P.E.R.C. NO. 97-112

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF EAST BRUNSWICK,

Respondent,

-and- Docket No. CO-96-375

OPEIU LOCAL 153,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission remands to the Director of Unfair Practices an unfair practice charge filed by OPEIU Local 153 against the Township of East Brunswick. The charge alleges that the Township violated the New Jersey Employer-Employee Relations Act by unilaterally changing the way employees can use vacation time. The Commission finds that under its Complaint issuance standard, it cannot be determined based on the charge alone whether the employer had an obligation to negotiate or whether its action was authorized by the contract.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Respondent, Apruzzese, 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)

DECISION AND ORDER

On May 28 and June 20, 1996, OPEIU Local 153 filed an unfair practice charge and amended charge against the Township of East Brunswick. The charge, as amended, alleges that the employer 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/] by unilaterally changing the way employees can use vacation time. According to Local 153, before January 4, 1996, employees were

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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. (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...."

permitted to take vacation days alone or in multiple days. On that date, Victor Romatowski was directed to use his vacation days in a certain way.

On July 29, 1996, the employer filed a statement of position. It asserts that portions of Romatowski's vacation request were denied pursuant to Article IX, section E of the parties' collective negotiations agreement which provides, in part:

> Vacation leave, subject to the approval of the Department Head, may be taken from time to time in units of full or half days.

It further asserts that it has a managerial prerogative to evaluate leave requests in light of staffing needs and the freedom to deny those requests when necessary.

On August 16, 1996, the Director of Unfair Practices refused to issue a Complaint. D.U.P. No. 97-9, 22 NJPER 330 (¶27170 1996). Citing State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984), the Director stated that we will not entertain an allegation of a violation of subsection 5.4(a)(5) if an employer reasonably relies on contract language for its actions and does not repudiate the contract. Here, it appeared to the Director that the Township reasonably relied on the contract to deny vacation time. He acknowledged that one could argue that the Township's interpretation of the contract is too broad. Nevertheless, such a broad interpretation does not amount to a repudiation of the contract.

On September 9, 1996, after an extension of time, Local 153 appealed. It asserts that there is a material issue of disputed fact concerning a contractual defense raised in response to an allegation of a unilateral change in a mandatorily negotiable subject. It further asserts that its claim that the employer has changed its established practice of administering Article IX, section E must be resolved at a hearing.

We recently clarified that where one party alleges a violation of the statutory duty to negotiate and the other party raises a contractual defense, a Complaint will normally issue. North Caldwell Bd. of Ed., P.E.R.C. No. 97-37, 22 NJPER 379 (¶27200 1996); see also Passaic Cty. Bd. of Ed., P.E.R.C. No. 89-98, 15 NJPER 257 (¶20106 1989). Nevertheless, deferral of the underlying contractual interpretation question to binding arbitration is the preferred mechanism for resolving such questions. See Brookdale Comm. College, P.E.R.C. 83-131, 9 NJPER 266 (¶14122 1983). Even if a case cannot be deferred, a pre-hearing summary judgment motion based on a contractual defense may be filed and supported by affidavits and exhibits. This procedure guarantees that no facts are in dispute and that the parties have had an opportunity to present their legal arguments.

In this case, the charging party has not alleged a mere breach of contract or a repudiation of the contract. The charging party has instead alleged that the employer had a statutory obligation to negotiate over vacation scheduling before changing a

past practice of permitting employees to determine whether to take vacation days singly or in groups. We therefore will not dismiss this charge under Human Services.

The Director did not have the benefit of our decision in North Caldwell Bd. of Ed. Under our Complaint issuance standard, it cannot be determined based on the charge alone whether the employer had an obligation to negotiate or whether its action was authorized by the contract.

ORDER

The matter is remanded to the Director of Unfair Practices for proceedings consistent with this decision.

BY ORDER OF THE COMMISSION

Millicent A. Wasell
Chair

Chair Wasell, Commissioners Boose, Buchanan, Klagholz and Ricci voted in favor of this decision. None opposed. Commissioner Finn abstained from consideration. Commissioner Wenzler was not present.

DATED: March 26, 1997
Trenton, New Jersey
ISSUED: March 26, 1997