

D.U.P. NO. 92-29

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

In the Matter of

UNION TP./BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-92-212

UNION TP. SUPERVISORS' ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a Complaint with respect to a charge filed by the Union Township Supervisors' Association against the Union Township Board of Education. The Association claims the Board violated the Act by unilaterally assigning classroom activities to several supervisors in violation of past practice and the parties' agreement. The Director finds that the parties' contract permitted the Board to make the assignments.

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Appearances:

For the Respondent,
Mikel John Associates
(Michael A. Blasi, consultant)

For the Charging Party,
Weinberg & Kaplow, attorneys
(Richard J. Kaplow, of counsel)

REFUSAL TO ISSUE COMPLAINT

On January 10, 1992, the Union Township Supervisors' Association filed an unfair practice charge with the Public Employment Relations Commission against the Board of Education of Union. The charge alleges that the 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), (2), (3) and (5).^{1/}

^{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. (2) Dominating or interfering with the formation, existence or administration of

The Association alleges that the Board unlawfully unilaterally assigned classroom activities, primarily teaching periods, to ten of the fifteen supervisors in the unit, in violation of long existing past practice, and in violation of the supervisors' job description and the collective negotiations agreement.

The Board claims that it has assigned teaching periods to supervisors in the past. Moreover, it asserts that the assignments complied with Article IV of the parties' agreement and the supervisors' job description incorporated therein.

The Association is the majority representative of a unit of supervisors employed by the Board; the unit includes the Coordinator of Testing. The Association and the Board are parties to a collective negotiations agreement effective April 1, 1990 through August 31, 1992. Article IV of the agreement, entitled "Job Description", provides:

The job description of Supervisors and the Test Coordinator shall be set forth in Schedule A which is attached hereto. This job description may be changed by the Board without negotiations, and any such change shall not be the subject of a grievance.

1/ Footnote Continued From Previous Page

any employee organization. (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."

Section 31 of the job description provides that supervisors' responsibilities shall include "any other duties which may be assigned by the principal and/or the Superintendent of Schools."

As of September 1, 1991, the Board assigned classroom activities to ten of the fifteen supervisors, while not reducing or altering any of their other functions. Specifically, some have been assigned one to three teaching periods, while others were assigned other teaching functions.

ANALYSIS

A change in terms and conditions of employment is lawful when authorized by a collective negotiations agreement. Randolph Twp. Bd. of Ed., P.E.R.C. No. 81-73, 7 NJPER 23 (¶12009 1980). Further, clear contract provisions prevail over contrary past practices in establishing terms and conditions of employment. Randolph; Township of Maplewood, D.U.P. No. 90-4, 15 NJPER 554 (¶20228 1989).

Here, the job description contained in the agreement provides that supervisors may be assigned other duties by the principal and/or the Superintendent of Schools. Moreover, Article IV provides that the job description of supervisors may be changed without negotiations. In light of this language, the Board had the contractual right to assign the supervisors the disputed classroom activities, even if past practice has been to the contrary. Randolph.

Therefore, I find that the Commission's complaint issuance standard has not been met. Accordingly, I decline to issue a complaint and hereby dismiss the charge.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: June 26, 1992
Trenton, New Jersey