

H.E. NO. 98-23

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

UNIVERSITY OF MEDICINE AND
DENTISTRY OF NEW JERSEY,

Respondent,

-and-

Docket No. CO-H-97-389

COUNCIL OF AMERICAN ASSOCIATION
OF UNIVERSITY PROFESSORS CHAPTERS,

Charging Party.

SYNOPSIS

A Hearing Examiner denies the Charging Party's Motion for Summary Judgment, finding that a genuine issue of material fact exists.

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Appearances:

For the Respondent, Peter Verniero, Attorney General
(Ann Marie Kelly, Deputy Attorney General)

For the Charging Party, Sterns & Weinroth, attorneys
(Mark D. Schorr, of counsel)

HEARING EXAMINER'S RECOMMENDED DECISION
ON MOTION FOR SUMMARY JUDGMENT

On May 19, 1997 and October 20, 1997, the University of Medicine and Dentistry of New Jersey Council of American Association of University Professors Chapters filed an unfair practice charge and amended charge against the University of Medicine and Dentistry of New Jersey. The amended charge alleges that UMDNJ violated 5.4a (1), (3) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. by unilaterally reducing Dr. Stanley Weiss' patient service component during negotiations for a successor agreement. The AAUP further

contends that this action was taken to retaliate against the AAUP and to discourage it from exercising its protected rights.

On December 15, 1995, a Complaint and Notice of Hearing issued.

On December 18, 1997, the AAUP filed a Motion for Summary Judgment with the Commission. UMDNJ did not file a response to the Motion. On January 5, 1998, the Motion was referred to me for a decision. N.J.A.C. 19:14-4.8.

Summary Judgment will be granted:

if it appears from the pleadings, together with the briefs, affidavits and other documents filed, that there exists no genuine issue of material fact and the movant...is entitled to its requested relief as a matter of law.
[N.J.A.C. 19:14-4.8(d)]

Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520, 540 (1995), specifies the standard to determine whether a "genuine issue" of material fact precludes summary judgment. The factfinder must "consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." If that issue can be resolved in only one way, it is not a "genuine issue" of material fact. A motion for summary judgment should be granted cautiously -- the procedure may not be used as a substitute for a plenary trial. Baer v. Sorbello, 177 N.J. Super. 182 (App. Div. 1981); Essex Cty.

Ed. Serv. Comm., P.E.R.C. No. 83-65, 9 NJPER 19 (¶14009 1982); N.J. Dept. of Human Services, P.E.R.C. No. 89-54, 14 NJPER 695 (¶19297 1988).

Applying these standards and relying upon the AAUP's brief and supporting documents, I make the following findings of fact:

1. Dr. Stanley Weiss is an employee of the Respondent and is a member of the bargaining unit represented by the Charging Party.

2. The compensation of unit members consists of both negotiated and non-negotiated components. The University and the AAUP have negotiated the "academic component" of the salary of unit members. Some faculty also receive a "patient service component," which, according to UMDNJ, is negotiated individually with the faculty member at the time of hiring and may be modified or terminated. The AAUP has never negotiated with UMDNJ over the patient service component.

3. In 1993, Dr. Weiss was promoted to Associate Professor. His salary was comprised of an academic component which was collectively negotiated and a patient service component which was negotiated by UMDNJ with Dr. Weiss individually.

4. In 1996, UMDNJ informed Dr. Weiss that his Department could no longer absorb his patient service component and that half of it would be removed in June 1997 and that the other half would be removed in January 1998. The removal would be effected without negotiations.

5. According to the University, since 1993, there have been approximately 43 faculty members who have had their patient service component unilaterally increased, decreased or terminated, without challenge by the AAUP.

ANALYSIS

The AAUP contends that the Respondent acted unlawfully when in unilaterally reduced a unilaterally imposed benefit--the patient service component of Dr. Weiss' compensation. It asks that UMDNJ be ordered to restore Dr. Weiss' patient service component with interest.

UMDNJ claims it has unilaterally awarded and unilaterally increased, decreased or terminated the patient service component in the past, without protest by the AAUP. It believes the AAUP has waived its right to negotiate over the patient service components or faculty practice supplements.

I deny the Motion, as I believe a genuine issue of material fact exists.

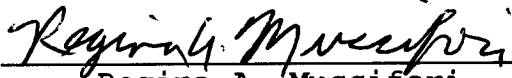
Assuming that the AAUP had the right to negotiate Dr. Weiss' patient service component, the facts before me raise the prospect that the AAUP may have waived any right to negotiate over the reduction and eventual elimination of Dr. Weiss' patient service component. According to the University, the practice has been for it to unilaterally reduce, increase or eliminate the patient service component for faculty members.

Under these circumstances, the moving party has not satisfied the requirements for granting summary judgment. Brill. Accordingly, the Motion is denied.

The pre-hearing in this matter will take place as scheduled on April 27, 1998 and the hearing will take place on April 28 and 29, 1998.

DECISION

The Motion is denied.


Regina A. Muccifori
Hearing Examiner

DATED: February 3, 1998
Trenton, New Jersey