

P.E.R.C. NO. 2006-51

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

UNIVERSITY OF MEDICINE AND DENTISTRY
OF NEW JERSEY,
Respondent,

-and-

Docket No. CO-2005-220

UNIVERSITY OF MEDICINE AND
DENTISTRY OF NEW JERSEY
COUNCIL OF AMERICAN ASSOCIATION
OF UNIVERSITY PROFESSORS CHAPTERS,

Charging Party.

UNIVERSITY OF MEDICINE AND DENTISTRY
OF NEW JERSEY,
Charging Party,

-and-

Docket No. CE-2006-003

UNIVERSITY OF MEDICINE AND
DENTISTRY OF NEW JERSEY
COUNCIL OF AMERICAN ASSOCIATION
OF UNIVERSITY PROFESSORS CHAPTERS,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies summary judgment motions filed by the University of Medicine and Dentistry of New Jersey Council of American Association of University Professors Chapters and the University of Medicine and Dentistry of New Jersey. Both the AAUP and UMDNJ filed unfair practice charges alleging violations of the New Jersey Employer-Employee Relations Act. The AAUP alleges that UMDNJ violated the Act when it unilaterally eliminated or reduced the clinical component of salary of a negotiations unit member. UMDNJ alleges that the AAUP violated the Act when it repudiated the parties' agreement and filed the charge. The Commission concludes that there are material facts in dispute and denies both summary judgment motions.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For UMDNJ, Nancy Kaplen, Acting Attorney General of New
Jersey (Michael J. Gonnella, Deputy Attorney General)

For the AAUP, Sterns & Weinroth, attorneys (Marc D.
Schorr, of counsel)

DECISION

The case comes to us by way of cross-motions for summary judgment. On February 22, 2005, the University of Medicine and Dentistry New Jersey Council of American Association of University Professors Chapters filed an unfair practice charge

against the University of Medicine and Dentistry (CO-2005-220). The charge alleges that UMDNJ violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1) and (5),^{1/} when it unilaterally eliminated or reduced the clinical components of salary of negotiations unit members, in particular of Dr. Sanford L. Klein. On August 4, UMDNJ filed an unfair practice charge against AAUP (CE-2006-003). That charge alleges that AAUP violated the Act, specifically 5.4b(3),^{2/} when it filed its unfair practice charge. UMDNJ contends that the filing represents an act of bad faith and a repudiation of the parties' 2004-2009 contract.

On November 9, 2005, AAUP moved for summary judgment in CE-2006-003. Its motion is supported by a certification of its chief negotiator. On December 1, UMDNJ filed a response to AAUP's motion and a cross-motion for summary judgment supported by a certification of its Director of Labor Relations. The

1/ 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 conditions of employment of employees in that unit. . . ."

2/ This provision prohibits employee organizations, their representatives or agents from: "(3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit."

following facts are derived from the certification of AAUP's chief negotiator.

Negotiations for a successor agreement began in the spring of 2004 and continued until December 2004. The parties signed an agreement on January 8, 2005.

All members of AAUP's unit receive a negotiated base salary. Clinical salary components make up a portion of the compensation of some unit members. These supplemental salaries had never been the subject of collective negotiations. During the most recent negotiations, the parties discussed a contractual provision concerning clinical salary components, but did not reach agreement.

On September 15, 2004, the parties signed a Memorandum of Agreement covering some, but not all, of the terms that would later be added to their agreement. Those terms did not include a provision governing clinical components of salary. The parties did agree on the procedures by which unit members would be apprised of changes in the clinical components they received.

On September 21, 2004, AAUP's attorney confirmed by letter the understanding reached with regard to procedures. He also noted that UMDNJ agreed that adoption of the procedures did not constitute a waiver of AAUP's right to negotiate about the clinical components of salary.

In October 2004, UMDNJ eliminated the entire \$117,412 clinical component of Klein's salary. AAUP viewed the action as an illegal unilateral change in the terms of his employment.

AAUP demanded negotiations. UMDNJ refused to negotiate, taking the position that the contract negotiations relieved it of an obligation to negotiate further. On December 21, AAUP notified UMDNJ that it approved the revised agreement, but noted its belief that UMDNJ's refusal to include a provision covering clinical compensation coupled with its refusal to negotiate further was actionable. AAUP's letter stated that AAUP reserved its rights to enforce past practices as to clinical supplements in an appropriate forum. On February 22, 2005, AAUP filed its charge alleging that UMDNJ violated the Act by unilaterally altering Klein's compensation.

The following facts are derived from the certification of UMDNJ's Director of Labor Relations.

Klein's clinical supplement was unilaterally established by UMDNJ and has been changed in amount over the years without AAUP involvement. This clinical supplement was eliminated by UMDNJ effective December 1, 2004 because Klein no longer had privileges to practice medicine at Robert Wood Johnson University Hospital.

The parties' Memorandum of Agreement stated that "any and all proposals . . . not contained herein were deemed withdrawn, void and without further effect." On December 21, 2004, UMDNJ refused to negotiate over Klein's clinical supplement, stating that the signing and ratification of the current contract would be deemed by UMDNJ to be a waiver of AAUP's right to negotiate further on the subject.

Summary judgment will be granted if there are no material facts in dispute and the movant is entitled to relief as a matter of law. N.J.A.C. 19:14-4.8(d); Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 540 (1995); Judson v. Peoples Bank & Trust Co., 17 N.J. 67, 73-75 (1954). In determining whether summary judgment is appropriate, we must view the evidence submitted in connection with the motion in the light most favorable to the party opposing the motion.

We deal first with AAUP's motion. It contends that there is no legal basis for the University's charge. AAUP asserts that filing a charge is protected activity and that the University has not alleged that AAUP's conduct adversely affected negotiations. It contends that the University's argument that AAUP waived its right to negotiate on the issue of clinical supplements by signing a collective negotiations agreement that contained nothing on that subject is a defense to AAUP's charge, not a separate cause of action. UMDNJ responds that the filing of the unfair practice charge is conclusive evidence of bad faith and wrongful repudiation.

Granting UMDNJ every reasonable inference, we construe its allegations to include the claim that AAUP repudiated the parties' contract by seeking to reopen the issue of supplemental stipends. The filing of the charge would not likely be illegal in itself. See Mercer Cty. Community College, P.E.R.C. No. 86-30, 11 NJPER 585 (¶16204 1985), adopting H.E. No. 85-40, 11 NJPER 352 (¶16127 1985) (public policy of the Act would be undermined if parties were not free to file charges when events appeared to them to so warrant). It could, however, be evidence of an allegedly unlawful repudiation. Accordingly, we deny the AAUP's motion for summary judgment.

We next address UMDNJ's cross-motion. Under UMDNJ's presentation of the facts, AAUP repudiated the contract when it challenged UMDNJ's right to unilaterally reduce Klein's salary. Under AAUP's presentation of the facts, AAUP reserved its right to challenge supplemental salary changes that did not comport with past practice. Thus, there are material facts in dispute and UMDNJ's cross-motion for summary judgment must be denied.

ORDER

The motion and cross-motion for summary judgment are denied.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Buchanan, DiNardo, Fuller, Katz and Watkins voted in favor of this decision. None opposed.

ISSUED: January 26, 2006

Trenton, New Jersey