

P.E.R.C. NO. 2005-1

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HILLSBOROUGH TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-2004-294

HILLSBOROUGH EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies Hillsborough Education Association's request for special permission to appeal the decision of the Director of Unfair Practices deferring its unfair practice charge against the Hillsborough Township Board of Education to binding arbitration. The charge alleges that the employer violated the New Jersey Employer-Employee Relations Act when it unilaterally altered the manner in which in-district credit for longevity purposes has been calculated. The Association alleges that the Board has repudiated a practice of more than 20 years. The Commission notes that binding arbitration is the preferred mechanism for resolving an unfair practice charge essentially alleging a violation of N.J.S.A. 5.4(a)(5) interrelated with a breach of contract. Should an arbitrator reach a result which is repugnant to the Act, the Association may seek to reopen the unfair practice charge.

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, Fogarty & Hara, attorneys (Vittorio S. LaPira, of counsel)

For the Charging Party, Selikoff & Cohen, PA, attorneys (Steven R. Cohen, of counsel)

DECISION

On July 13, 2004, the Hillsborough Education Association requested special permission to appeal a decision of the Director of Unfair Practices deferring its unfair practice charge against the Hillsborough Township Board of Education to binding arbitration. The charge alleges that the employer violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1) and (5),<sup>1/</sup> when it unilaterally

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1/ These provisions 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  
(continued...)

altered the manner in which in-district credit for longevity purposes has been calculated. The Association alleges that the Board has repudiated a practice of more than 20 years. On July 19, the Board filed a statement opposing the request.

The Association alleges that the Board either failed to disclose or concealed from the Association and the fact-finder that it was going to repudiate more than 20 years of practice by withholding the commencement of longevity payments until the 21st year of service instead of starting those payments at the beginning of the 20th year. The Association argues that we must investigate as an unfair practice an allegation that a unilateral change has been made in a previously undisputed assumption underlying a calculation which impacts all negotiations unit members adversely.

The Board responds that where clear and unambiguous contract language defines a benefit for employees, an employer does not violate the Act by ending a past practice granting more generous benefits and returning to the benefit level set by the contract. It asserts that it has not repudiated the contract and that deferral to arbitration is appropriate where the sole issue is contractual.

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1/ (...continued)  
refusing to process grievances presented by the majority representative."

Special permission to appeal will be granted only in extraordinary circumstances not present here. Binding arbitration is the preferred mechanism for resolving a dispute when an unfair practice charge essentially alleges a violation of subsection 5.4(a)(5) interrelated with a breach of contract.

Pennsauken Tp., P.E.R.C. No. 88-53, 14 NJPER 61 (¶19020 1987).

In deciding an Association grievance alleging that the employer breached the parties' contract by changing the way it computes longevity, an arbitrator may consider the contract language, the parties' practice, and their negotiations history; these are the same issues that would be considered in an unfair practice proceeding. Should the arbitrator reach a result that is repugnant to the Act, the Association may seek to reopen the unfair practice charge.

State of New Jersey (Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984), relied on by the Association, does not command a different result. That case addresses whether an alleged contractual repudiation constitutes an unfair practice. It does not preclude deferral of unfair practice charges interrelated with contractual interpretation issues to binding arbitration. Compare City of South Amboy, P.E.R.C. No. 85-16, 10 NJPER 511 (¶15234 1984) (unilateral reduction in health benefits is a statutory violation) with Pennsauken (deferral of health benefit change cases to arbitration).

ORDER

The request of the Hillsborough Education Association for special permission to appeal is denied.

BY ORDER OF THE COMMISSION

A handwritten signature in black ink, appearing to read "L Henderson", written over a horizontal line.

Lawrence Henderson  
Chairman

Chairman Henderson, Commissioners Buchanan, DiNardo, Katz, Mastriani, Sandman and Watkins voted in favor of this decision. None opposed.

DATED: August 12, 2004  
Trenton, New Jersey  
ISSUED: August 13, 2004