

D.U.P. NO. 94-11

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

In the Matter of

TOWNSHIP OF WOODBRIDGE,

Respondent,

-and-

Docket No. CO-93-328

AFSCME COUNCIL 73, LOCAL 2292,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses a charge alleging that Woodbridge Township changed the sanitation department's collection system without negotiations. Although AFSCME contends that the change lengthened employees' work hours, the Director finds that such allegations are at best, a breach of contract.

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Appearances:

For the Respondent,  
Genova Burns  
(James J. McGovern, III, of counsel)

For the Charging Party,  
Don Dileo, Staff Representative

REFUSAL TO ISSUE COMPLAINT

On March 22, 1993, AFSCME Council 73, Local 2292 ("AFSCME") filed an unfair practice charge with the Public Employment Relations Commission charging Woodbridge Township ("Township") with violating subsection 5.4(a)(5)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act") by unilaterally changing the sanitation department's collection system.

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<sup>1/</sup> 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."

AFSCME's charge states that in November, 1992,<sup>2/</sup> the Township changed the sanitation department's collection system without bargaining. It contends that the change caused employees to work longer hours and and changed the length of the workday, and that such changes caused continuous problems in the sanitation department.

Article XI of the parties' 1990-92 collective negotiations agreement<sup>3/</sup> provides in pertinent part that "Sanitation crews are on a finish and go home system. (When a crew finishes their own route and truck is dumped they are allowed to go home regardless of the time.") The article further provides that "Sanitation men are required to work Ten (10) hours on Monday, Ten (10) hours on Tuesday, Four (4) hours on Wednesday, Eight (8) hours on Thursday and Eight (8) hours on Friday before receiving overtime to complete their own route." Article XI also provides that "Any change in the work schedule is subject to the discretion of the Director of Public Works."

The Township contends that AFSCME's allegations at most, constitute a contractual violation and do not constitute an unfair practice.

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<sup>2/</sup> A Commission staff agent conducted an exploratory conference on May, 13, 1993. At the conclusion of the conference, the parties agreed to hold processing of the charge in abeyance pending commencement of fact finding. On August 9, 1993, AFSCME informed us that the parties reached a negotiated agreement and requested that the charge be processed.

<sup>3/</sup> The parties were in negotiations for a successor agreement when this charge was filed.

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 disregard or repudiate the contract.

The parties' contract provides for a finish and go home system of garbage collection, with a minimum number of work hours per day before overtime accrues. AFSCME contends that the changed collection method caused employees to work longer hours and changed the length of the workday. However, the contract expressly provides that the Director of Public Works maintains the discretion to make changes in the work schedule. I find that AFSCME's allegations constitute at most a breach of contract, and do not rise to the level of an unfair practice.

Based upon the foregoing, I decline to issue a complaint and accordingly, the charge is dismissed.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Edmund G. Gerber, Director

DATED: August 19, 1993  
Trenton, New Jersey