

D.U.P. No. 2020-9

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

In the Matter of

TRENTON BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-2019-198

TRENTON PARAPROFESSIONALS ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by Trenton Paraprofessionals Association (Association) against Trenton Board of Education (Board). The charge alleges that the Board violated the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1, et seq., specifically sections 5.4a(1), (3), and (5), by failing to provide dental and vision health insurance benefits to newly-hired unit members despite provisions in the parties' collective negotiations agreement, memorandum of agreement, and past practice entitling them to those benefits. Initially, the Director dismissed the 5.4a(3) claim given that no facts indicate that the Board's conduct was motivated by anti-union animus. The Director also dismissed the 5.4a(1) and (5) claims, finding those allegations were moot given that the Board took prompt and dispositive action to remedy what appears to be a mistake regarding the proper enrollment of certain Association members in vision and dental insurance plans; and given that the Board agreed to reimburse affected unit members, upon receipt of documentation, for related out-of-pocket costs in the amount that would have been provided by insurance. The Director determined that continued litigation for the purpose of securing a cease and desist order and a posting for the benefit of the employees was not appropriate. The Director also found that the charge did not comply with N.J.A.C. 19:14-1.3(a) given that the Association failed to identify affected unit members who were/are not properly enrolled in vision and dental insurance plans and/or who have related out-of-pocket costs. The Director determined that the Association's contention that the Board may have an ongoing obligation to reimburse affected unit members in the future was speculative in the context of this charge.

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Appearances:

For the Respondent, Adams, Gutierrez & Lattiboudere,
LLC, attorneys (Andrew B. Brown, of counsel)

For the Charging Party, Zazzali, Fagella, Nowak,
Kleinbaum & Friedman, P.C., attorneys (Richard A.
Friedman, of counsel)

REFUSAL TO ISSUE COMPLAINT

On February 4, 2019, Trenton Paraprofessionals Association (Association) filed an unfair practice charge against Trenton Board of Education (Board). The charge alleges that in September, 2018, the Board stopped providing dental and vision health insurance benefits to newly-hired unit members, despite provisions in the parties' collective negotiations agreement (CNA), memorandum of agreement (MOA) and past practice entitling them to those benefits. The Board's conduct allegedly violates sections 5.4a(1), (3), and (5)^{1/} of the New Jersey

^{1/} These provisions prohibit public employers, their
(continued...)

Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq.

As a remedy, the charge requests that the Board reinstate the appropriate level of health benefits by providing dental and vision insurance to all new unit members and making unit members whole for any out-of-pocket costs.

On August 7, 2019, a staff agent held an exploratory conference.

On January 17, 2020, the Board served a position statement on the Association. The Board asserts that since the charge was filed, it has ensured that all unit members are enrolled in the proper vision and dental insurance plans as required by the parties' 2015-2018 CNA, 2018-2019 MOA, and past practice. To date, the Association has not identified any unit member who is not properly enrolled. The Board also asserts that it has asked the Association to identify unit members who suffered economic harm by seeking/paying for treatment for which they should have been covered and has agreed that upon receipt of documentation

1/ (...continued)
representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act"; "(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"; and "(5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employees in that unit, or refusing to process grievances presented by the majority representative."

supporting out-of-pocket costs, the Board will reimburse unit members in the amount that the insurance carrier would have paid had the unit member been covered. To date, the Association has only identified two unit members and provided adequate documentation for one. The Board argues that absent any indicia that this was anything other than a mistake that has been cured, the matter is moot, ". . . [t]he purposes of the Act have been effectuated and a complaint should not issue."

On January 30, 2020, the Association served a position statement on the Board. The Association contends that the Board has admitted that it violated the parties' collective negotiations agreement and past practice and has asserted that it has now enrolled all unit members in the proper vision and dental insurance plans. The Association maintains that it provided the names of unit members that it presently knows suffered an economic loss and concedes that one unit member must still provide documentation. The Association asserts that although the Board has agreed to reimburse the two unit members that have been identified, the Board also has an ongoing obligation to reimburse unit members that the Association may identify in the future. The Association contends that ". . . unless the Board agrees to enroll and reimburse all affected . . . unit members for claims prior to the date of their enrollment, the [c]harge is not moot

. . . and the Board is in violation of section 5.4a(5) of the Act for failing to negotiate in good faith . . . in its unilateral termination of dental and vision benefits for employees.”

