

D.U.P. NO. 88-20

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

In the Matter of

GARWOOD BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-88-238

GARWOOD TEACHERS' ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses a charge filed by the Garwood Teachers' Association alleging that the Garwood Board of Education violated subsections (a)(1) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it extended the day before Thanksgiving to a full workday. The Director finds that the Board complied with its negotiations obligation and that the dispute is contractual. N.J. Dept. of Human Services.

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Appearances:

For the Respondent
Cassetta, Taylor & Whalen, Consultants
(Gary M. Whalen, Consultant)

For the Charging Party
Zazzali, Zazzali & Kroll, Esqs.
(Paul L. Kleinbaum, of counsel)

REFUSAL TO ISSUE COMPLAINT

On March 16, 1988, Garwood Teachers' Association ("Association") filed an unfair practice charge against the Garwood Board of Education ("Board") alleging that it violated subsections 5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act").^{1/} The charge alleged that in

^{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; (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."

February 1988, the Board unilaterally increased working hours and pupil contact time on the day before Thanksgiving and failed to negotiate additional compensation.

On March 29, 1988, the Board filed a response asserting that the contract permitted the Board to set the calendar. It relied upon Jamesburg Bd. of Ed., P.E.R.C. No. 80-56, 5 NJPER 496 (¶10253 1979), aff'd App. Div. Dkt. No. A-775-79 (12/9/80), which permitted that employer to increase the day before Thanksgiving to a full workday. It later asserted that the charge failed to state an unfair practice under Department of Human Services, P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).

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. The standard provides that a complaint shall issue if it appears that the allegations of the charging party, if true, may

^{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...."

constitute an unfair practice within the meaning of the Act.^{3/}
The Commission's rules provide that I may decline to issue a
complaint.^{4/}

The Board and the Association executed a collective
negotiations agreement covering from September 1, 1986 to August 31,
1988. Article VII, Section B of the contract states:

Prior to the Board's adoption of the school
calendar, the Superintendent shall submit the
proposed calendar to the Association and shall
meet, upon request, with representatives of the
Association to discuss the proposed calendar;
however, the ultimate determination of the
calendar shall be the Board's.

Article VII, Section A sets the length of the school term at 184
days. Article III, Section D of the grievance procedure states that
an arbitrator's decision shall be advisory until the Board rejects
an award, "following which, all subsequent arbitrations that are or
have been filed in that school year, shall be binding." The Board
has not rejected an award in this calendar year. The contract
contains no past practice or maintenance of benefits clause.

For the past 12 years or longer, teachers worked to 12:45
p.m. on the day before Thanksgiving. In early January 1988, the
Board and representatives of the Association met and discussed the
school calendar for the 1988-89 school term. The parties apparently
agreed that the day before Thanksgiving would remain a half

^{3/} N.J.A.C. 19:14-2.1.

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

workday. Sometime later, the Association learned that the half day might not be approved. It sent a letter to the Board stating its concern.

On or about January 19, 1988, the Board met and approved a proposed calendar for the 1988-89 school year. The calendar eliminated the half day before Thanksgiving and replaced it with a full workday.

On or about March 8, 1988, the Association filed a grievance alleging that the Board violated the contract when it "increase[ed] the workday from a half day to a full day prior to the Thanksgiving recess." The Association did not seek to negotiate over the change in hours.

The Board admits the past practice and it made the change without discussion with the Association.

The Commission and New Jersey's Courts have consistently found that school boards do not have a managerial prerogative to increase teacher work hours without negotiating compensation and that a refusal to negotiate is an unfair practice. Bd. of Ed. of Woodstown-Pilesgrove Reg. School Dist. v. Woodstown-Pilesgrove Ed. Assn., 81 N.J. ____ (1980); Newark Bd. of Ed., P.E.R.C. No. 79-38, 5 NJPER 41 (¶10026 1979), aff'd App. Div. Dkt. No. A-2060-78 (2/26/80); Dover Bd. of Ed., P.E.R.C. No. 81-110, 7 NJPER 161 (¶12071 1981), aff'd App. Div. Dkt. No. A-3380-80T2 (3/16/82). In the absence of a contract defense, a board of education has a duty to negotiate before increasing teacher work hours. See New Brunswick Bd. of Ed., P.E.R.C. No. 78-47, 4 NJPER 84 (¶4040 1978).

We therefore cannot determine if the duty to negotiate has been violated without first reviewing the contract which the Board relies upon in defense of the charge. Article VII, Section B requires the Board to submit the proposed calendar to the Association and discuss it with the representatives upon request. It appears that the Board substantially complied with this provision in early January 1988. The provision also gives the Board authority to determine the calendar. It parallels a contract provision which the Commission, in a similar case, found to be a valid defense to a charge of refusal to negotiate.

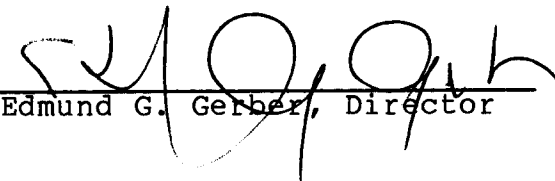
In Jamesburg Bd. of Ed., P.E.R.C. No. 80-56, 5 NJPER 496 (¶10253 1979), aff'd App. Div. Dkt. No. A-775-79 (12/9/80), the parties executed a collective negotiations agreement containing a provision leaving to the board the responsibility of establishing a school calendar. The provision also permitted an Association committee to "make recommendations to the Superintendent concerning the school calendar." The Board adopted a school calendar extending the day before Thanksgiving to a full workday (eliminating the practice of dismissing unit members at 1 p.m.). The contract also contained a grievance procedure ending in advisory arbitration and did not contain a past practice clause. The Association was sent a copy of the calendar proposals but did not discuss it with the Superintendent. The Commission found that the Board met its negotiations obligation, based on the parties' negotiation of a work year clause and the clause enabling the Association to make recommendations before the Board set the calendar.

As in Jamesburg Bd. of Ed., the parties here have a contract provision giving the Board the authority to set the calendar on condition of its meeting with the Association. The contract also contains a clause setting the total number of workdays and does not contain past practice or maintenance of benefits clauses. We conclude that the Board met its negotiations obligations and did not violate subsection (a)(5) of the Act.

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 charges alleging only a breach of contract do not warrant the exercise of the Commission's unfair practice jurisdiction. The Association has alleged only a breach of contract. The Board relies upon Article VII, Section B as a defense to the charge and the Association filed a grievance alleging that the Board's action violated the same provision. Further, nothing in the charge suggests that the Board has repudiated the agreement.

On June 3, 1988, we advised the Association that it appeared that the Commission's complaint issuance standards had not been met and that absent the filing of additional facts, we would refuse to issue a complaint. We have received no additional statements of position. Accordingly, we refuse to issue a complaint and dismiss the charge.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: June 22, 1988
Trenton, New Jersey