P.E.R.C. NO. 89-98

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PASSAIC COUNTY BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-88-316

PASSAIC VALLEY EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission determines that a complaint should issue on an unfair practice charge filed by the Passaic Valley Education Association against the Passaic County Board of Education. The charge alleges the Board violated the New Jersey Employer-Employee Relations Act when it unilaterally increased the work year for teachers and guidance counselors. Under the Commission's complaint issuance standard, it cannot be determined with assurance at this early stage of the administrative process if the parties' contract authorized the employer's action or if the charging parties' claim contradicts the contract provision.

P.E.R.C. NO. 89-98

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PASSAIC COUNTY BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-88-316

PASSAIC VALLEY EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Sills, Cummis, Zuckerman, Radin, Tischman, Epstein and Gross, Esqs.
(Richard M. Salsberg, of counsel)

For the Charging Party, Bucceri and Pincus, Esqs.
(Sheldon H. Pincus, of counsel)

DECISION AND ORDER

On May 31, 1988, the Passaic Valley Education Association ("charging party") filed an unfair practice charge against the Passaic County Board of Education ("employer"). The charge 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/] when it unilaterally increased the work year for teachers and guidance counselors.

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, or refusing to process grievances presented by the majority representative."

On December 7, 1988, the Director of Unfair Practices refused to issue a Complaint. D.U.P. No. 89-5, 14 NJPER 54 (¶20019 1988). He found that the allegations merely involve a good faith dispute over the interpretation of contract language and that the appropriate forum for resolution of contractual disputes is the negotiated grievance procedure. State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).

On December 16, 1988, the charging party filed an appeal. On December 21, the employer filed a statement in opposition.

The charge alleges a unilateral change in a term and condition of employment and does not rely on any contractual provision. It claims the longer work year altered the parties' practice. It seeks restoration of the status quo ante pending negotiations over any work year changes. The employer claims that the dispute concerns a contractual clause's interpretation and that the charging party should not be permitted to circumvent the negotiated grievance procedure.

Human Services cautions against permitting litigation of mere breach of contract claims in the guise of unfair practice charges. That case concerned two alleged breaches of the parties' collective negotiations agreement. We concluded that allegations setting forth at most a mere breach of contract do not warrant the exercise of our unfair practice jurisdiction.

Here, the union does not claim a contractual right or seek enforcement of any contractual provision. Instead, it claims that

the employer has unilaterally changed a past practice without the prior negotiations required by N.J.S.A. 34:13A-5.3. It wants the employer to negotiate before changing the alleged past practice. See NLRB v. C & C Plywood Corp., 325 U.S. 421, 64 LRRM 2065 (1967) (contractual defense does not divest NLRB of jurisdiction to determine whether employer unilaterally changed terms and conditions of employment). Like the National Labor Relations Board, the Commission has the duty:

> to enforce a statutory right which Congress considered necessary to allow labor and management to get on with the process of reaching fair terms and conditions of employment.... [Id. at ___, 64 LRRM 2068]

The employer has raised a contractual defense to an allegation of a unilateral change. While our role is not to enforce contractual rights, we are charged with determining whether the employer violated its statutory negotiations obligation. In so doing, we must consider whether the charging party, through the contract, agreed to waive its statutory negotiations right.

N.J.A.C. 19:14-2.1 provides, in part:

> if it appears to the Director of Unfair Practices that the allegations of the charging party, if true, may constitute unfair practices on the part of the respondent, and that formal proceedings in respect thereto should be instituted in order to afford the parties an opportunity to litigate relevant legal and factual issue, the Director of Unfair Practices shall issue...a formal complaint.

The employer claims the parties' contract authorized its action. The Association claims that the provisions that the Board relies on do not control and that the Board should follow its

practice until it negotiates to impasse. Under our complaint issuance standard, it cannot be determined with assurance at this early stage of the administrative process if the parties' contract authorized the employer's action or if the charging party's claim contradicts the contract provision. Accordingly, a Complaint should issue.2/

ORDER

The matter is remanded to the Director of Unfair Practices for complaint issuance.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Johnson, Ruggiero and Smith voted in favor of this decision. None opposed. Commissioner Reid abstained. Commissioners Bertolino and Wenzler were not present.

DATED: Trenton, New Jersey
March 9, 1989
ISSUED: March 10, 1989

2/ Had the parties agreed to binding arbitration of contractual disputes, deferral to that procedure would have been appropriate. Complaint issuance does not preclude summary judgment in cases where there are no material facts in dispute and the employer has a valid contract defense.