

D.U.P. NO. 97-9

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

In the Matter of

TOWNSHIP OF EAST BRUNSWICK,

Respondent,

-and-

Docket No. CO-96-375

OPEIU LOCAL 153

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge against the Township of East Brunswick where OPEIU Local 153 alleges that the Township violated the Act when it denied Victor Romatowski's request for vacation time. The Director determined that Local 153's claim was not an unfair practice since it appeared to be a good faith dispute over the interpretation of contract times.

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Appearances:

For the Respondent,
Appruzzese, McDermott, Mastro & Murphy, attorneys
(Robert T. Clarke, of counsel)

For the Charging Party,
Schneider, Goldberger, Cohen, Finn, Solomon, Leder &
Montalbano, attorneys
(James M. Mets, of counsel)

REFUSAL TO ISSUE COMPLAINT

Local 153, OPEIU filed an unfair practice charge on May 28, 1996, and amended charge on June 20, 1996, with the Public Employment Relations Commission against the Township of East Brunswick. The charge alleges that the Township 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/} when it denied Victor Romatowski's request for vacation time.

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the

The Commission has the authority to issue a complaint if it appears that the allegations of the charging party, if true, may constitute an unfair practice within the meaning of the Act and that final proceedings in respect thereto should be instituted in order to afford the parties an opportunity to litigate relevant legal and factual issues. N.J.A.C. 19:14-2.1. The Commission's rules provide that I may decline to issue a complaint. N.J.A.C. 19:14-2.3.

The Township and Local 153 have a collective negotiations agreement effective from 1993 to 1996, concerning terms and conditions of employment for all professional and non-professional primary level supervisors employed by the Township. Contract Article IX, Section E, states:

Accumulation of vacation leave beyond that earned in a twelve (12) month period shall be permitted to carry over automatically to the following year. No employee shall be permitted to accumulate more than thirty (30) days of unused vacation leave. Vacation leave, subject to the approval of the Department Head, may be taken from time to time in units of full or half days.

On February 6, 1996, unit member Victor Romatowski requested twenty-one vacation days to be used in November and December 1996. The Township denied Romatowski's request and claims

1/ Footnote Continued From Previous Page

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."

it has a right pursuant to Article IX to deny such a vacation request. Local 153 asserts that unit members have always been permitted to take vacation when they so chose and Article IX merely gives employees the right to the vacation days in 1/2 and one day units.

Local 153's argument is, at best, one of contract interpretation. A mere breach of contract does not necessarily rise to the level of an unfair practice. State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984). We will not entertain an allegation of a violation of subsection (a)(5) if an employer reasonably relies on contract language for its actions and does not repudiate the contract. Here, it appears that the Township reasonably relied on contract language to deny vacation time. Admittedly, one could argue that the Township's interpretation of the contract is over broad. However, such an over broad interpretation does not amount to a repudiation of the contract. This claim does not constitute an unfair practice. Human Services, Franklin Tp. Bd. of Ed., D.U.P. No. 85-22, 11 NJPER 278 (¶16100 1985) (contractual claim dismissed where grievance procedure ended in advisory arbitration).

Accordingly, I find that the Commission's complaint issuance standard has not been met and I refuse to issue a complaint. N.J.A.C. 19:14-1.5 and 2.1. The charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Edmund G. Gerber, Director

DATED: August 16, 1996
Trenton, New Jersey