D.U.P. NO. 94-27

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

In the Matter of

COUNTY OF MORRIS,

Respondent,

-and-

Docket No. CO-93-235

DISTRICT 1199J, NUHHCE,
AFSCME, AFL-CIO,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a Complaint and Notice of Hearing on a charge alleging that an employer violated a "side-bar agreement" providing an option to unit employees to upgrade health insurance coverage. The Director determined that the purported oral agreement violates the parol evidence rule.

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Appearances:

For the Respondent,
O'Mullan & Brady, attorneys
(Daniel W. O'Mullan, of counsel)

For the Charging Party,
Balk, Oxfeld, Mandell & Cohen, attorneys
(Arnold S. Cohen, of counsel)

REFUSAL TO ISSUE COMPLAINT

On December 31, 1992, District 1199J, NUHHCE, AFSCME, AFL-CIO filed an unfair practice charge against the County of Morris. The charge asserts that on April 22, 1992, the parties signed a memorandum of agreement in which the County negotiated a switch in health insurance coverage from Blue Cross/Blue Shield "Medallion" coverage to "wrap-around" coverage beginning June 1, 1992. The allegation is that on April 22, 1992, the parties also "entered a side-bar agreement" which provided that "if any employee of the County was offered Medallion coverage, any member of the District 1199J unit would have the option of keeping Medallion coverage, under the same terms by which non-unit members were given

such coverage." The union alleges that non-unit employees are being offered Medallion coverage but unit employees are not, violating subsection 5.4(a)(3) and (5) of the Act.[1/]

On February 3, 1993, the County filed a letter admitting that a memorandum of agreement was entered on April 22, 1992 but denying the existence of any side-bar agreement concerning the availability of Medallion coverage to unit employees. It also provided a copy of the memorandum of agreement entered on April 22, 1992.

Paragraph 5 of that agreement states:

> Effective June 1, 1992, Article 7 (Health Benefits) shall be amended so as to implement the basic hospital wrap around major medical plan as shown in attachment B.

Attachment B makes no reference to "medallion coverage."

The union concedes that the alleged agreement about the availability of medallion coverage was orally entered on April 22, 1992.

The clear terms of a collective agreement cannot be contradicted by outside evidence. Raritan Township M.U.A., P.E.R.C.

1/ These subsections prohibit public employers, their representatives or agents from: "(3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage 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."

No. 84-94, 10 NJPER 147 (¶15072 1984). Specifically, the parol evidence rule excludes evidence of surrounding circumstance when the purpose is to "give effect to an intent at variance with any meaning that can be attached to the words." Cariel v. King, 2 N.J. 45 (1949). See also, Atlantic Northern Airlines v. Schwimmer, 12 N.J. 293 (1953); Borough of Bergenfield, P.E.R.C. No. 82-1, 7 NJPER 431 (¶12191 1981).

The alleged oral agreement is "at variance" with the terms of the written memorandum, which on June 1, 1992, commences "wrap around" coverage for unit employees. The oral agreement purports to set a condition for discontinuation (at the employee's option) of the coverage provided by the memorandum. Such a condition needed to have been memorialized in writing.

Based upon the foregoing, the allegations of the charge do not constitute a violation of subsection 5.4(a)(5) of the Act. Accordingly, because the Commission's complaint issuance standard has not been met (N.J.A.C. 19:14-2.3), I dismiss the charge.[2/]

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES

Edmund G. Gerber, Director

DATED: February 2, 1994
Trenton, New Jersey

2/ There are no allegations in the charge which would support a determination that the County's acts violated subsection 5.4(a)(3) of the Act. Accordingly, I also dismiss this portion of the charge.