

D.U.P. NO. 2000-10

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

MERCER COUNTY SPECIAL SERVICES
BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-99-288

MERCER COUNTY SPECIAL SERVICES
EDUCATIONAL & THERAPEUTIC ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint where the underlying facts of the charge involve a contract dispute regarding the amount and time frame for implementation of a waiver of health benefits reimbursement. An application of State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984) requires a dismissal of the charge as a mere contract dispute to be resolved through the parties' negotiated grievance procedure.

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Appearances:

For the Respondent,
Cassetta, Taylor, Whalen & Hybbeneth, consultants
(Garry M. Whalen)

For the Charging Party,
Wills, O'Neill & Mellk, attorneys
(Gidian R. Mellk, of counsel)

REFSUAL TO ISSUE COMPLAINT

On March 4, 1999, Mercer County Special Services Educational & Therapeutic Association (MCSSETA) filed an unfair practice charge against the Mercer County Special Services Board of Education (Board). On March 24, 1999, MCSSETA filed an amended unfair practice charge to correct certain defects contained in the original charge. The amended charge alleges that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et

seq. (Act), specifically 5.4a(1) and (5).^{1/} Specifically, MCSSETA alleges that the Board refused to make health insurance waiver incentive payments to eligible unit employees in May and December 1999 and unilaterally implemented an effective waiver date of July 1, 1999.^{2/} MCSSETA asserts that the Board was obligated to make the payments to eligible employees in May 1999 pursuant to a Memorandum of Agreement (Agreement) entered into by the parties on January 5, 1999. MCSSETA contends that health benefit payments should have been made effective with the ratification of the parties' January 5 Agreement.

The Board denies that it unilaterally implemented an effective date of July 1, 1999. Additionally, the Board asserts that after the parties' January 5, 1999 Agreement was signed, it proceeded with due diligence to contact insurance brokers, establish the "Section 125 Accounts" required by law in waiver situations, distribute the appropriate waiver forms and pay out the pro-rated reimbursement amounts for April through June pursuant to the January

^{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 refusing to process grievances presented by the majority representative."

^{2/} The only payment date actually at issue here is May 1999. Any allegations involving payment of health insurance waiver incentives for December 1999 are premature.

5 Agreement. Finally, the Board argues that MCSSETA's withdrawal of a February 26 grievance, which raised identical issues as those alleged here, should prevent the allegations from being relitigated through the unfair practice charge. The Board asserts that MCSSETA stated that the Board had "satisfactorily" addressed the grievance.

The Commission has authority to issue a Complaint where it appears that the Charging Party's allegations, if true, may constitute an unfair practice within the meaning of the Act.

N.J.S.A. 34:13A-5.4c; N.J.A.C. 19:14-2.1. The Commission has delegated that authority to me. Where the Complaint issuance standard has not been met, I may decline to issue a Complaint.

N.J.A.C. 19:14-2.3. In correspondence dated November 3, 1999, I advised the parties that I was not inclined to issue a Complaint in this matter and set forth the basis upon which I arrived at that conclusion. I provided the parties with an opportunity to respond. Neither party filed a response. Based upon the following, I find the Complaint issuance standard has not been met.

The parties entered into a Memorandum of Agreement on January 5, 1999. On January 12, 1999, the Board ratified the agreement and on or about February 9, 1999, MCSSETA ratified.

On February 26, 1999, MCSSETA filed a grievance concerning the Board's alleged non-implementation of the contractual waiver payments program. In the grievance, MCSSETA requested that the Board make available health benefit waiver forms, that the Board establish "Section 125 Accounts", that the required reimbursement

plan be put in place, and that reimbursement be available for May 1999; per the parties' Agreement. On April 30, 1999, MCSSETA withdrew the grievance based upon the Board's March 3, 1999 written assurance that it was proceeding to establish the waiver incentive program and that the program would be available during April 1999.

On March 11, 1999, the Board made the necessary waiver forms available to eligible employees and on May 21, 1999 all eligible employees received reimbursement payments covering the period April 1999 through June 1999.^{3/} MCSSETA continues to contend in its charge that the amount of waiver payment owed remains in dispute and should reflect monies covering the period from February when it ratified the Agreement through June 1999, rather than from April through June 1999, as paid by the Board.

The parties' January 5 Agreement provides in pertinent part:

8. b. Health Insurance Waiver Incentive Payments;

	Medical	Prescription	Dental
S	\$ 800	\$200	\$100
PC	\$1000	\$250	\$200
HW	\$1500	\$300	\$200
F	\$2000	\$400	\$300

Payments made in December and May. Proof of alternative coverage required. Subject to re-enrollment for "Cobra" life circumstance change. Board will create and pay for Sec. 125 accounts for participants.

^{3/} During the period February through March 1999, unit members were covered pursuant to the contractual health benefits plan.

12. There shall be two agreements. The first one shall cover the period from July 1, 1998 to June 30, 1999. The second one shall cover the period from July 1, 1999 to June 30, 2002.

ANALYSIS

In State of New Jersey (Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984), the Commission held that:

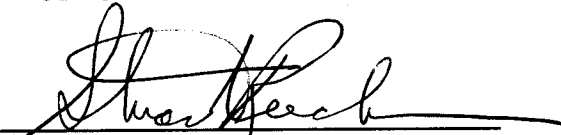
a mere breach of contract claim does not state a cause of action under subsection 5.4a(5) which may be litigated through unfair practice proceedings and instead parties must attempt to resolve such contract disputes through their negotiated grievance procedures. [10 NJPER at 421.]

In the instant case, the parties have a good faith dispute concerning the interpretation of the contract language in question, particularly with regard to the time frame for implementation of waiver reimbursement and the amount which was to be paid out during May 1999. The Commission will not substitute its unfair practice jurisdiction for the parties' agreed upon grievance procedure to resolve contract disputes. Moreover, in recognition of the contractual nature of the parties' dispute herein, MCSSETA pursued resolution of the dispute through the parties' grievance procedure and, subsequently, chose to withdraw the grievance as being "satisfied." Thus, I find that the underlying facts of the charge merely involve a contract dispute and the charge must therefore be dismissed. Human Services.

ORDER

The unfair practice charge is dismissed.^{4/}

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Stuart Reichman, Director

DATED: December 3, 1999
Trenton, New Jersey

^{4/} N.J.A.C. 19:14-2.3.