

P.E.R.C. NO. 2012-42

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CAMDEN COUNTY AND CAMDEN  
COUNTY PROSECUTOR,

Respondent,

-and-

Docket No. CO-2009-076

CAMDEN COUNTY ASSISTANT  
PROSECUTORS ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission affirms a decision of a Hearing Examiner dismissing the Complaint in an unfair practice charge filed by the Camden County Assistant Prosecutors Association against the Camden County Prosecutor and Camden County. The charge alleged that the Prosecutor violated the Act when the County began charging Association members for dental plans that had previously been provided for free, and did not implement a negotiated agreement to offer unit members an enhanced dental plan. The decision holds that the allegation of the Association is in essence a breach of contract claim, and, as a result, does not warrant the exercise of the Commission's unfair practice jurisdiction. Contract disputes must be resolved through negotiated grievance procedures.

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 the Respondent, Brown and Connery, LLP, attorneys  
(William M. Tambussi, of counsel)

For the Charging Party, Loccke, Correia, Limsky &  
Bukosky, attorneys (Merick H. Limsky, of counsel)

DECISION

On September 8, 2008, the Camden County Assistant Prosecutors Association (Association) filed an unfair practice charge with the Public Employment Relations Commission against Camden County and the Camden County Prosecutor (County or Prosecutor). The Association alleges that the County violated sections 5.4a(1), (2), (3), (4), (5), (6) and (7)<sup>1/</sup> of the New

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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. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (3) Discriminating in regard to hire or tenure of employment or any term or condition of  
(continued...)

Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act) when, on or about August 1, 2008, the County began charging Association members for dental plans that had previously been provided for free, and failed to implement a negotiated agreement to offer unit members an enhanced dental plan.

#### Procedural Background

The unfair practice charge was accompanied by an application for interim relief. On October 1, 2008, a Commission designee denied the application, I.R. No. 2009-7, 34 NJPER 295 (¶105 2008), finding that the Association had not shown that it was substantially likely to prevail on the merits or that it would be irreparably harmed. The Association sought reconsideration of the designee's decision and, on November 25, 2008, the Commission granted the request, ordering the County to provide access to the improved dental plan. P.E.R.C. No. 2009-27, 34 NJPER 383 (¶124 2008).

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1/ (...continued)  
employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under 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. (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement. (7) Violating any of the rules and regulations established by the commission.

On January 2, 2009, the Association filed a motion for compliance and enforcement of the Commission's Order. On May 13, 2009, after a hearing and receipt of additional information, a Commission designee found that the County was in compliance with the Commission's Order. P.E.R.C. No. 2009-62, 35 NJPER 147 (¶53 2009). The charge was then transferred to the Director of Unfair Practices.

On June 9, 2009, the Director issued a Complaint solely on the alleged violations of 5.4a(1) and (5) of the charge. He declined to issue the Complaint on the 5.4a(2), (3), (4), (6) and (7) allegations, finding that no alleged facts supported those allegations. On August 10, 2009, after additional attempts to resolve the issues, the Director assigned the charge to a hearing examiner.

On November 23, 2009, February 8 and 22, 2010 and March 4, 2010, the hearing examiner conducted hearings where the parties argued orally, examined witnesses and placed documentary evidence into the record.

The crux of this matter is a clause in the agreement between the parties<sup>2/</sup> regarding dental benefits. Article V, paragraph M provides: "Any dental plan administered by the County and

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<sup>2/</sup> The agreement covers the period from January 1, 2006 through December 31, 2009 and is between the Prosecutor and the Association; the County, however, administers the dental plans.

available to other employees of the Prosecutor's Office shall be available to members of the Association, the cost of which shall be payable by the member."

In her decision of May 31, 2011, the hearing examiner stated the following:

The issues in this case are whether the County unilaterally altered an established practice when it began deducting contributions for dental plans from the Camden County Assistant Prosecutors in August 2008, and failed to implement a provision making available an enhanced dental plan to the assistant prosecutors by rejecting their applications for enrollment in the plan. The evidence demonstrates that for years prior to 2008, the assistant prosecutors could select one of two dental plans that were provided at no cost but the execution of the 2006-2009 agreement gave the County the right to charge the Association members for any dental plan they selected. Further, the dental plan language in the new agreement established two conditions for access to the enhanced dental plan previously available only to managerial employees, and the Association did not show that the conditions had been met. Thus, I recommend that when the members' applications for the plan were rejected, the County did not repudiate the agreement.

The hearing examiner found that paragraph M was not ambiguous and that the County did not violate the agreement when it denied Association members' applications for enrollment in the enhanced dental plan. The hearing examiner further found that "Interpretations about whether an employer has properly applied a term, such as paragraph M, are the exclusive province of the parties' negotiated grievance and arbitration procedures."

The hearing officer recommended that the charge be dismissed. H.E. No. 2011-13, \_\_ NJPER \_\_ (¶\_\_ 2011).

On June 10, 2011, the Association filed this appeal.<sup>3/</sup> In its exceptions, the Association claims that the hearing examiner's findings of fact and conclusions of law were wrong because the contract was between the Association and the Prosecutor (and not the County) and the Prosecutor who signed the agreement<sup>4/</sup> agrees with the Association's interpretation of paragraph M.<sup>5/</sup>

Whether we accept the Association's argument or not, the facts of this charge clearly show that this is a dispute between the parties that revolves around the interpretation of a contract clause (Article V, paragraph M) and whether or not there has been a breach of that clause. In State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984), we held that allegations setting forth "at most a mere breach of

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<sup>3/</sup> No response was filed by the County.

<sup>4/</sup> Joshua Ottenberg, Esq., was the Acting Camden County Prosecutor when the agreement was negotiated and ultimately executed by the parties on January 30, 2008.

<sup>5/</sup> The hearing examiner addressed this argument regarding the interpretation of the meaning of paragraph M by the Association and the Prosecutor: "This is not a case of unilateral mistake, because I believe that the Association and Prosecutor Ottenberg properly questioned whether the language Wilson had counter proposed captured their intention. But the Association failed to follow through and counter propose language that would have preserved their existing plans."

contract do not warrant the exercise of the Commission's unfair practice jurisdiction." Contract disputes must be resolved through negotiated grievance procedures. This case involves just such a breach of contract allegation.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Eskilson, Krengel, Wall and Voos voted in favor of this decision. None opposed. Commissioner Jones recused himself.

ISSUED: January 26, 2012

Trenton, New Jersey