The Commission has authority to issue a complaint where it appears that a 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; CWA Local 1040, D.U.P. No. 2011-9, 38 NJPER 93 (¶20 2011), aff’d, P.E.R.C. No. 2012-55, 38 NJPER 356 (¶120 2012). Based upon the following, I find that the complaint issuance standard has not been met and decline to issue a complaint.

The Association represents all parent liaisons (salaried), 10-month paraprofessionals, and 12-month paraprofessionals employed by the Board. The Board and the Association are parties to an expired CNA in effect from September 1, 2015 through August 31, 2018 and an expired MOA in effect from September 1, 2018 through August 31, 2019. The grievance procedure ends in binding arbitration. The Association has filed an unrelated unfair practice charge regarding the parties’ negotiations for a successor agreement (Dkt. No. CO-2020-200).

Article XV of the parties' 2015-2018 CNA, entitled "Medical Benefits & Retirement," provides in a pertinent part:

A. New hires (effective with the ratification of this Agreement) are provided with HMO coverage benefits subject to Chapter 78 contribution rates. New hires are permitted to pay the difference for a PPO plan.

B. Individual and family health insurance benefits as presently provided, hospitalization and major medical including depend[ent] coverage to age 25, or HMO coverage at benefit levels currently provided. At the Board's discretion, all unit members may be covered by the State Health Benefits Plan. The plan will include individual and family health insurance benefits substantially equal to those provided as of September 1, 2004, including dependent coverage to age 23 and HMO coverage with \$5.00 co-pay.

* * *

D. Effective September 1, 1986 family dental insurance, in accordance with the plan benefits provided under the September 1, 1984-August 31, 1987 Agreement. Individual dental insurance, in accordance with the plan benefits provided under the September 1, 1979-August 31 Agreement.

* * *

K. The Board shall provide an optical plan.
(12/24/24)

L. During the term of this Agreement the Board shall pay for all existing health benefits for all employees and their eligible dependents, and employees will contribute at the Level of Tier 4 of Chapter 78, P.L. 2011 throughout the life of this agreement.

The parties' 2018-2019 MOA provides in a pertinent part:

* * *

4. All employees hired after July 1, 2018 will be offered single only health insurance coverage in an HMO, and they shall contribute towards health insurance benefits at Tier 4 of Chapter 78. Employees will have the option to buy up for additional health insurance coverage, and will be responsible for paying the increase in the total premium.

* * *

7. All other current terms and conditions not contained herein shall remain status quo.

ANALYSIS

The Commission has held that “. . .[a] case will be found moot where ‘continued litigation over past allegations of misconduct which have no present effects unwisely focuses the parties’ attention on a divisive past rather than a cooperative future.’” Hudson Cty., D.U.P. No. 2011-8, 37 NJPER 160 (¶50 2011) (citing Ramapo Indian Hills Bd. of Ed., P.E.R.C. No. 91-38, 16 NJPER 581, 582 (¶21255 1990)). “Other considerations are whether there remain open issues which have practical significance; whether there is a continuing chilling effect from the earlier conduct which has not been erased; whether, after a respondent’s corrective action, a cease and desist order is necessary to prevent other adverse action against the same or other employees; and, whether the offending conduct is likely to recur.” Id.; see also Matawan-Aberdeen Reg. Sch. Dist. Bd. of Ed., H.E. No. 87-69, 13 NJPER 517 (¶18195 1987), adopted P.E.R.C.

