

I.R. NO. 2002-10

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of
COUNTY OF UNION,

Respondent,

-and-

Docket No. CO-2002-250

UNION COUNTY PBA LOCAL NO. 199,

Charging Party.

SYNOPSIS

The Union County PBA Local No. 199 alleged that the County of Union unilaterally modified terms and conditions of employment by implementing dental premium deductions from unit employees' salaries. The County contends that the parties' recently expired agreement contains language which allows it to deduct dental premiums. The Commission Designee found that the parties' underlying dispute pertained to a differing interpretation of the collective agreement. State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419, 421 (¶15191 1984). He also found that any past practice of not deducting premiums, or failure of the County to negotiate procedures relating to the calculation, amount, and timing of the deductions did not establish the requisite likelihood of success by the PBA, necessary for interim relief in light of the agreement's language. The Designee relied on Commission cases finding that clear contractual provisions prevail over contrary past practices, and that an employer does not violate the Act when it acts pursuant to the collective agreement. The PBA's application for interim relief was denied.

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Appearances:

For the Respondent,
Schenck, Price, Smith & King, attorneys
(Kathryn V. Hatfield, of counsel)

For the Charging Party,
Loccke & Correia, attorneys
(Michael A. Bukosky, of counsel)

INTERLOCUTORY DECISION

On March 14, 2002, Union County PBA Local No. 199 (PBA) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that Union County (County) committed unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act) by violating N.J.S.A. 34:13A-5.4a(1), (3), (5) and (7).^{1/} The PBA

^{1/} These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the

Footnote Continued on Next Page

alleges that the County unilaterally modified terms and conditions of employment affecting unit employees by implementing dental premium deductions from employees' salaries. The PBA contests the County's alleged unilateral implementation of new procedures and methods of determining dental premiums and the unilateral implementation of new rules governing the timing of such deductions.

The unfair practice charge was accompanied by an application for interim relief. On March 15, 2002, an order to show cause was executed and a return date was initially set for April 16, and, at the County's request and with the consent of the PBA, was subsequently rescheduled to April 23, 2002. The parties submitted briefs, affidavits and exhibits in accordance with Commission rules and argued orally on the return date. The following facts appear.

The County and the PBA are parties to a collective negotiations agreement which expired on December 31, 2000. The parties have proceeded to interest arbitration and are currently awaiting an award.

1/ Footnote Continued From Previous Page

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. (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. (7) Violating any of the rules and regulations established by the commission."

Since at least 1995, the collective agreement has included an article providing a dental benefit for unit employees. Article 8, Section 2, of the agreement states:

The parties agree to continue the principal [sic] that if the dental premium increase for any year exceeds the rate in effect for the base year of 1995 then the same shall be paid for by each employee covered by the Dental Plan. Payment of any such increase will be made by deduction from each employee's pay by dividing the amount of premium increase over the pay periods remaining after the premium increase is determined and deducting a pro rata share out of each of the remaining pay periods until the increased premium is paid and satisfied.

In January 2002, the County was notified that the dental insurance carrier instituted a premium increase for dental benefits for unit employees. Apparently, the County then realized that it had not passed along premium increases in prior years; thus it had never made dental insurance deductions from unit employees' salaries.

On or about February 1, 2002, representatives from the County and the PBA met to discuss the issue of increased dental premiums and the recoupment of dental premiums which the County claimed it was owed from prior years' dental premium increases.^{2/} The County advised the PBA that under its reading of the collective agreement, it would implement payroll deductions of \$8.90 per pay

^{2/} During oral argument, the PBA stated its application for interim relief does not pertain to the issue of prior years' dental premium recoupment. This issue is also the subject of an unfair practice charge filed by the County against the PBA (Docket No. CE-2002-10). Consequently, I do not address that issue in this decision.

period to cover the increase in dental premiums over the 1995 rate.^{3/} The County commenced dental premium deductions on or about March 7, 2002.

On or about March 1, 2002, the PBA advised the County that it opposed any payroll deduction resulting from dental premium increases. On or about March 7, 2002, the County responded by asserting that it had a contractual right to unilaterally implement deductions for dental premiums. The County relied upon Article 8, Section 2. On or about March 11, 2002, the PBA demanded (1) that the County enter into ~~negotiations~~ with it concerning any changes in benefits incident to the deductions for dental premiums and (2) immediately reinstate what the PBA contends are the contractually established terms and conditions of employment concerning salaries.

The PBA alleges that by instituting a deduction from unit employees' pay, the County has improperly reduced the salaries provided for in Article 8, Section 1, of the collective negotiations agreement. The PBA asserts that the reduction in salary level constitutes a unilateral change in terms and conditions of employment during interest arbitration proceedings. Additionally, the PBA contends that since this is the first time that the County has deducted dental premiums from unit employees' salaries, the County may only do so after negotiating the procedures and methods

^{3/} The County contends that in 1995 the dental premium was \$32.60 per month. In 2002, the dental premium increased to \$50.40. The \$17.80 monthly difference comes to \$8.90 per pay period.

of determining the amount of the premium and any new rules governing the timing of the deductions. The PBA claims that the County has unilaterally determined the amount of the premium increase; the manner such increase is calculated; the procedures by which an increase is computed; the rules governing who determines that an increase has occurred; and the new work rules governing the entire process affecting the timing of such deductions. The PBA also argues that since the parties are in the midst of negotiating the successor collective agreement and are now before an interest arbitrator, the County cannot change terms and conditions of employment during the pendency of the interest arbitration process. N.J.S.A. 34:13A-21. Finally, the PBA asserts that Article 8, Section 2, contains numerous ambiguities such as the meaning of "principal" (sic) and of the language "...after the premium increase is determined...."

