

D.U.P. NO. 90-4

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

In the Matter of

TOWNSHIP OF MAPLEWOOD,

Respondent,

-and-

Docket No. CO-89-244

FMBA LOCAL 25,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a Complaint and Notice of Hearing on unfair practice charges alleging that "despite contract language to the contrary", the Township of Maplewood changed a past practice of allowing two firefighters to select the same vacation schedules and that it refused to post those schedules.

The Director determined that the applicable collective negotiations agreement executed by the FMBA and the Township permitted the Township to limit the number of firefighters on vacation at any one time. Accordingly, he dismissed the charge.

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Appearances:

For the Respondent
Grotta, Glassman & Hoffman, Esqs.
(M. Joan Foster, of counsel)

For the Charging Party
Goldberger & Finn, Esqs.
(Howard Goldberger, of counsel)

REFUSAL TO ISSUE COMPLAINT

On February 27, 1989, Firemen's Mutual Benevolent Association, Local 25 ("FMBA") filed an unfair practice charge alleging that "despite contract language to the contrary", the Township of Maplewood ("Township") changed a past practice of allowing two firefighters "to pick the same vacation schedules." It alleged that on January 18, 1989, the Township "refused to post vacation schedules" and "[did] not permit more than one person per shift on any vacation period." It also alleged that in negotiations for a successor contract, the Township unlawfully proposed that if the FMBA agreed to its overall proposal, it would again permit two firefighters to take vacations at the same time. The acts allegedly

violated subsections 5.4(a)(1), (3) and (5)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act").

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 charged.^{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. The 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.^{3/}

^{1/} 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.(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."

^{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.

The Commission's rules provide that I may decline to issue a complaint.^{4/} For the reasons that follow, I decline to issue a complaint.

The Township and FMBA executed a collective negotiations agreement extending from January 1, 1987 through December 31, 1988. The parties have not negotiated a successor contract. Article 16 of the agreement is entitled "Vacations" and states in pertinent part: "There shall be no more than one (1) man off per platoon at any given time and he shall receive his regularly scheduled three (3) off days prior to the start of his vacation."

Clear contract provisions prevail over contrary past practices in setting terms and conditions of employment. Randolph Tp. Bd. of Ed., P.E.R.C. No. 83-41, 8 NJPER 600 (¶13202 1982); Old Bridge Municipal Utilities Auth., P.E.R.C. No. 84-116, 10 NJPER 261 (¶15126 1984); N.J. Sports & Exposition Authority, P.E.R.C. No. 88-14, 13 NJPER 710 (¶18264 1987). Article 16 sets a limit on the number of firefighters who may take vacations at any one time. Even assuming that a contrary past practice existed for more than twenty years, I find that the Township's acts in or around January 1989 are permitted by Article 16. Accordingly, I dismiss FMBA's "past practice" allegation.

I also dismiss the allegation that the Township unlawfully negotiated to allow more than one firefighter on vacation at one

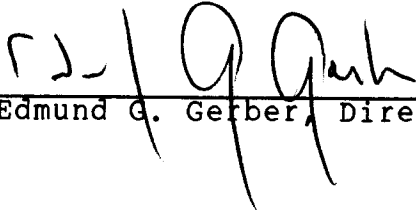
^{4/} N.J.A.C. 19:14-2.3.

time in exchange for the FMBA's execution of a proposed contract. The Township did no more than attempt to negotiate over a "permissive" subject of bargaining as defined in our previous Tp. of Maplewood, P.E.R.C. No. 84-114, 10 NJPER 259 (¶15124 1984) decision. The parties' most recent agreement limited the number of firefighters who could go on vacation at one time and the Township merely placed that provision on the table. Seeing nothing unlawful in this conduct, I dismiss the allegation that the Township engaged in unlawful negotiations.

Finally, the FMBA alleged that the Township refused to "post vacation schedules." The facts and argument submitted do not demonstrate how the refusal to post a schedule (increasing the number of firefighters on vacation at one time beyond the contractual limit) is a violation of the Act.

Accordingly, I decline to issue a complaint. The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: September 19, 1989
Trenton, New Jersey