

D.U.P. NO. 85-22

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

In the Matter of

FRANKLIN TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and-

DOCKET NO. CO-84-267

FRANKLIN TOWNSHIP EDUCATION ASSOCIATION.

Charging Party.

SYNOPSIS

The Director of Unfair Practices declines to issue a complaint in a matter where the Franklin Township Education Association alleged that the Franklin Township Board of Education committed an unfair practice by unilaterally altering work schedules for teachers. The Director found that the Charge raised a dispute which was purely contractual in nature and, relying on In re State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (Para 15191 1984), concluded that even assuming arguendo that the Association's breach of contract claim was meritorious, the allegations did not rise to the level of an unfair labor practice.

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CHARGING PARTY.

Appearances:

For the Respondent

Walker & Dansky, Esqs. P.C.
(Michael Borelli of counsel)

For the Charging Party

Eugene Sharp, UniServ Representative, NJEA

REFUSAL TO ISSUE COMPLAINT

On March 27, 1984, an Unfair Practice Charge was filed with the Public Employment Relations Commission ("Commission") by the Franklin Township Education Association ("Association") alleging that the Franklin Township Board of Education ("Board") had 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)(5).^{1/}

^{1/} This subsection prohibits public employers, their representatives or agents from: "(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."

N.J.S.A. 34:13A-5.4(c) sets forth in pertinent part 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 unfair practice charge.^{2/} The Commission has delegated its authority to issue complaints to me 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, and that formal proceedings in respect thereto should be instituted in order to afford the parties an opportunity to litigate relevant legal and factual issues.^{3/} The Commission's rules provide that I may decline to issue a complaint.^{4/}

The Association alleges that the Board violated the parties' contract and the Act when it unilaterally altered the work schedules for teachers within the school district by requiring the teachers to

^{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

begin supervision of the students 15 minutes earlier each day. The Association further alleges that in times past, teachers in the larger schools were required to arrive at school by 8 a.m., report to their classrooms to supervise students by 8:15 a.m., and begin their instruction at 8:30 a.m.. Teachers in the satellite schools were required to arrive at school by 8:30 a.m., report to their classrooms to supervise students and begin their instruction at 9 a.m.. At the end of September 1983, the Association alleges that the Board required its teachers to begin its supervision and/or instruction 15 minutes earlier.

The Board responded to the Charge by stating that the parties' contract governed this situation and that the Board simply adhered to the terms of the agreement. It additionally stated that the parties had already taken this dispute to advisory arbitration and received a decision from Arbitrator Jeffrey B. Tener, which was favorable to its position.^{5/}

^{5/} While the Arbitrator's Advisory Opinion does not address the unfair labor practice per se and is not binding on the Commission, the Opinion appears sound in its disposition of the contract dispute which underlies the instant unfair practice. In his opinion, the Arbitrator stated:

The issue is whether these changes constituted a violation of the parties' agreement. I do not believe that they did.

Although it is true that the past practice is clear, that past practice is not relevant in a case such as this where contract language covers the situation. This situation is governed by Article XI...

(Footnote continued on next page)

It appears that this Charge raises a dispute which is purely contractual in nature and that the Charge arises from the parties' different interpretations of Article XI, entitled Teaching Hours and Teaching Load. It reads in pertinent part:

A. No teacher shall be required to report for duty earlier than thirty (30) minutes before the

(Footnote continued from previous page)

Article XI A specifies the time for reporting for duty. It is explicit. Teachers report for duty 30 minutes before the opening of the pupils' school day. It is clear that the Board has not violated this provision as to the time of reporting.

Also, the provision requires that the teachers report for duty. The duty is not specified but it is to be for duty. This is in contrast to Article XI B1 which provides for a duty-free period during the course of the work day. It also is in contrast to Article XI B3 which specifies a number of preparation periods. It is a well-established principle of contract interpretation that to express one thing is to exclude others. Here, the contract provides for a certain number of preparation periods. These the Board provides. The agreement, however, does not provide that the 15 minute period in dispute is to be a preparation period. Rather, it is to be used "for duty." In the absence of limiting language, it is for the Board to determine that duty. Neither the Association nor its members have the right to define that duty in the absence of contract language.

Also, there is nothing that prohibits the Board from changing that duty. That is precisely what occurred here. For years, the Board apparently was content to permit teachers to use that time for preparation, for calling parents, for running dittos, and for meetings. Due to the transportation situation, the Board decided to change the duty to pupil supervision. There is nothing in the contract which would restrict the Board from making that assignment.

opening of the pupils' school day, and shall be permitted to leave fifteen (15) minutes at the close of the pupils' school day...

B. 1. Teachers shall have a duty-free lunch period comparable to students' lunch period.

3. The Board will provide one additional preparation period for every ten (10) day cycle for all classroom teachers grade one through six. This will result in three preparation periods per five (5) day cycle for all classroom teachers grade one through six.

The sole issue in this matter is contractual: did the Board breach the terms of the parties' contract when it increased duty time at the beginning of the school day?

In In re State of New Jersey (Dept. of Human Services,
P.E.R.C. No. 84-148, 10 NJPER 419 (Para 15191 1984), the Commission
stated:

[we consider herein] whether and under what circumstances a charging party having agreed that a contract dispute may not be submitted to binding arbitration, may still litigate a breach of contract claim in unfair practice proceedings. We conclude 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. We base this conclusion primarily on our interpretation of the Act and the legislative policy expressed therein favoring the use of negotiated grievance procedures for handling contractual disputes. In re State of New Jersey, supra, at 421.

In Human Services, supra, the Commission cited the following policy statement from In re Borough of Palisades Park, D.U.P. No. 78-71, 3 NJPER 238 (1977):

The Commission does not view its role as the enforcer of collective negotiations agreements. Such a matter is appropriately the concern of an arbitrator, or alternatively the courts upon a suit for contract enforcement. In certain limited situations where a contract has been breached, the Commission will find that such a breach has also constituted a statutorily prohibited unilateral change in terms and conditions of employment without prior negotiations and thereby find that an unfair practice has occurred. (Citations omitted) In re Palisades Park, footnote 8 at 240.

Finally, in Human Services, supra, the Commission concluded:

In short, we conclude that allegations setting forth at most a mere breach of contract do not warrant the exercise of the Commission's unfair practice jurisdiction. An employer which negotiates terms and conditions of employment as set forth in a collective negotiations agreement, which agrees to specific grievance procedures for the resolution of contractual disputes, and which is willing to abide by those negotiated procedures, does not "refuse to negotiate in good faith" simply because its interpretation of an unclear contract clause may ultimately prove to be mistaken. In re State of New Jersey, supra, at 422.

In consideration of the foregoing, even assuming *arguendo* that the Association's contract claim was meritorious, I am unable to conclude that the Association's breach of contract claim would amount to an unfair labor practice. Accordingly, I decline to issue a complaint with respect to the instant Charge.

For the above-stated reasons, I decline to issue a complaint
in this matter.

BY ORDER OF THE DIRECTOR


Edmund G. Gerber

DATED: April 10, 1985
Trenton, New Jersey