

P.E.R.C. NO. 2018-53

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WARREN COUNTY
COMMUNITY COLLEGE,

Respondent,

-and-

Docket No. CO-2016-006

WARREN COUNTY
COLLEGE FACULTY ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies the motion for summary judgment filed by the College in an unfair practice case filed by the Association. The Association's charge alleges that the College violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4a(1) and (5), when it unilaterally changed its promotional guidelines for Assistant Professor and Associate Professor positions. The Commission upholds its findings in P.E.R.C. No. 2018-25, which affirmed D.U.P. No. 2018-4, and remands this matter for an evidentiary hearing to determine the severable impact, if any, of the modification of promotional criteria.

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, Cleary, Giacobbe, Alfieri & Jacobs, LLC (Matthew J. Giacobbe, of counsel and on the brief; Gregory J. Franklin, of counsel and on the brief)

For the Charging Party, Detzky, Hunter & DeFillippo, LLC (Stephen B. Hunter, of counsel)

DECISION

This case comes to us by way of a motion for summary judgment filed by Warren County Community College (College) in an unfair practice case filed against the College by the Warren County College Faculty Association (Association). The initial unfair practice charge and two amended charges allege that the College violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act), specifically subsections 5.4a (1) and (5),^{1/} when it unilaterally changed its promotional

1/ These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with,
(continued...)"

guidelines for Assistant Professor and Associate Professor positions.^{2/}

The Association is the majority representative for all full-time teaching faculty employed by the College including instructors, assistant professors, associate professors, and professors. The College and the Association are parties to a collective negotiations agreement (CNA) in effect from July 1, 2012 through June 30, 2015 and a successor agreement in effect from July 1, 2015 through June 30, 2019.

On July 22, 2015, the Association filed the underlying unfair practice charge. On May 2, 2017, the Association filed an amended charge. On August 7, the Acting Director of Unfair Practices (Acting Director) issued a tentative decision indicating that she was inclined to find that the amended charge did not satisfy the complaint issuance standard with respect to

1/ (...continued)
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 employees in that unit, or refusing to process grievances presented by the majority representative."

2/ Initially, the Association also alleged violations of N.J.S.A. 34:13A-5.4a(1) and (3). On December 21, 2017, pursuant to a Memorandum of Agreement, the Association agreed to withdraw its independent a(1) allegation. In D.U.P. No. 2018-4, the Acting Director dismissed the Association's a(3) claim.

the Association's a(5) allegations.^{3/} The Acting Director provided the Association until August 17 to present additional facts in the form of a second amended charge and/or additional legal argument in the form of a letter brief.

In response, on August 24, 2017, the Association filed the certification of its current President Kerry Fabrizio with two exhibits. The first exhibit was a May 20, 2015 letter from its former President Lori King to Sharon Hintz, the College's Director of Human Resources, in which King requested impact negotiations. The second exhibit was email exchanges dated June 2 and June 14, 2015 between King and Hintz regarding the Association's impact negotiations request. The June 14 email from King to Hintz contained lengthy assertions regarding the impact of the College's unilateral change to promotional guidelines. The College did not file a response.

On October 12, 2017, the Acting Director issued a decision on the Association's amended charge. D.U.P. No. 2018-4, 44 NJPER 159 (¶47 2017). The Acting Director determined that the College exercised a managerial prerogative when it changed promotional criteria and dismissed this aspect of the a(5) claim. However,

^{3/} N.J.A.C. 19:14-1.3(a)3 requires "a clear and concise statement of the facts constituting the alleged unfair practice. The statement must specify the date and place the alleged acts occurred, the names of the persons alleged to have committed such acts, the subsection(s) of the Act alleged to have been violated, and the relief sought."

she found that based upon Fabrizio's certification and the attached exhibits, the Association had presented sufficient facts to support a viable a(5) claim that the College violated the Act by refusing to negotiate over the severable impact of changing promotional criteria.^{4/} The Acting Director noted that she would not issue a complaint regarding the College's alleged refusal to negotiate unless the Association filed an amendment to its charge specifically setting forth this claim.

On October 25, 2017, the College filed a request for special permission to appeal D.U.P. No. 2018-4. On November 9, the Association filed a response and a second amended charge which included a paragraph detailing its general allegation that the College refused to negotiate over the severable impact of changing promotional criteria. On November 20, the Acting Director issued a complaint and notice of pre-hearing consistent with D.U.P. No. 2018-4.