The County contends it has committed no unfair practice. The County asserts that the express language contained in the recently expired collective negotiations agreement at Article 8, Section 2, allows it to deduct dental premiums in excess of the base year of 1995 as it has done. Consequently, the County asserts that the unilateral change in terms and conditions of employment which it implemented by deducting dental premiums from employees' salaries is authorized under Article 8, Section 2, of the collective agreement.

To obtain interim relief, the moving party must demonstrate both that it has a substantial likelihood of prevailing in a final

Commission decision on its legal and factual allegations and that irreparable harm will occur if the requested relief is not granted. Further, the public interest must not be injured by an interim relief order and the relative hardship to the parties in granting or denying relief must be considered. Crowe v. De Gioia, 90 N.J. 126, 132-134 (1982); Whitmyer Bros., Inc. v. Doyle, 58 N.J. 25, 35 (1971); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Little Egg Harbor Tp., P.E.R.C. No. 94, 1 NJPER 37 (1975).

In State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419, 421 (¶15191 1984), the Commission stated:

a mere breach of contract claim does not state a cause of action under subsection 5.4(a)(5) which may be litigated through unfair practice proceedings and instead parties must attempt to resolve such contract disputes through their negotiated grievance procedures.

* * *

The Act delineates seven unfair practices by public employer, N.J.S.A. 34:13A-5.4(a), as well as five unfair practices by public employee organizations. 5.4(b). The breach of a collective negotiations agreement is not enumerated as an unfair practice. We deem this omission to be significant and to evidence a legislative intent that claims merely alleging a breach of contract based on apparent good faith differences over contract interpretation would not, even if proven, rise to the level of a refusal to negotiate in good faith under subsection 5.4(a)(5). Rather than make such claims the subject of unfair practice proceedings, our Legislature has indicated that such claims must be resolved, if possible, through the parties' agreed-upon grievance procedures. [Citations omitted.]

In this case, the PBA cites Article 8, Section 1, Salaries, and the ambiguities which it has identified in Article 8, Section 2, in support of its assertion that the collective agreement prohibits the County from making dental premium deductions. The County contends that the express language contained in Article 8, Section 2, allows it to deduct dental premiums from employees' salaries without violating the Act. Clearly, the parties have differing interpretations of the meaning of Article 8, Section 2. During oral argument, the PBA stated that it has ~~proposed~~ to the County that all ~~issues~~ in dispute concerning the instant matter ~~be~~ submitted to arbitration. Likewise, during oral argument, the County ~~conceded~~ that the PBA may contest the County's implementation of dental premium deductions from unit employees' salaries in arbitration. Thus, it appears that the dispute between the parties revolves around differing interpretations of the collective negotiations agreement. Pursuant to Human Services, a mere breach of contract claim does not constitute an unfair practice.

The PBA also appears to claim that the County has a past practice of not deducting dental premiums and since this is the first time that the County has implemented such deductions, it must negotiate procedures with respect to the calculation, amount and timing of such deductions. However, the Commission has held that clear contract provisions prevail over contrary past practices in establishing terms and conditions of employment. Randolph Tp. Bd. of Ed., P.E.R.C. No. 81-73, 7 NJPER 23 (¶12009 1980). Nor does an

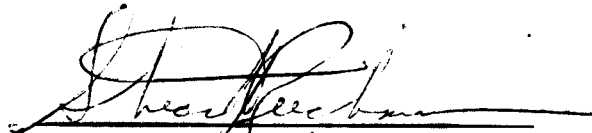
employer violate the Act when it acts pursuant to the parties collective agreement. See Sussex-Wantage Reg. Bd. of Ed., P.E.R.C. No. 86-57, 11 NJPER 711 (¶16247 1985). Thus, if Article 8, Section 2, is ultimately determined by an arbitrator to provide the County with the authority to deduct dental premiums, a contrary past practice of not having deducted dental premiums would not constitute a violation of the Act. Likewise, an arbitrator may find that the language contained in Article 8, Section 2, already covers the procedural issues sought to now be negotiated by the PBA. Thus, the County will have acted in accordance with the collective agreement and no unfair practice would be found. Assuming, arguendo, that the arbitrator finds the PBA's position to prevail, s/he is in a position to issue an adequate monetary remedy making employees whole for any damages suffered.^{4/} I make no finding concerning the interpretation of the collective agreement; I leave that to the arbitrator. Thus, even assuming that the PBA has established irreparable harm in this case, for the reasons expressed above, I find that in light of the contract language dispute, the PBA has not demonstrated that it has a substantial likelihood of prevailing in a final Commission decision, one of the requisite elements to obtain

^{4/} The Commission has adopted a policy of deferring the resolution of unfair practice charges to the parties' contractual grievance/binding arbitration mechanism where it is reasonably probable that the dispute underlying the alleged unfair practice will be resolved in the parties' contractual forum. In re Brookdale Community College, P.E.R.C. No. 83-131, 9 NJPER 267 (¶14122 1983).

interim relief. Consequently, I decline to grant the PBA's application for interim relief. This case will proceed through the normal unfair practice process.

ORDER

The PBA's application for interim relief is denied.

A handwritten signature in black ink, appearing to read "Stuart Reichman", is written over a horizontal line.

Stuart Reichman
Commission Designee

DATED: May 1, 2002
Trenton, New Jersey