

D.U.P. NO. 94-16

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

In the Matter of

PASSAIC VALLEY REGIONAL BOARD
OF EDUCATION,

Respondent,

-and-

Docket No. CO-93-335

PASSAIC VALLEY REGIONAL HIGH SCHOOL
OPERATIONS STAFF,

Charging Party.

SYNOPSIS

The Passaic Valley Regional High School Operations Staff filed an unfair practice charge against the Passaic Valley Regional Board of Education, claiming that the Board violated the Act when it paid holiday pay to custodians who worked on the State holiday of President's Day's rather than Washington's birthday as designated in the parties' negotiated agreement. The Director of Unfair Practices refuses to issue a complaint, finding that the Board reasonably relies upon contract language for its action and that the parties merely disagree on the interpretation of the agreement.

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Appearances:

For the Respondent,
DeMaria, Ellis, Hunt, Salsberg and Friedman, attorneys
(Richard H. Bauch, of counsel)

For the Charging Party,
Charles Tucker, NJEA Consultant

REFUSAL TO ISSUE COMPLAINT

On March 29, 1993, the Passaic Valley Regional High School Operations Staff filed an unfair practice charge with the New Jersey Public Employment Relations Commission alleging that the Passaic Valley Regional Board of Education violated subsection 5.4(a)(5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.^{1/} The Association alleges that the Board repudiated the

^{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."

parties' negotiated agreement by refusing to pay the holiday rate of pay to those employees who worked on Washington's birthday, February 22, 1993. The Board denies that it violated the agreement. It asserts that the Board celebrated Washington's birthday on the State's designated official holiday date of February 15, 1993, (N.J.S.A. 36:1-1 et seq.) and accordingly, those employees who worked on that date, rather than February 22, 1993, were paid the premium holiday rate.

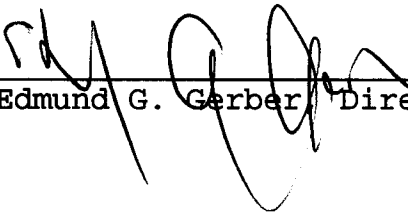
Article 5, section 5, Holiday Pay, of the parties' negotiated agreement states that employees who are to work on a holiday will be paid "double time plus 1/2 payment." In section 5, Holidays, 15 holidays are identified by name, including "Washington's birthday." Article 5 has been part of the agreement for many years.

Where an employer does not repudiate or disregard the terms of a contract, but rather reasonably relies upon contract language to defend its action, the Commission will not find an unfair practice. Op. of Barnegat, D.U.P. No. 91-19, 17 NJPER 172 (¶22071 1992); State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).

Here, the Association and the Board appear to be in disagreement as to when Washington's birthday should be observed. As such, the Board cannot be said to have repudiated or disregarded the terms of the agreement. The Board and the Association simply disagree on how the agreement is to be interpreted.

Therefore, I decline to issue a complaint on the allegations of this charge.^{2/} The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: September 9, 1993
Trenton, New Jersey

^{2/} N.J.A.C. 19:14-2.3.