

P.E.R.C. NO. 92-37

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

KITTATINNY REGIONAL BOARD  
OF EDUCATION

Respondent,

-and-

Docket No. CO-H-91-215

KITTATINNY EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission sustains a Hearing Examiner's decision dismissing a Complaint based on an unfair practice charge filed by the Kittatinny Education Association against the Kittatinny Regional Board of Education. The charge alleged that the Board violated the New Jersey Employer-Employee Relations Act by unilaterally increasing the work day of office personnel during school holidays and recess periods. The Commission finds that the parties' contract gives the Board the right to have a seven and one-half hour work day throughout the year.

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Appearances:

For the Respondent, Schwartz, Pisano, Simon, Edelstein & Ben-Asher, attorneys (Nathanya G. Simon, of counsel)

For the Charging Party, Zazzali, Zazzali, Fagella & Nowak, attorneys (Paul L. Kleinbaum, of counsel)

DECISION AND ORDER

On March 19, 1991, the Kittatinny Education Association filed an unfair practice charge against the Kittatinny Regional Board of Education. The Association alleges that the Board violated New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (5) and (7),<sup>1/</sup> by unilaterally increasing the workday of office personnel during school holidays and recess periods.

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<sup>1/</sup> 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 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. (7) Violating any of the rules and regulations established by the commission."

On May 29, 1991, a Complaint and Notice of Hearing issued. On June 18, the Board filed its Answer claiming, among other things, that it had complied with the relevant contractual terms.

On July 16, 1991, Hearing Examiner Susan A. Weinberg conducted a hearing. The parties examined witnesses and introduced exhibits. At the end of the Association's case-in-chief, the Hearing Examiner granted the Board's motion to dismiss. She found that the Board had acted pursuant to a contractual provision setting the regular working hours for secretaries at seven and one-half hours per day, five days per week, twelve months per year.

On August 6, 1991, the Association requested review. It claims that there is at least a scintilla of evidence that the parties intended the contractual language to incorporate a past practice of reduced hours during recess periods.

On August 9, 1991, the Board replied. It claims that the contractual language is clear and that the Board is not required to negotiate what is already in the contract. It disputes the Association's claim that some evidence indicates that the contractual language was meant to incorporate the reduced hours during recess periods.

We have reviewed the record and sustain the Hearing Examiner's determination. Where clear and unambiguous contract language grants a benefit to employees, an employer does not violate the Act by ending a past practice granting more generous benefits and by returning to the benefit level set by the contract.

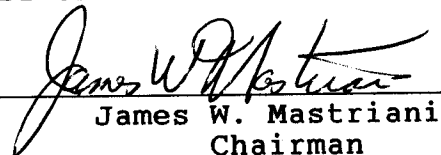
See, e.g., New Brunswick Bd. of Ed., P.E.R.C. No. 78-47, 4 NJPER 84 (¶4040 1978), recon. den. P.E.R.C. No. 78-56, 4 NJPER 156 (¶4073 1978), aff'd App. Div. Dkt. No. A-2450-77 (4/2/79). The parties' contract sets the length of the workday, workweek and workyear for secretaries. The Association has presented evidence that there was a practice of reducing hours during holidays and recess periods. It also presented evidence that at least some secretaries were told of those reduced hours when they were hired. But there is no evidence that the contract language incorporates those reduced hours. Instead it gives the Board the right to have a seven and one-half hour workday throughout the year. Accordingly, we cannot find that the employer violated the Act when it required secretaries to work the hours provided for in the contract.

Granting every reasonable inference to the charging party, we sustain the dismissal.

ORDER

The Hearing Examiner's decision dismissing the Complaint is sustained.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Goetting, Grandrimo, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Regan abstained from consideration.

DATED: September 30, 1991  
Trenton, New Jersey  
ISSUED: October 1, 1991