

D.U.P. NO. 93-24

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

In the Matter of

MAHWAH TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-92-174

MAHWAH EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint and notice of hearing on a charge alleging that a public employer unilaterally changed terms and conditions of employment without negotiations.

The Director determines that the allegedly unlawful increase in pupil contact time is permitted by the collective agreement. He also finds that a dispute over contractual terms is not an unfair practice. State of New Jersey (Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15919 1984).

Accordingly, the Director dismisses charges that the employer violated subsections 5.4(a)(1), (3) and (5) of the Act.

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Appearances:

For the Respondent,
Sullivan & Sullivan, attorneys
(Mark G. Sullivan, of counsel)

For the Charging Party,
Bucceri & Pincus, attorneys
(Gregory T. Syrek, of counsel)

REFUSAL TO ISSUE COMPLAINT

On December 9, 1991, the Mahwah Education Association filed an unfair practice charge alleging that the Mahwah Township Board of Education unilaterally changed terms and conditions of employment without negotiations. The Association alleges that it learned in June 1991 that in the 1991-92 term, the Board intended to assign teachers in one school to playground duty (8:30 a.m. - 9:00 a.m.) and to afternoon bus duty (3:00 p.m. - 3:25 p.m.) when in previous years, this time was primarily duty-free and occasionally used for meetings. It also alleges that in other schools, teachers were assigned morning bus duty (8:30 a.m. - 8:55 a.m.) and afternoon bus duty, when in previous years, the periods were duty-free. On June

14, 1991, the Association demanded negotiations over the changes. The Board did not respond. The changes were implemented in September 1991. The Board's acts allegedly violate 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").

The Board denies engaging in unfair practices. It relies on provisions of the applicable collective negotiations agreement which assertedly give it the right to make the disputed changes.

On December 30, 1992, I issued a letter tentatively dismissing the charge. No responses were filed.

The parties 1990-92 agreement has numerous provisions, including a grievance procedure (Article III) and Teacher Work Day provisions (Article XV). The grievance procedure, which ends in binding arbitration, has time limits for the filing of grievances at Level 1 (30 calendar days, after which it shall "be deemed waived and barred..."), Level 2 (10 calendar days) and Level 3 (7 calendar days).

Article XV has 21 paragraphs, lettered A-U. These paragraphs are relevant to the dispute:

^{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."

- B. Teachers shall not be required to report earlier than one-quarter (1/4) hour before the start of the school day and shall not be required to remain longer than three-quarters (3/4) hour at the close of the school day. Teachers required to report one-half (1/2) hour before the school day shall not be required to remain more than a half hour (1/2) after the close of the school day.
- E. No teacher is required to work beyond the regular work day or work year, as stipulated in this Agreement, without compensation.
- G. The non-teaching duties of teachers are stipulated in Article XVI.
- J. The weekly teaching load in the elementary schools shall not exceed twenty-five (25) hours of pupil contact per week.
- K. Teachers shall have a daily duty-free lunch period of at least thirty (30) minutes.
- T. All teachers shall have at least five (5) periods per week free from pupil contact. The administration shall make a concerted effort to schedule on (sic) period each day free from pupil contact. This period shall be used for professional purposes by the teacher. A reasonable amount of time shall be included in the above period for the teacher to take care of his/her personal needs. Any teacher who abuses this section shall be warned by the principal. Continued abuse of this section after warnings may result in the withholding of the teacher's increment.

Article XVI states:

NON-TEACHING DUTIES

The Board and Association acknowledge that a teacher's primary responsibility to teach and that his/her energies should, to the extent possible, be utilized to this end. The Board and the Association recognize that teacher aides are useful and necessary to implement this principle. However, teachers may be required to perform some non-teaching duties in the conduct of school business.

It is well established that the extent of pupil-teacher contact time is mandatorily negotiable. See e.g., Burlington Cty.

Coll. Fac. Assn. v. Bd. of Trustees, 64 N.J. 10 (1973); Maywood Bd. of Ed. v. Maywood Ed. Assn., 168 N.J. Super. 145 (App. Div. 1979), certif. den. 81 N.J. 292 (1979). But, a public employer will not be found to have violated its negotiations obligation if an increase in pupil contact time is authorized by the collective agreement. Carlstadt Bd. of Ed., P.E.R.C. No. 91-72, 17 NJPER 153 (¶22062 1991).

In Pascack Valley Bd. of Ed., P.E.R.C. No. 81-61, 6 NJPER 554 (¶11281 1980), 30 minutes of pupil contact time were substituted for 30 minutes of duty free time. The contract set the length of the workday, the maximum number of teaching periods and the number of duty-free and planning periods within the workday. The Commission dismissed the complaint because the disputed increase was within the contractual limits.

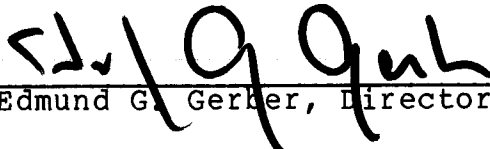
In Carlstadt, the majority representative alleged that the public employer unilaterally increased instructional time by 34 minutes per day without additional compensation. The Commission affirmed the hearing examiner's dismissal of the complaint, noting that consistent with the agreement, the length of the school day remained at 7 hours, teachers continued to have a 30-minute duty-free lunch, had at least 260 minutes preparation time per week and taught no more than 6 period per day.

A similar result is required here. Teachers are not, as a result of the change, required to report earlier than 15 minutes before the start of the day and remain more than 45 minutes after

the close of the school day. Their weekly teaching load has not exceeded 25 hours of pupil contact time and they still receive a duty-free lunch period of 30 minutes. Furthermore, the Association had not alleged that teachers suffered diminution of the 5 periods per week "free from pupil contact." See also, Glen Ridge Bd. of Ed., P.E.R.C. No. 90-33, 15 NJPER 619 (¶20258 1989); Sussex-Wantgae Bd. of Ed., P.E.R.C. No. 86-57, 11 NJPER 711 (¶16247 1985); Randolph Tp. Bd. of Ed., P.E.R.C. No. 83-41, 8 NJPER 600 (¶13282 1982).

Although a mandatorily negotiable workload increase may have occurred, the Board relies on the terms of the collective agreement for its actions. Such disputes over contract language are not, absent more, unfair practices. State of New Jersey (Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15919 1984). The change appears to be within the limits of the contractual provisions negotiated by the Board and Association; such changes are permitted by law. Accordingly, I refuse to issue a Complaint and Notice of Hearing. N.J.A.C. 19:14-2.3. The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: January 15, 1993
Trenton, New Jersey