

D.U.P. No. 2012-11

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

In the Matter of

UNIVERSITY OF MEDICINE AND  
DENTISTRY OF NEW JERSEY,

Respondent,

-and-

Docket No. CO-2011-161

HEALTH PROFESSIONALS AND ALLIED  
EMPLOYEES, LOCAL 5089, AFT, AFL-CIO,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint and dismisses an unfair practice charge alleging that the public employer unilaterally changed the "wage rates" of per diem registered nurse anaesthetists (CRNA) included in a collective negotiations unit represented by the exclusive representative. The Director observed that the parties' collective negotiations agreement sets forth a grievance procedure ending in binding arbitration and a provision setting per diem rates of pay for the CRNA title, including shift and weekend differentials.

The Director holds that the unfair practice charge asserts a mere breach of contract claim which does not state a cause of action under 5.4a(5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. The parties must instead seek to resolve their dispute through the negotiated grievance procedure. State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419, 421 (¶15191 1984).

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Appearances:

For the Respondent,  
Abdel Kanan, Esq.

For the Charging Party,  
Chris Whalen, Staff Representative

REFUSAL TO ISSUE COMPLAINT

On October 20, 2010, the Health Professionals and Allied Employees, Local 5089, AFT, AFL-CIO (HPAE), filed an unfair practice charge against the University of Medicine and Dentistry of New Jersey (UMDNJ). On November 5, 2010, HPAE filed an amended charge against UMDNJ. The charge alleges that UMDNJ violated 5.4a(1) and (5)<sup>1/</sup> of the New Jersey Employer-Employee

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<sup>1/</sup> 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  
(continued...)

Relations Act, N.J.S.A. 34:13A-1 et seq. (Act), when, on or about September 17, 2010, UMDNJ “. . . unilaterally changed the wages rates (sic) of CRNA per diem employees without prior negotiations with the union.” The remedy sought by HPAE “. . . requests that the above-named employer pay CRNA per diem employees at the rate negotiated by the parties in the collective bargaining agreement.”

The Commission has authority to issue a complaint where it appears that the Charging Party's allegations, if true, may constitute unfair practices on the part of the Respondent. 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 will decline to issue a complaint. N.J.A.C. 19:14-2.3. The following facts appear:

The Charging Party represents the title of certified registered nurse anaesthetists (CRNA). The July 1, 2006 through June 30, 2010 collective agreement, paragraph 4.01, Classification, provides as follows:

An employee will be classified as either (a) full time (including five (5)) eight (8) hour shifts per week, sixteen (16) ten (10) hour shifts per four (4) week period, or thirteen (13) twelve (12) hour shifts per four (4)

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

week period and (b) part time or (c) per diem.

Paragraph 4.02, Full Time Employee, states as follows:

An employee who is employed on a regular basis to work forty (40) hours per week through scheduled work shifts of eight (8) or ten (10) hours, or an employee who is regularly scheduled to work thirteen (13) twelve (12) hour shifts per four (4) week period shall be classified as a full time employee and shall receive all benefits pertaining to full time status.

Paragraph 4.03, Per Diem Employee, provides as follows:

An employee who works on a day-to-day basis as needed by the University and who does not fall under the classification of Full Time or Part Time, except that employees who were hired as Per Diem prior to the effective date of this agreement but who fit the definition of Part Time employee shall remain classified as Per Diem. Per Diem employees are not entitled to any benefits under this agreement except where they are specifically provided for.

Paragraph 4.04, Part Time Employee, provides as follows:

A Part Time employee is an employee who works twenty (20) hours or more each week, but less than the Full Time equivalent for the title. A Part Time employee shall be entitled to pro-rated benefits.

Paragraph 4.05, Weekend Per Diem, provides as follows:

If any Per Diem works either a weekend or holiday work shifts (sic) he/she shall be eligible for the Weekend Per Diem rate of pay.

Paragraph 21, CRNAs - Wages and Benefits, provides, in relevant part:

Per Diem Rate - CRNA:

Weekday: \$90 per hour  
Weekend: \$100 per hour

The grievance procedure includes a multi-step process which culminates in binding arbitration.

In State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419, 421 (¶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.

In the instant matter, the parties' collective agreement clearly establishes the pay rate of per diem CRNAs. Pursuant to the terms of the collective agreement, that pay rate must remain unchanged until the parties enter into a mutually acceptable negotiated modification. Thus, until such negotiated modification, the pay rate established pursuant to the collective agreement is enforceable through the filing of a grievance claiming that the collective agreement has been violated as a result of any change or misapplication in the contractually established pay rate for per diem CRNAs. Consequently, since a contractual remedy is available, the Commission need not entertain an alleged violation of 5.4a(5) of the Act.


Accordingly, I refuse to issue a complaint on this charge and

refer the parties to the grievance procedure contained in their collective agreement. Consequently, I do not believe that the Commission's complaint issuance standard has been met and I refuse to issue a complaint on the allegation set forth in this unfair practice charge.

ORDER

The above-captioned unfair practice charge is dismissed.

By Order of the Director  
of Unfair Practices

  
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Gayl R. Mazuco, Director

DATED: January 12, 2012  
Trenton, New Jersey

**This decision may be appealed to the Commission pursuant to N.J.A.C. 19:14-2.3.**

**Any appeal is due by January 23, 2012.**