P.E.R.C. NO. 2019-6

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MOUNT HOLLY TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-2018-126

MOUNT HOLLY TOWNSHIP EDUCATION ASSOCIATION,

Charging Party.

BURLINGTON TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-2018-128

BURLINGTON TOWNSHIP EDUCATION ASSOCIATION,

Charging Party.

GLOUCESTER TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-2018-151

GLOUCESTER TOWNSHIP EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission holds, based upon stipulated facts in lieu of a hearing pursuant to N.J.A.C. 19:14-6.7, that the Boards of Education violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4a(1) and (5), by failing to provide the Associations with employee names with their corresponding health insurance coverage and costs. The Commission finds that the Associations have a legitimate representational interest in obtaining such information for purposes of collective negotiations and contract administration.

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, Parker McCay P.A., attorneys, (Frank P. Cavallo, Jr., of counsel and on the brief; Victoria S. Beck, on the brief)

For the Charging Party, Selikoff & Cohen, P.A., attorneys, (Keith Waldman, of counsel and on the brief; Hop T. Wechsler, on the brief)

DECISION

On November 16, 2017, the Mount Holly Township Education Association (MHTEA) filed an unfair practice charge against the Mount Holly Township Board of Education (MHTBOE). On November 17, 2017, the Burlington Township Education Association (BTEA) filed an unfair practice charge against the Burlington Township Board of Education (BTBOE). On January 10, 2018, the Gloucester Township Education Association (GTEA) filed an unfair practice charge against the Gloucester Township Board of Education (GTBOE). The Associations' charges in all three cases allege that the Boards violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the Act), specifically subsections 5.4a(1) and (5)[1/], by failing to provide the Associations with employees' names in conjunction with their level of health insurance coverage (single, employee and spouse, family, etc.) and employee costs for such coverage, which the Associations assert is needed for collective negotiations.

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, or refusing to process grievances presented by the majority representative."

The Boards filed Answers to the charges.[2/] [3/] On March 12, 2018, the Acting Director of Unfair Practices issued a Complaint and Notice of Hearing. On May 11, the parties submitted a joint stipulation of facts. On May 14, the parties submitted fully executed agreements to stipulate the facts, waive a Hearing Examiner's Report and Recommended Decision, and have the Commission issue a decision based on the stipulated facts and the parties' legal arguments. See N.J.A.C. 19:14-6.7.[4/] The parties submitted briefs on June 5 and reply briefs on June 18.

FACTS

Based upon the parties' stipulations and exhibits, the record is comprised of these facts:

- The Associations are the exclusive majority representatives of collective negotiations units including teaching staff and multiple other school employee

2/ The charges relate to substantially similar information requests. The Associations are represented by the same counsel and the Boards are represented by the same counsel.

3/ The Charging Parties will collectively be referred to as the "Associations" and the Respondents will collectively be referred to as the "Boards."

4/ The parties were advised that the facts as stipulated constitute the complete record to be submitted to the Commission. The Associations were placed on notice that to the extent that the stipulated facts are insufficient to sustain their burden of proof by a preponderance of the evidence, the Complaint may be dismissed by the Commission. Similarly, the Boards were advised that they too must rely upon the sufficiency of the stipulated record to sustain any affirmative defenses they have asserted.

titles as set forth in each collective negotiations agreement (CNA).

- The Boards are the employers of the employees in the negotiations units represented by the Associations.

- On November 3 and November 14, 2017, MHTEA requested health benefit information, including the name of each employee, the nature of medical insurance coverage elected by the employee (single, employee and spouse, family, etc.), and the cost to the employee of the coverage selected, from MHTBOE for purposes of collective negotiations.

- On November 14, 2017, counsel for MHTBOE denied MHTEA's request for employee names.

- On March 26, 2018, the MHTBOE sent the requested health benefit information, excluding employee names, to MHTEA.

- On April 6, 2018, MHTEA responded, indicating that the information provided did not allow MHTEA to verify individual member contributions.

- On October 17, 2017, BTEA requested health benefit information, including the name of each employee, the nature of medical insurance coverage elected by the employee (single, employee and spouse, family, etc.), and the cost to the employee of the coverage selected, from BTBOE for purposes of contract administration and collective negotiations.

