

D.U.P. NO. 89-5

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

In the Matter of

PASSAIC COUNTY REGIONAL BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-88-316

PASSAIC VALLEY EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses a charge alleging that the Board unilaterally changed the past practice of not requiring teachers to make up snow days. The Director found that the additional days were permitted by a clearly worded workyear clause in the parties contract. Further, the Director noted that even if the contractual language of the workyear provisions was ambiguous, the appropriate forum for resolution of good faith differences in contractual language is the parties contractual grievance procedure. State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984). Therefore, the Director declines to issue a complaint.

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Appearances:

For the Respondent

Sills, Cummis, Zuckerman, Radin, Tischman,  
Epstein and Gross, Esqs.  
(Richard M. Salsberg, of counsel)

For the Charging Party

Bucceri and Pincus, Esqs.  
(Sheldon H. Pincus, of counsel)

REFUSAL TO ISSUE COMPLAINT

On May 31, 1988, the Passaic Valley Education Association ("Association") filed an unfair practice charge with the Public Employment Relations Commission ("Commission") alleging that the Passaic County Regional Board of Education ("Board") violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically subsections 5.4(a)(1) and (5),<sup>1/</sup> when

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<sup>1/</sup> These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with,

it unilaterally increased the number of administrative days teachers and guidance counsellors were required to work during the 1987-88 school year.

The Commission has delegated its authority to issue complaints to me and 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 charging party's allegations, if true, may constitute unfair practices within the meaning of the Act.<sup>2/</sup> If this standard has not been met, I may decline to issue a complaint.<sup>3/</sup>

For the reasons set forth below, I do not find that the Commission's complaint issuance standards have been met.

The Board and the Association are parties to a collective negotiations agreement covering the period from July 1, 1986 through June 30, 1989. That agreement provides at Article 5, "Teacher Work Year", that,

A. In-School Work Year -- Teachers

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1/ Footnote Continued From Previous Page

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."

2/ N.J.A.C. 19:14-2.1.

3/ N.J.A.C. 19:14-2.3.

The in-school work year for teachers employed on a ten (10) month basis shall not exceed one hundred eight-five (185) days. Excluded from this section are: new teachers, who may be required to attend three additional days of orientation, and guidance counselors, whose work year is defined below.

B. In-School Work Year -- Guidance Counselors  
The in-school work year for guidance counselors only, shall not exceed one hundred ninety-three (193) days. The guidance counselor work year shall begin five (5) working days immediately prior to the first day that all teachers report...The guidance counselor work year shall extend three (3) work days immediately following the teacher work year.

C. Inclement Weather or Similar Emergency --  
Teacher attendance shall not be required  
whenever student attendance is not required due to inclement weather or other similar emergency.

The Board's practice has been to schedule 184 instructional days and one administrative day for teachers. Pursuant to Article 5, Section C, teachers were not required to work whenever school was closed for inclement weather. The Association asserts that for at least the past ten years, the Board only required teachers to "make-up" instructional days if more than four days were lost to inclement weather.<sup>4/</sup> The Association further contends that the Board never required teachers and guidance counselors to make up snow days with non-instructional days.

In April 1988, the Board required teachers and guidance counselors to make up two snow days by working two additional

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<sup>4/</sup> The State Department of Education requires at least 180 days of instruction.

administrative days at the end of the school year. The Association asserts that this uncompensated increase in the length of the teachers' workyear is a unilateral change in terms and conditions of employment which violates § 5.4 (a)(5).

The Board acknowledges that it required teachers and guidance counsellors to work two additional administrative days in the 1987-88 school year, for a total of 184 days. However, the Board asserts that it had a contractual right to do so, and therefore, it did not violate §(a)(5) by not negotiating over the increase. The Board relies upon the above-cited article of the current contract which provides that "...the workyear shall not exceed 185 days..."

The Board also contends that the Association's charge amounts to an alleged breach of contract, which may only be pursued under the parties' contractual grievance process. State of New Jersey, Dept. of Human Services, P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984) ("Human Services").

The Association argues that Articles 5A and 5C, when taken together, create an ambiguity. It maintains that while Article 5A specifies a maximum number of workdays, Article 5C provides that teachers shall not be required to attend whenever student attendance is not required due to inclement weather. The Association argues that the conflict between these two clauses requires the application of past practice. Passaic Tp. Bd. of Ed., P.E.R.C. No. 78-42, 4 NJPER 72 (¶4035 1978). Further, the Association argues that the contract should not operate as a waiver since Article 5A only sets a

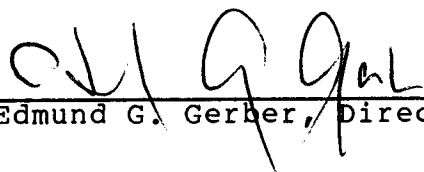
maximum number of days in the teachers' workyear, and the number of days below that maximum is negotiable; in this case, the Association contends that the workyear is controlled by the past practice.

Here, both sides are relying on the language of the contract to support their respective positions. The Association has not alleged a repudiation of the contract.

Assuming arguendo that the language of the contractual workyear provisions is ambiguous, the parties have a good faith difference concerning the interpretation of that language. The parties have negotiated a past practices article in their contract. The appropriate forum for resolution of contractual disputes is in the contractual grievance procedure. Where unfair practice allegations merely involve a good faith dispute over the interpretation of contract language, the Commission will not issue a complaint. State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (15191 1984).

Accordingly, I find that the Commission's complaint issuance standard has not been met and I decline to issue a complaint in this matter. The Charge is dismissed.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Edmund G. Gerber, Director

DATED: December 7, 1988