P.E.R.C. NO. 2014-53

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

OCEAN COUNTY VOCATIONAL
BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-2011-335

OCEAN COUNTY VOCATIONAL
TECHNICAL EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission grants the Ocean County Vocational Board of Education's motion for summary judgment and denies the Ocean County Vocational Technical Education Association's cross-motion for summary judgment in an unfair practice case filed by the Association. The Association's unfair practice charge alleges that the Board violated the New Jersey Employer-Employee Relations Act, specifically N.J.S.A. 34:13A-5.4a(1), (3) and (5), by unilaterally deducting 1.5% from members' salaries for health insurance coverage. The Commission holds that there are no material facts in dispute and that P.L. 2010, c. 2. required the Board to deduct the 1.5% contribution.

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, Adams Gutierrez & Lattiboudere, LLC, attorneys (Derlys M. Gutierrez, of counsel and on the brief; Adam S. Herman, on the brief)

For the Charging Party, Zazzali, Fagella, Nowak, Kleinbaum & Friedman, attorneys (Richard A. Friedman, of counsel and on the brief)

DECISION

This case comes to us by way of a motion for summary judgment filed by the Ocean County Vocational Board of Education ("Board") and a cross-motion for summary judgment filed by the Ocean County Vocational Technical Education Association ("Association"). On February 25, 2011, the Association filed an unfair practice charge against the Board alleging that the Board unilaterally began deducting 1.5% for health insurance coverage

from its members' salaries beginning July 1, 2010[1/] in violation of P.L. 2010, c. 2, codified in relevant part as N.J.S.A. 52:14-17.28b(c)(2)[2/] and its collective negotiations agreement ("CNA"). The Association alleges that the Board, in taking the 1.5% deductions, repudiated the parties' CNA in violation of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4 et seq., specifically 5.4a(1), (3) and (5).[3/]

1/ The Association filed a motion to amend its unfair practice charge on November 1, 2013 that, in pertinent part, changed the July 1 date to September 1, 2010.

2/ This statute provides in pertinent part:

> Commencing on the effective date [May 21, 2010] of P.L. 2010, c.2 and upon the expiration of any applicable binding collective negotiations agreement in force on that effective date, the amount of the contribution required pursuant to paragraph (1) of this subsection by State employees and employees of an independent State authority, board, commission, corporation, agency, or organization for whom there is a majority representative for collective negotiations purposes shall be 1.5% of base salary, notwithstanding any other amount that may be required additionally pursuant to this paragraph by means of a binding collective negotiations agreement.

3/ 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. (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

(continued...)

The Association represents non-supervisory professional and support staff employees in several different titles who either work a 10 or 12 month per year schedule.

On February 22, 2013, the Director of Unfair Practices issued a Complaint and Notice of Hearing on the alleged violations of 5.4a(1) and (5) finding that those allegations contained in the Association's charge, if true, may constitute unfair practices.[4/] Hearing Examiner Timothy Averell was assigned to conduct a hearing. On October 2, 2013, the Board filed a motion for summary judgment, a brief with exhibits and a certification. On November 1, the Association filed a cross-motion for summary judgment, a brief with exhibits and a certification accompanied by a motion to amend the unfair practice charge with a certification. On November 22, the Board filed an opposition to the Association's motion to amend the unfair practice charge, a brief and certification. On November 25, the Board filed an opposition to the Association's cross-motion for summary judgment, a brief and two certifications. On the same day, the Association filed a letter brief asserting that

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3/ (...continued)
concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

4/ The Director of Unfair Practices determined that the alleged violations of 5.4a(3) did not meet the Commission's complaint issuance standards and were dismissed.

the Board did not have the right to respond to the Association's amended charge pursuant to N.J.A.C. 19:14-1.5 since amendments to charges are to be filed with the hearing examiner after a Complaint has issued as in this case. Additionally, the Association asserts that it filed its amended charge as a motion with the Chair pursuant to N.J.A.C. 19:14-4.8 since it had simultaneously filed its cross-motion for summary judgment with the Chair.

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). N.J.A.C. 19:14-4.8(d) provides that a motion for summary judgment will be granted:

> If it appears from the pleadings, together with the briefs, affidavits and other documents filed, that there exists no genuine issue of material fact and the movant . . . is entitled to its requested relief as a matter of law.

The material facts in this case are not in dispute and we grant the Board's motion for summary judgment and deny the Association's cross-motion for summary judgment as a matter of law based on the plain reading of P.L. 2010, c. 2.

The following is a summary of the material facts as submitted by the parties. Prior to the May 21, 2010, effective date of P.L. 2010, c. 2, the parties had a CNA covering the

period from July 1, 2007 to June 30, 2010. On May 20, 2010, the parties ratified a new CNA that was effective from July 1, 2010 to June 30, 2013. Article 24 of the new CNA, in pertinent part, contained the following provision:

> Teaching staff members shall contribute thirty-five dollars ($35.00) per month and employee staff members shall contribute fifteen dollars ($15.00) per month towards the cost of health benefits, only if it is determined that the 1.5 percent employee contribution for health benefits is not effective on July 1. 2010 and the duration of this contract. If it is determined that the 1.5 percent employee contribution for health benefits is required, then only the 1.5 percent will be paid by the employees. Such payroll deductions shall be made on a ten (10) month basis for all employees.