- On November 15, 2017, counsel for BTBOE denied BTEA's request for employee names.

- On August 29, 2017, GTEA requested health benefit information, including the names of each employee, the nature of medical insurance coverage elected by the employee (single, employee and spouse, family, etc.), and the cost to the employee of the coverage selected, from GTBOE for purposes of collective negotiations.

- On or about October 3, 2017, GTBOE provided GTEA with a scattergram of all health benefit information, not including employee names.

- On December 7, 2017, GTEA again requested health benefit information, including the name of each employee, the nature of medical insurance coverage elected by the employees (single, employee and spouse, family, etc.), and the cost to the employee of the coverage selected, from GTBOE.

- On December 12, 2017, counsel for GTBOE denied GTEA's request for the information.

- In mid-January 2018, GTEA representatives and counsel for GTBOE discussed a revised request for the information that conditionally would exclude the names of employees; however, the parties were unable to reach agreement.

- On April 6, 2018, GTBOE sent the requested health benefit information, excluding employee names, to GTEA.

- On April 9, 2018, GTEA responded, indicating that the information provided did not have identifiers that would allow GTEA to verify information.

The Associations assert that the Act requires the Boards to provide them with the requested employee health insurance information because Commission precedent applies a broad discovery-type standard for determining what information is potentially relevant for unions to effectuate the collective negotiations process. The Associations contend that they need employee names with the level of medical insurance coverage and employee costs to verify the accuracy of the Board's calculations for use in developing proposals and counter-proposals in the collective negotiations process.

The Boards assert that they are not required by the Act to release employee names in conjunction with the requested health insurance information because it is confidential, and the Commission has found that certain confidential employee information is not subject to disclosure to majority representatives.

N.J.S.A. 34:13A-5.4(a)(5) prohibits public employers from "refusing to negotiate in good faith with a majority representative concerning terms and conditions of employment." An employer's refusal to provide a majority representative with information that the union needs to represent its members constitutes a refusal to negotiate in good faith. UMDNJ, P.E.R.C. No. 93-114, 19 NJPER 342 (¶24155 1993), recon. granted,

P.E.R.C. No. 94-60, 20 NJPER 45 (¶25014 1994), aff'd, 21 NJPER 319 (¶26203 App. Div. 1995), aff'd, 144 N.J. 511 (1996).

Majority representatives have a statutory right to information in a public employer's possession which is relevant to its representational duties. State of N.J. (OER), P.E.R.C. No. 88-27, 13 NJPER 752 (¶18284 1987), recon. den., P.E.R.C. No. 88-45, 13 NJPER 841 (¶18323 1987), aff'd, NJPER Supp. 2d 198 (¶177 App. Div. 1988). Relevance in this context is determined under a discovery-type standard, not a trial-type standard, and therefore a broad range of potentially useful information should be disclosed to majority representatives for the purpose of effectuating their duties. See NLRB v. Acme Industrial Co., 385 U.S. 432, 437, 64 LRRM 2069 (1967); see also Proctor & Gamble Manufacturing Co. v. NLRB, 603 F.2d 1310, 1315, 102 LRRM 2128 (8th Cir. 1979).[5/] However, a majority representative's right to receive information from a public employer is not absolute, and turns upon the individual circumstances of a case. State of N.J. (OER). The employer is not required to produce information clearly irrelevant, confidential, or which it does not control or possess. Ibid.

5/ Precedents under the unfair practice provisions of the federal National Labor Relations Act may guide us in interpreting our Act. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 159 n.2 (1978); Galloway Tp. Bd. of Ed. v. Galloway Tp. Ass'n of Ed. Secretaries, 78 N.J. 1 (1978).

We find that the Associations have a legitimate representational interest in being provided with employee names in conjunction with their level of medical insurance coverage (single, employee and spouse, family etc.) and employee costs for such coverage. While the Boards have supplied the requested information with the exception of employee names, the list of employee names will allow the Associations to verify the accuracy of the Boards' calculations of employee contributions matched to the level of coverage selected by employees. Without this information, the Associations are unable to independently validate the Boards' calculations.

