

D.U.P. NO. 95-4

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

In the Matter of

BOUND BROOK BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-94-255

BOUND BROOK EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses the Association's charge alleging the Board violated subsection 5.4(a)(5) of the Act when it unilaterally discontinued the practice of giving secretaries days off for Spring break. The Director found that the parties' contract clause concerning workyear permitted the Board to require secretaries to work whenever teachers work.

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Appearances:

For the Respondent,
Carroll and Weiss, attorneys
(Russell Weiss, of counsel)

For the Charging Party,
New Jersey Education Association
(Thomas Meyers, UniServ Field Representative)

REFUSAL TO ISSUE COMPLAINT

On December 3, 1993, and March 31, 1994, the Bound Brook Education Association filed an Unfair Practice Charge and amendment with the Public Employment Relations Commission, alleging that the Bound Brook Board of Education violated the New Jersey Public Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4(a)(5)^{1/} when it discontinued the practice of giving secretaries days off for

^{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."

Easter recess.

The Association's current collective negotiations agreement provides at Article 22, B(3) that,

Work Year:

(a) The work year shall be from July 1 to June 30.

(b) Personnel need not report during any school recesses (i.e., Christmas and/or Spring/Easter) for faculty which occur between the opening and closing dates of school.

In years before September 1993, secretaries were given six days off for Easter break, as were teachers. In September 1993, the Board adopted a calendar which eliminated Easter break for all employees.

The Association grieved the Board's action but the arbitrator ruled that the matter was not arbitrable pursuant to the parties' contract.

The Board argues that the contract provision cited above specifically provides that if teachers are off, secretaries will be off. Therefore, the Board asserts, if teachers work, secretaries are also contractually required to work.

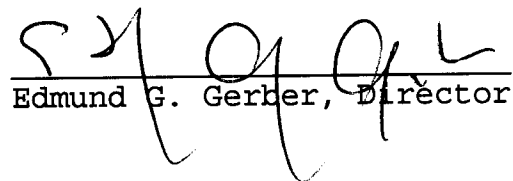
Where a change in the past practice is permitted by the parties' agreement, the employer is not obligated to negotiate prior to making the change, and there is no violation of the Act. See Carlstadt Bd. of Ed., P.E.R.C. No. 91-72, 17 NJPER 153 (¶22062 1991); Kittatinny Bd. of Ed., P.E.R.C. No. 93-34, 18 NJPER 501 (¶23231 1992); Manalapan-Englishtown Bd. of Ed., D.U.P. No. 93-41, 19 NJPER 292 (¶24151 1993). Here, it appears that this contract

clause permits the Board to require secretaries to work during the school year whenever teachers work. Accordingly, we find that no unfair practice.

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 where there is a claim of a contract violation, the Commission will not entertain an allegation of a violation of subsection (a)(5) if an employer reasonably relies upon contract language for its actions and does not repudiate the contract. Here, the Board relies on contract language which the Association claims does not apply. Accordingly, there is a good faith dispute over the interpretation of contract terms. Such a claim is not an unfair practice. Hardystown Tp. Bd. of Ed., D.U.P. No. 94-46, 20 NJPER 266 (¶25132 1994); Tp. of Barnegat, D.U.P. No. 91-19, 17 NJPER 172 (¶22071 1992);

Based upon all of the above, I find that this charge fails to allege a violation of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. Accordingly, I decline to issue a complaint and dismiss the charge in its entirety.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: September 14, 1994
Trenton, New Jersey