

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

In the Matter of

SOUTH AMBOY BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-93-102

SOUTH AMBOY EDUCATION ASSOCIATION/
SOUTH AMBOY OFFICE PERSONNEL ASSOCIATION,

Charging Party.

SYNOPSIS

The Director dismisses a charge alleging that the Board ended a past practice of early release on the days before Thanksgiving, Christmas and Easter recesses without first negotiating with the Associations. The Director finds that the parties' contracts, which provided for a specific workday, exempted the Board from any duty to negotiate before conforming the employees' hours to the contractual workday.

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Appearances:

For the Respondent,
Convery, Convery, & Shihar
Clark W. Convery, Esq.

For the Charging Party,
Klausner, Hunter, Cige & Seid
Stephen Klausner, Esq.

REFUSAL TO ISSUE COMPLAINT

On September 16, 1992, the South Amboy Education Association and the South Amboy Office Personnel Association jointly filed an unfair practice charge against the South Amboy Board of Education. The charge alleges that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1) and (5)^{1/} by ending a past

^{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

practice of half-day sessions on the days preceding Thanksgiving, Christmas and Easter recesses without first negotiating with the respective employee associations.

The Board denies it engaged in unfair practices. It relies on provisions of the applicable collective negotiations agreements which it asserts gave it the right to make the disputed changes.

The 1991-94 agreement between the Board and the Office Personnel Association, which covers secretaries and clerks, provides,

Article V, Workday:

A. The workday for all secretaries and clerks shall be seven (7) hours and shall include one-half (1/2) hour for lunch.

C. The work year for twelve (12) month secretaries is 1,645 hours.

D. Ten (10) month clerks will start on September 1st and end on June 30th.

The 1990-93 contract between the Board and the Education Association, which covers teachers and other certificated employees, provides,

"Article VI, Work Year, Teaching Hours and Teaching Load:

B.1. The total in-school workday of grades five (5) through twelve (12) shall consist of not more than six (6) hours and fifty-five (55) minutes to

1/ Footnote Continued From Previous Page

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."

run continuously. The starting and termination time for the school day will be determined by the Board of Education.

C. The in-school workday for elementary teachers in grades one through four shall not exceed six (6) hours and fifty-five (55) minutes, which shall include a duty-free lunch period of forty (40) minutes...

The Board contends that this contract language gives it the right to schedule the secretaries and the teachers for full days up to the maximum number of contractual hours. The Association argues that the contract language is ambiguous and it should be permitted to litigate the change in the past practice.

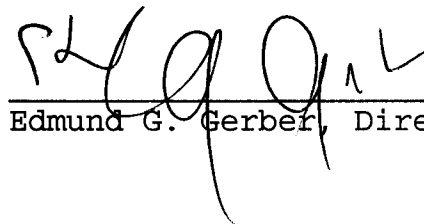
Here, the contracts for both units provide for a specific workday (7 hours and 6 hours and 55 minutes, respectively). Where a contract clearly sets a term and condition of employment, it is not an unfair practice for the employer to end a practice of granting more generous benefits than the contract provides and to return to the benefit level set by the contract. See Kittatinny Bd. of Ed., P.E.R.C. No. 92-37, 17 NJPER 475 (¶22230 1991) and Kittatinny Bd. of Ed., P.E.R.C. No. 93-34, 18 NJPER 501 (¶23231 1992), in which the Commission found that, where the parties' contract fixed the length of the workday, the employer was not obligated to negotiate before

discontinuing a practice of shortened hours during the summer and holiday recess periods.^{2/}

Moreover, a mere dispute over the interpretation of contract language, as opposed to a repudiation of the contract, is not an unfair practice. State of New Jersey (Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).

I find that the employer did not violate the Act when it required teachers and secretaries to work the full number of hours provided in their respective contracts. The charge does not meet the Commission's complaint issuance standard and I will not issue a complaint on the allegations of this charge. The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: May 5, 1993
Trenton, New Jersey

^{2/} See also, New Brunswick Bd. of Ed., P.E.R.C. No. 78-47, 4 NJPER 84 (¶4040 1978), recon. den. P.E.R.C. No. 78-56, 4 NJPER 156 (¶4073 1978), aff'd App. Div. Dkt. No. A-2450-77 (4/2/79); Burlington Cty. Bridge Comm., P.E.R.C. No. 92-47, 17 NJPER 496 (¶22242 1991); Passaic Cty. Reg. Bd. of Ed., P.E.R.C. No. 91-11, 16 NJPER 446 (¶21192 1990); New Jersey Sports and Exposition Authority, P.E.R.C. No. 88-14, 13 NJPER 710 (¶18264 1987); Ramapo State College, P.E.R.C. No. 86-28, 11 NJPER 580 (¶16202 1985).