

D.U.P. NO. 2018-10

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

In the Matter of

CUMBERLAND COUNTY BOARD OF SOCIAL SERVICES,

Respondent,

-and-

Docket No. CO-2018-067

NEW JERSEY CIVIL SERVICE ASSOCIATION
CUMBERLAND COUNTY COUNCIL 18,

Charging Party.

SYNOPSIS

The Acting Director of Unfair Practices dismissed an unfair practice charge filed by the New Jersey Civil Service Association Cumberland County Council 18 (Council) against the County of Cumberland (County). The charge alleged the County violated section 5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act by unilaterally changing retirees' health insurance coverage, resulting in higher deductibles for retirees who used out-of-network care. The County argued the Commission lacked jurisdiction over an unfair practice charge alleging a unilateral change to retiree health benefits. The Acting Director agreed with the County, citing longstanding Commission precedent that the Commission does not have unfair practice jurisdiction over retirees.

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Appearances:

For the Respondent,
Capehart Scatchard, attorneys
(Kelly E. Adler, of counsel)

For the Charging Party,
O'Brien, Belland & Bushinsky LLC, attorneys
(Kevin Jarvis, of counsel)

REFUSAL TO ISSUE COMPLAINT

On August 30, 2017, the New Jersey Civil Service Association Cumberland County Council 18 (Council or Charging Party) filed an unfair practice charge against the Cumberland County Board of Social Services (County or Respondent).^{1/} The charge alleges

^{1/} In its March 16, 2018 brief in support of dismissing the charge, the County asserts that the Board of Social Services was abolished in 2015 and that the employees represented by the Council are employed by the County in the County's "Division of Social Services." The Council filed a reply to the County's March 16 brief and does not dispute this fact. I therefore will refer to the employer in this case as the "County" in spite of the charge's designation of the Respondent as the "Cumberland County Board of Social

(continued...)

that on July 1, 2017, the County violated section 5.4a(1) and (5)^{2/} of the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq., when it "...unilaterally and without negotiations changed the retirees' health benefit coverage resulting in significantly higher costs and less coverage." According to the Council, this unilateral change to retiree health benefits "materially modified" the benefits provided to retirees under the parties' collective negotiations agreement and increased retirees' out-of-pocket deductible for out-of-network care.

On March 16, 2018, the County filed and served on the Council a brief in support of dismissing the charge.^{3/} The

1/ (...continued)
Services."

2/ 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; and (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."

3/ The County describes its submission as a "Motion for Summary Decision" and the Council objects to the filing of such a motion prior to the issuance of a complaint. I agree with the Council that a motion for summary decision or judgment may only be filed after a complaint is issued. N.J.A.C. 19:14-4.8. I will treat the County's brief as a position statement on whether the allegations in the Council's charge, if true, constitutes an unfair practice. N.J.A.C. 19:14-1.6(a)(2).

County contends that the Commission lacks jurisdiction to process the Council's charge since the charge concerns retirees who are not "employees" within the meaning of the Act.

In response, the Council filed and served on the County a reply brief urging issuance of a complaint on its charge. The Council concedes that the County's argument, "...applies [only] for purposes of negotiating changes to benefits...", contending that a union is not precluded from enforcing a collective negotiations agreement on behalf of retirees. (Council Reply Brief, page 5). The Council cites three Commission decisions issued on scope of negotiations petitions that permitted arbitration of grievances on behalf of retirees; Voorhees Tp., P.E.R.C. No. 2012-13, 38 NJPER 155 (¶44 2011), aff'd 39 NJPER 69 (¶27 App. Div. 2012), City of Jersey City, P.E.R.C. No. 2013-38, 39 NJPER 223 (¶75 2012), aff'd 41 NJPER 31 (¶7 App. Div. 2014); and New Jersey Turnpike Authority, P.E.R.C. No. 2006-13, 31 NJPER 284 (¶111 2005). Relying on North Hudson Regional Fire & Rescue, P.E.R.C. No. 2013-83, 40 NJPER 32 (¶13 2013), aff'd 41 NJPER 353 (¶112 App. Div. 2015), the Council argues that a "...union can seek relief for breach of a CNA for changes to retiree benefits in the context of unfair practice proceedings." (Council's Reply Brief, page 6).