On December 21, 2017, the Commission issued a decision on the College's request for special permission to appeal. P.E.R.C. No. 2018-25, 44 NJPER 287 (¶80 2017). Although we identified some deficiencies in the charge and irregularities in its processing, we ultimately determined that the complaint should

^{4/} The Acting Director suggested that a severable procedural and/or impact-related issue was "whether or not employees who relied, to their detriment, on the old promotional policy should be grand-fathered under the new policy or made whole in another manner." D.U.P. No. 2018-4.

proceed to hearing in accordance with the terms of D.U.P. No. 2018-4.

On March 20, 2018, the College filed a motion for summary judgment supported by a brief and exhibits. On April 19, the Association filed an opposition brief.^{5/} On April 20, the motion was referred to the Commission for a decision pursuant to N.J.A.C. 19:14-4.8(a).

The College argues that its motion for summary judgment should be granted because the Association's original and amended charge failed to plead that the College refused to engage in impact negotiations; and the second amended charge failed to set forth the names of the individuals alleged to have refused to negotiate and the specific impact issues over which the Association sought negotiations. The College also argues that its motion for summary judgment should be granted because the Association has not alleged any impact that is severable from the College's managerial prerogative to establish promotional criteria.

The Association responds that its second amended charge satisfies the Commission's pleading requirements by providing specific information regarding the Association's demand for

^{5/} On April 30, the College submitted a reply brief. On May 1, the Commission Case Administrator advised the College that absent being granted leave to file a reply, the College's reply brief would not be accepted or made part of the record.

impact negotiations in Fabrizio's certification and related exhibits. The Association also argues that the second amended charge clearly articulates impact issues that are severable from the College's managerial prerogative to establish promotional criteria.

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. Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 540 (1995); see also, Judson v. Peoples Bank & Trust Co., 17 N.J. 67, 73-75 (1954).^{6/} In determining whether summary judgment is appropriate, we must ascertain "whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party in consideration of the applicable evidentiary standard, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party." Id. at 523. "Although summary judgment serves the valid purpose in our judicial system of protecting against groundless claims and frivolous defenses, it

^{6/} N.J.A.C. 19:14-4.8(e) provides:

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 that the movant or cross-movant is entitled to its requested relief as a matter of law, the motion or cross-motion for summary judgment may be granted and the requested relief may be ordered.

is not a substitute for a full plenary trial” and “should be denied unless the right thereto appears so clearly as to leave no room for controversy.” Saldana v. DiMedio, 275 N.J. Super. 488, 495 (App. Div. 1995); see also UMDNJ, P.E.R.C. No. 2006-51, 32 NJPER 12 (¶6 2006).

We deny the College’s motion for summary judgment, and uphold our findings in P.E.R.C. No 2018-25, in which we affirmed D.U.P. No. 2018-4. The College may not attempt via its motion for summary judgment to litigate once more issues which were already addressed in our prior rulings.

Fabrizio’s August 24, 2017 certification and its related exhibits provide the necessary details regarding the Association’s claims. Specifically, Fabrizio’s certification and related exhibits provide the date and place the alleged unfair practices occurred, the names of the persons alleged to have committed such acts, the impact issues sought to be negotiated, and the relief sought. N.J.A.C. 19:14-1.3(a)3. Moreover, the Association’s second amended charge cured the deficiency noted by the Acting Director in D.U.P. No. 2018-4 that the Association had not pled with specificity that the College refused to negotiate over the impact of the changes to promotional criteria.

Turning to the assertion that the Association has not alleged any impact that is severable from the College’s managerial prerogative to establish promotional criteria, as

indicated in P.E.R.C. No. 2018-25, the College may raise this defense in a motion to dismiss before the Hearing Examiner after the Association has had the opportunity to prove its allegations. See, e.g., State of New Jersey (Office of the Public Defender), P.E.R.C. No. 2009-32, 34 NJPER 439 (¶137 2008) (denying a motion for summary judgment that was filed in lieu of a request for special permission to appeal the issuance of a complaint and indicating that the respondent could make a motion to dismiss before the hearing examiner at the close of the charging party's case).

ORDER

Warren County Community College's motion for summary judgment is denied. This matter is remanded for an evidentiary hearing to determine the severable impact, if any, of the modification of promotional criteria.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Boudreau, Jones and Voos voted in favor of this decision. None opposed. Commissioner Bonanni recused himself.

ISSUED: June 28, 2018

Trenton, New Jersey