Beginning in July 2010 for the 12 month employees and thereafter in September 2010 for the 10 month employees, the Board began deducting 1.5% from the employees' pay for their health benefits contribution pursuant to P.L. 2010, c. 2.

The sole issue to be decided in this case is whether the Board was required to deduct the 1.5% contribution under P.L. 2010, c. 2. from Association members' pay based on the fact that the parties' July 1, 2010 to June 30, 2013 CNA was ratified on May 20, 2010, before the May 21, 2010 effective date of the statute.

The Association argues that the new CNA was ratified before May 21st, and as a result, the 1.5% contribution should not have been deducted by the Board. The Association relies on a

Certifying Officer Letter issued by the New Jersey Division of Pensions and Benefits ("DPB") dated April 20, 2010, entitled "Frequently Asked Questions Regarding Chapter 2, P.L. 2010 and Changes to Public Employee Health Benefits."[5/] Specifically, Question 20:

> Q. A labor contract expired last year and is still in negotiations. Will those employees be required the pay the 1.5% contribution?
>
> A. If the contract is not ratified on or before May 21st, the covered employees will be required to contribute a minimum of 1.5% of their annual base salary effective May 22nd. If the contract is ratified on or before May 21st, the covered employees would not be subject to the minimum contribution until the expiration of that contract.[6/]

5/ The Frequently Asked Questions ("FAQ") are attached to the letter under the heading of "State Health Benefits Program and School Employees' Health Benefits Program." The FAQs were updated on May 27, 2010.

6/ An earlier Certifying Officer Letter entitled, "Chapter 2, P.L. 2010 — Changes to the State Health Benefits Program (SHBP) and School Employees' Health Benefits Program (SEHBP)" was issued on April 1, 2010, and contained a section entitled "Minimum Contribution for Health Coverage" which provided in pertinent part:

> Upon the expiration of any labor agreement after May 21, 2010, employees enrolled in the SHBP/SEHBP will be required to contribute a minimum of 1.5 percent of annual base salary towards the cost of their medical and/or prescription drug coverage. The minimum contribution is in addition to any premium paid for dental, vision or other health benefit.

The Board argues that original CNA expired after the May 21, 2010 deadline, on June 30, and as a result, under the statute, the Board was required to deduct the 1.5% contribution from Association members' pay. Additionally, the Board argues that the Association's reliance on the DPB FAQs is misplaced because that scenario concerns an expired contract and not one that was still effective until June 30.

As set forth above, we grant the Board's motion for summary judgment finding that there are no material facts in dispute and as a matter of law, P.L. 2010, c. 2., required the Board to deduct the 1.5% contribution from the Association's employees' pay. "In carrying out its duties, [the Commission] will at times be required to interpret statutes other than the Employer-Employee Relations Act." Bernards Tp. Bd. of Ed. v. Bernards Tp. Ed. Ass'n, 79 N.J. 311, 316 (1979). See also Hunterdon Central H.S. Bd. of Ed., 174 N.J. Super. 468, 473-474 (App. Div. 1980), aff'd o.b. 86 N.J. 43 (1981). Thus, we may construe P.L. 2010, c. 2. and other SHBP/SEHBP statutes and regulations and have done so in other cases. See, e.g., Town of Morristown, P.E.R.C. No. 2013-11, 39 NJPER 149 (¶46 2012); Essex Cty., P.E.R.C. No. 2012-9, 38 NJPER 142 (¶39 2011); Paterson State-Operated Sch. Dist., P.E.R.C. No. 2002-2, 27 NJPER 319 (¶32113 2001); Frankford Tp. Bd. of Ed., P.E.R.C. No. 98-60, 23 NJPER 625 (¶28304 1997); Stratford Tp. Bd. of Ed., P.E.R.C. No. 94-65, 20 NJPER 55 (¶25019

1993); Tenafly Bd. of Ed., P.E.R.C. No. 93-83, 19 NJPER 210 (¶24100 1993); Hudson Cty., P.E.R.C. No. 92-56, 18 NJPER 37 (¶23012 1991); City of Passaic, P.E.R.C. No. 92-23, 17 NJPER 422 (¶22203 1991).

The relevant language from the statute is, "Commencing on the effective date [May 21, 2010] of P.L. 2010, c. 2 and upon the expiration of any applicable binding collective negotiations agreement in force on that effective date..." In this case, the parties' initial CNA was "in force" on the effective date of the statute since it expired on June 30, 2010. The fact that the parties ratified their subsequent CNA before the effective date does not insulate the parties from the 1.5% contribution requirement under the statute. Since we are granting the Board's motion for summary judgment, we need not address the Association's motion to amend the unfair practice charge.

ORDER

The Ocean County Vocational Board of Education's motion for summary judgment is granted and Ocean County Vocational Technical Education Association's cross-motion for summary judgment is denied.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson, Voos and Wall voted in favor of this decision. Commissioner Jones voted against this decision.

ISSUED: February 27, 2014

Trenton, New Jersey