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).

I find the following facts.

The Council is the exclusive majority representative of a unit of white collar, professional and non-professional employees of the County, including social work supervisors, clerk supervisors, child support supervisors, human services specialists, administrative supervisors of income maintenance, assistant administrative supervisors of income maintenance and other employees within the County's Division of Social Services. The Council and County are parties to a collective negotiations agreement (Agreement) extending from January 1, 2015 through December 31, 2017. The Agreement provides health insurance coverage for retirees. On July 1, 2017, the County changed retirees' health insurance coverage. The Council alleges this change was implemented without negotiations with the Council and resulted in higher deductible costs for retirees using out-of-network care.

ANALYSIS

A retiree is not an "employee" within the meaning of the Act. N.J.S.A. 34:13A-3(d); IAFF Local 2081 (Sarapuchiello), P.E.R.C. No. 2009-47, 35 NJPER 66, (¶25 2009); Fairfield Tp., D.U.P. No. 2011-6, 37 NJPER 129 (¶38 2011). It is well-settled that the "Commission does not have jurisdiction over individuals who are no longer public employees, such as individuals who have resigned or retired." Plainfield Bd. of Ed., D.U.P. No. 2016-6, 43 NJPER 9, 10 (¶3 2016); City of Asbury Park, D.U.P. No. 2002-9, 28 NJPER 160, 161 (¶33057 2002), aff'd P.E.R.C. No. 2002-73, 28 NJPER 253 (¶33096 2002).

In the context of changes to health insurance benefits, an employer is not obligated to negotiate over benefit changes for employees who are already retired. New Jersey Turnpike Authority, P.E.R.C. No. 2006-13, 31 NJPER 284 (¶111 2005). A union may, however, enforce a contract on behalf of a retired employee since it has a cognizable interest in ensuring the terms of a collective negotiations agreement are followed. 31 NJPER at 285. The mechanism for enforcing a collective agreement is a grievance, not an unfair practice charge. Voorhees Tp.; P.E.R.C. No. 2012-13, 38 NJPER 155 (¶44 2011), aff'd 39 NJPER 69 (¶27 App. Div. 2012) (Unions file joint grievance on behalf of retirees who were not reimbursed for increased prescription co-payments under State Health Benefits program); City of Jersey City, P.E.R.C. No.

2013-38, 39 NJPER 223 (¶75 2012), aff'd 41 NJPER 31 (¶7 App. Div. 2014) (Unions file grievances challenging unilateral changes by employer to retiree health care coverage).

Based on well-settled Commission precedent, I dismiss the Council's charge for lack of jurisdiction. The Council is correct that it has standing to pursue enforcement of its collective negotiations agreement on behalf of retirees, but the appropriate vehicle for obtaining such relief is a contractual grievance, not an unfair practice charge. Fairfield Tp. The Commission lacks jurisdiction over retirees and cannot exercise unfair practice jurisdiction over claims that an employer unilaterally changed or refused to negotiate over changes to retiree health benefits. The County has no obligation under the Act to negotiate with the Council over changes to retiree health benefits. New Jersey Turnpike Authority.

The Council's reliance on North Hudson Regional, *supra*, is misplaced. North Hudson involved an unfair practice charge alleging a unilateral change to a practice of affording current employees, *upon retirement*, the option of receiving terminal leave payments in a lump sum. 40 NJPER at 34. It did not involve a unilateral change to terms and conditions of retirees. Id. The Commission will adjudicate an unfair practice charge over unilateral changes to health insurance benefits that current employees will receive upon retirement since an employer has an

obligation to negotiate over the benefits its current employees will receive upon retirement. New Jersey Turnpike Authority, 31 NJPER at 285. North Hudson also did not involve a breach of a collective negotiations agreement since the agreement was silent about the method of terminal leave payments. 40 NJPER at 34.

Based on the foregoing, I conclude the Council's unfair practice charge does not satisfy the complaint issuance standard. N.J.A.C. 19:14-2.1.

ORDER

The unfair practice charge is dismissed.

/s/Jonathan Roth
Acting Director of
Unfair Practices

DATED: May 9, 2018
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 May 21, 2018.