

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PATERSON CHARTER SCHOOL
FOR SCIENCE AND TECHNOLOGY,

Respondent,

-and-

Docket No. CO-2020-143

PATERSON CHARTER
EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission remands to the Director of Unfair Practices for the issuance of a complaint on an unfair practice charge filed by the Paterson Charter Education Association against the Paterson Charter School for Science & Technology, which alleged that the School violated N.J.S.A. 34:13A-5.4a(1) and (5) when it unilaterally changed terms and conditions of employment for the 2019-2020 school year by failing to provide all teaching staff members at the 7-12th grade campus with a 45-minute duty-free lunch period, in violation and repudiation of the parties' collective negotiations agreement (CNA). On the Association's appeal from the Director's refusal to issue a complaint, the Commission finds that it appears that the allegations of the charge, if true, may constitute unfair practices on the part of the School, requiring formal proceedings in order to afford the parties an opportunity to litigate relevant legal and factual issues. The Commission finds that the School's assertion that it complied with the CNA by giving teaching staff members the discretion to fit their lunch periods within whatever 46-minute interval(s) happened to exist between classes in their individual schedules to be more akin to a contractual defense rather than merely stating a dispute over conflicting interpretations of the parties' contract; and 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.

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, Riker, Danzig, Scherer, Hyland,
Perretti, LLP, attorneys (Fiona E. Cousland, of
counsel)

For the Charging Party, Oxfeld Cohen, P.C., attorneys
(William P. Hannan, of counsel)

DECISION

On November 25, 2019 and March 3, 2020, Paterson Charter Education Association (Association) filed an unfair practice charge, amended charge, and second amended charge against Paterson Charter School for Science & Technology (PCSST). The charge, as amended, alleges that on or about August 26, 2019, PCSST violated section 5.4a(1) and (5)^{1/} of the New Jersey

^{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"; and "(5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and
(continued...)

Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq., when it unilaterally changed terms and conditions of employment for the 2019-2020 school year by failing to provide all teaching staff members at the 7-12th grade campus with a 45-minute duty-free lunch period, in violation and repudiation of the parties' collective negotiations agreement (CNA). The amended charge further alleges that during the 2019-2020 school year there are two 30-minute lunch periods on Mondays, but teaching staff members are assigned to only one as a duty-free lunch period; while on Tuesdays through Fridays there are two 40-minute lunch periods, but teaching staff members are assigned to only one as a duty-free lunch period; and that teaching staff members are also denied 45-minute duty-free lunch periods on early dismissal days and delayed opening days.

On May 15, 2020, the Director of Unfair Practices refused to issue a complaint. D.U.P. No. 2020-14, 46 NJPER 547 (¶124 2020). The Association filed an appeal on May 26. PCSST filed a response on June 5, 2020.

Article VIII(A) of the parties' CNA, entitled "Work Hours and Work Load," provides: "All employees shall be provided a 45-minute duty-free lunch period." On appeal, the Association

1/ (...continued)
conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

argues that the contract clause providing for a 45-minute duty-free lunch is clear and unambiguous, there is nothing in the parties' past relationship indicating it has been given any interpretation other than its plain and clear meaning, and that PCSST repudiated an established term or condition of employment by unilaterally implementing a schedule that specifically breached that negotiated term, which affects all teaching staff members. The Association also contends that PCSST appears to include the three-minute travel periods between class periods and lunch periods as part of the "46 Minute" breaks which are prominently flagged in the individual teaching schedules^{2/} relied upon by PCSST, and that this "defies common sense and logic," asserting that this is not merely a good-faith difference of opinion in the interpretation of the relevant contractual

2/ With its brief in opposition to the amended charge, PCSST submitted copies (Exhibit A) of the teaching schedules of 57 teaching staff members. All of these show one block of time on Tuesdays through Fridays, prominently labeled "Total of 89 Minutes Break (between 11:01 to 12:30) 43 minutes for intervention or enrichment duty, 46 Minutes for Lunch Break." Two periods on Mondays, each prominently labeled "Total of 46 Minutes Break," one in the morning and one in the afternoon, appear in 44 of the individual schedules. In the remaining individual schedules, two show a total of three "Total of 46 Minutes Break" periods on Mondays, another two have two in the mornings only, and four have two in the afternoons only. Lastly, on five of the individual schedules the "Total of 46 Minutes Break" label does not appear at all on Mondays. We do not know if these labels were in the originals or were added by PCSST for this proceeding.

language that removes the Association's repudiation claim from PERC's jurisdiction.

PCSST maintains that the schedules relied upon by the Association are for students, not teachers, and that while students are only permitted to eat lunch at certain times, teachers have no such restriction. PCSST contends it has not repudiated the contractual provision that provides teaching staff members with a 45-minute duty-free lunch, and that the dispute is merely a conflicting interpretation of the parties' contract which should be resolved through the parties' grievance procedure. We disagree.

We remand to the Director for the issuance of a complaint. In accordance with our complaint issuance standard, we find that it appears that the allegations of the amended charge, if true, may constitute unfair practices on the part of the PCSST, requiring formal proceedings in order to afford the parties an opportunity to litigate relevant legal and factual issues.

N.J.A.C. 19:14-2.1. These include, among other things, factual issues relating to the parties' opposing views and documentary submissions with respect to whether PCSST's schedules afford unit members the contractually allotted 45-minute lunch break, without exception.

The Association has alleged a repudiation of the contract. We find that PCSST's assertion that it complied with the CNA by

giving teaching staff members the discretion to fit their 45-minute duty-free lunch periods within whatever 46-minute interval(s) happened to exist between classes in their individual schedules to be more akin to a contractual defense rather than merely stating a dispute over conflicting interpretations of the parties' contract. We have held 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. Tp. of East Brunswick, P.E.R.C. No. 97-112, 23 NJPER 229 (¶28109 1997), citing North Caldwell Bd. of Ed., P.E.R.C. No. 97-37, 22 NJPER 379 (¶27200 1996); Passaic Cty. Bd. of Ed., P.E.R.C. No. 89-98, 15 NJPER 257 (¶20106 1989). We therefore will not dismiss this charge under State of New Jersey (Dep't of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).

ORDER

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

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Jones, Papero and Voos voted in favor of this decision. None opposed. Commissioner Ford recused himself.

ISSUED: September 17, 2020

Trenton, New Jersey