No. 88-52, 14 NJPER 57 (¶19019 1987), aff'd NJPER Supp.2d 225 (¶196 App. Div. 1990) (dismissing a complaint based, in part, upon the fact that during the processing of the unfair practice charge, the board rescinded unilateral workload increases for the subsequent school year and provided no indication that it was contemplating making future changes in unit members' work schedule, and an arbitration award was issued compensating unit members for workload increases during the prior school year; finding that this aspect of the charge was now "a mere academic issue").

The Commission has affirmed the Director's refusal to issue a complaint where the claims of recurrence are "speculative." Communications Workers of America, Local 1031, D.U.P. No. 2016-5, 43 NJPER 15 (¶5 2016), aff'd P.E.R.C. No. 2017-4, 43 NJPER 71 (¶18 2016) (refusing to issue a complaint regarding the union's request to engage in coalition bargaining given that, in the interim, the parties continued and completed contract negotiations without delay or detriment); see also Mt. Olive Tp., D.U.P. No. 85-11, 10 NJPER 603 (¶15281 1984) (refusing to issue a complaint based upon the union "successfully griev[ing]" the issue with the employer during the processing of the unfair practice charge; finding that the charge was moot); Union Cty. Reg. H.S. Bd. of Ed., D.U.P. No. 79-23, 5 NJPER 158 (¶10088 1979) (refusing to issue a complaint based upon the board's "prompt and

dispositive actions" which convinced the Director that there was "minimal likelihood of occurrence of the aggrieved conduct . . . in the future and that litigation . . . for the purpose of securing a cease and desist order and a posting for the benefit of the employees is not appropriate").

Here, it is undisputed that the Board has enrolled any/all affected unit members identified by the Association in the proper vision and dental insurance plans. It is also undisputed that the Board has asked the Association to identify any/all unit members with related out-of-pocket costs and has agreed to reimburse any/all affected unit members, upon receipt of documentation, for out-of-pocket costs in the amount that would have been provided by insurance. To date, the Association has only identified two such unit members and only one has provided documentation. The Association has not alleged any facts undermining the Board's representation that any failure to provide newly-hired unit employees such benefits was in error.

Under these circumstances, I find that the allegations set forth in the charge are moot. While the underlying unfair practice charge was processing, the Board took prompt and dispositive action to remedy what appears to be a mistake (i.e., there is no indicia of bad faith) regarding the proper enrollment of certain Association members in vision and dental insurance plans. The Board has also agreed to reimburse affected unit

members, upon receipt of documentation, for related out-of-pocket costs in the amount that would have been provided by insurance. Accordingly, this aspect of the charge is now "a mere academic issue" and continued litigation for the purpose of securing a cease and desist order and a posting for the benefit of the employees is not appropriate. See Hudson Cty.; Matawan-Aberdeen Reg. Sch. Dist. Bd. of Ed.; Union Cty. Reg. H.S. Bd. of Ed.

The Association's contention that the Board has an ongoing obligation to reimburse affected unit members in the future may be true, but it is speculative in the context of this unfair practice charge. See Communications Workers of America, Local 1031. N.J.A.C. 19:14-1.3(a) requires that a charge sets forth:

A clear and concise statement of the facts constituting the alleged unfair practice. The statement must specify the date and place the alleged acts occurred, the names of the persons alleged to have committed such acts, the subsection(s) of the Act alleged to have been violated, and the relief sought.

The Association has not met this administrative requirement. Although this unfair practice charge was filed more than one year ago, the Association has not alleged specific facts regarding the remedy sought (i.e., identifying affected unit members who were/are not properly enrolled in vision and dental insurance plans and/or who have related out-of-pocket costs). See Hudson Cty.

Accordingly, I find that the complaint issuance standard has not been met and decline to issue a complaint on the allegations of this charge.^{2/} N.J.A.C. 19:14-2.1.

ORDER

The unfair practice charge is dismissed.

/s/ Jonathan Roth
Jonathan Roth
Director of Unfair Practices

DATED: February 4, 2020
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 February 14, 2020.

^{2/} No facts indicate that the Board's conduct was motivated by anti-union animus. I dismiss the section 5.4a(3) allegation.