REFUSAL TO ISSUE COMPLAINT

On March 20, 1987, the Sayreville Education Association ("Association") filed an unfair practice charge against the Sayreville Board of Education ("Respondent") alleging violations of subsections 5.4(b)(1), (3), (5) and (7)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act").

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<sup>1/</sup> 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;

N.J.S.A. 34:13A-5.4(c) provides that the Commission shall have the power to prevent anyone from engaging in any unfair practice, and that it has the authority to issue a complaint stating the specific unfair practice charged.<sup>2/</sup> The Commission has delegated to me its authority to issue complaints and has established a standard upon which an unfair practice complaint may be issued. This standard provides that a complaint shall issue if it appears that the allegations of the Charging Party, if true, may constitute an unfair practice within the meaning of the Act.<sup>3/</sup> If, however, this standard is not met, we may decline to issue a complaint.<sup>4/</sup> For the reasons stated below, we have determined that the Commission's complaint issuance standards have not been met.

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1/ Footnote Continued From Previous Page

(5) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit; (7) Violating any of the rules and regulations established by the commission."

2/ N.J.S.A. 34:13A-5.4(c) provides: The Commission shall have exclusive power as hereinafter provided to prevent anyone from engaging in any unfair practice.... Whenever it is charged that anyone has engaged or is engaging in any such unfair practice, the Commission, or any designated agent thereof, shall have authority to issue and cause to be served upon such party a complaint stating the specific unfair practice charged and including a notice of hearing containing the date and place of hearing before the Commission or any designated agent thereof...."

3/ N.J.A.C. 19:14-2.1.

4/ N.J.A.C. 19:14-2.3.

The charge asserts that the Board repudiated the contract by assigning certain academic teachers in the Middle School 6 teaching periods each. The collective agreement provides at Article 7(E):

Middle School teachers of language arts, science, social studies, and mathematics will teach a maximum of five (5) teaching periods except where there are unusual and compelling circumstances. Such circumstances are those related to an excessive number of students in individual classes (class size) and special needs created by the nature of the educational program.

The Board acknowledged that it assigned academic teachers 6 teaching periods each but relies on the language of the contract provision in dispute. It asserts that it increased teaching periods as a result of the special needs created by the nature of the educational program.

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 does not state a cause of action under Subsection 5.4(a)(5) which may be litigated through unfair practice proceedings and instead parties must attempt to resolve such contract disputes through their negotiated grievance procedures. Id. at 420.

In that case, the Commission set forth specific examples of where a breach of contract claim bears a sufficient relationship to an

alleged violation of the Act so as to warrant the issuance of the complaint: (a) where the employer has abrogated contractual provisions based on the claim that the provision is outside the scope of bargaining; (b) where the clause in dispute is so clear that an inference of bad faith arises from a refusal to honor such clause or where the parties past or consistent practice indicates a change in administration of such clause; (c) where, in addition to the alleged breach of contract there are other specific indications of bad faith, or (d) the policies of the Act may otherwise be at stake.

Where a breach of contract claim is asserted in an unfair practice charge, we examine the allegations to determine whether there is sufficient connection between the duty to negotiate in good faith and the alleged contractual violation to determine whether to issue a complaint. See Branchburg Bd. of Ed., D.U.P. No. 86-19, 12 NJPER 478 (¶17181 1986) affirmed P.E.R.C. No. 87-15, 12 NJPER 733 (¶17273 1986); Newark Board of Education, D.U.P. No. 87-18, 13 NJPER 515 (¶18193 1987); Roselle Board of Education, D.U.P. No. 86-6, 12 NJPER 218 (¶17088 1986), affirmed P.E.R.C. No. 86-138, 12 NJPER 456 (¶17173 1986).

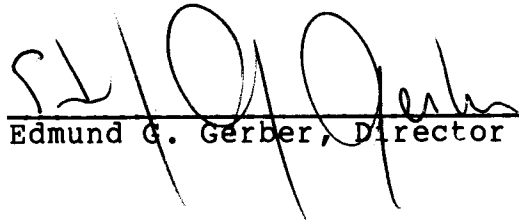
A bare assertion of a contract repudiation that is merely a conclusory statement is insufficient to warrant the issuance of a complaint. Roselle Bd. of Ed., supra.

It appears, here, that the parties have good faith differences over the interpretation of the contract clause

permitting the assignment of 6 teaching periods "under unusual and compelling circumstances." Therefore, I find that the charge merely asserts a breach of contract claim and no complaint should issue.<sup>5/</sup>

Accordingly, we have determined that the Commission's complaint issuance standard has not been met and refuse to issue a complaint in this matter.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: December 31, 1987  
Trenton, New Jersey

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<sup>5/</sup> The Board has recently advised us that no academic middle school teachers were assigned more than five (5) teaching periods for 1987-1988 school year.