Majority representatives have been granted access to detailed medical information when potentially relevant to their representational duties. See City of Newark, P.E.R.C. No. 2013-73, 39 NJPER 481 (¶152 2013) (employer violated Act by refusing to provide sick and injury leave records of all unit and non-unit officers in the grievants' precincts); City of Newark, P.E.R.C. No. 2015-64, 41 NJPER 447 (¶138 2015) (employer violated Act by refusing to provide the names of retirees eligible for Medicare Part "B" reimbursement and the amounts reimbursed).

In Morris Cty and Morris Coun. No. 6, NJCSA, IFPTE, AFL-CIO, P.E.R.C. No. 2003-22, 28 NJPER 421 (¶33154 2002), aff'd, 371 N.J. Super. 246 (App. Div. 2004), certif. den., 182 N.J. 427 (2005),

the Commission held that the employer violated the Act by failing to provide the union with the names and associated home addresses of every employee in the negotiations unit. The Appellate Division affirmed, holding:

> In this case the record reflects no objections to disclosure by unit members or County employees, no reasonable basis for a fear of harassment or disclosure of the list to third parties or any special confidentiality considerations that outweigh the unions' fundamental need for the home addresses, a need created by its statutory obligation to represent unit employees. Accordingly, the unions are entitled to the home addresses of their members and the employees within the negotiations unit.
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> [Morris Cty., 371 N.J. Super. at 262.]

As in Morris Cty., the record reflects no reasonable basis to fear that the Associations will misuse the information or make unauthorized disclosures to third parties. Nor have the Boards articulated any special confidentiality considerations from knowing what level of health coverage employees have.

The cases cited by the Boards are inapplicable or distinguishable. Bergen County College, I.R. No. 2009-21, 35 NJPER 96 (¶38 2009) is an interim relief decision wherein the union was unable to establish irreparable harm. The final decision on the merits, Bergen County College, H.E. No. 2013-6, 39 NJPER 260 (¶89 2012), held that the employer violated the Act by refusing to provide the union with the employer's investigative notes and reports potentially relevant to pursuing

a disciplinary grievance for a terminated unit member. City of Newark, P.E.R.C. No. 2010-11, 35 NJPER 298 (¶104 2009) was a determination pursuant to a motion for summary judgment wherein the record as to some of the union's information requests was not fully developed so its motion was partially denied. However, the final Commission decision on the merits, Newark, P.E.R.C. No. 2013-73, supra, held that the employer violated the Act by refusing to supply the requested sick and injury leave records. Next, City of Newark, State Operated School District, P.E.R.C. No. 2017-14, 43 NJPER 106 (¶32 2016), which held that teacher evaluation ratings were confidential, is distinguishable because it relied on a specific education statute, N.J.S.A. 18A:6-120(d), for the finding of confidentiality.

Finally, the Boards note that Michelson v. Wyatt 379 N.J. Super. 611 (App. Div. 2005), held that the Open Public Records Act (OPRA) bars public access to public employee information with regard to health benefit plan selections and costs. However, Michelson concerned a citizen's request for disclosure of certain health insurance related information under both OPRA and the common law. It did not concern a majority representative's request for information for the effectuation of the negotiations process. In Morris Cty., P.E.R.C. No. 2003-22, supra, the Commission noted the difference between a request for information under OPRA and a majority representative's request for

information pursuant to its representational duties under the Act, finding:

> [T]he provisions of the New Jersey statutes and executive orders dealing with personnel records permit disclosure when otherwise provided by law. Our Act is a law providing otherwise for the limited purpose of disclosure to a majority representative. It may be that an employee's home address is not a "public record" disclosable to any member of the public upon demand. Nevertheless, an address may still be disclosed on a limited basis for a proper purpose pursuant to a specific statute, as is the case here.
>
> [Morris Cty., 28 NJPER at 425; citations omitted.]

The Appellate Division agreed, holding:

> We agree with PERC that the Executive Orders [that limit public access] are not germane in the special labor-law context presented here. . . . [T]he issue before us deals only with the provision of information to the unions. Our reasoning does not depend on statutes that relate to the general public's access to information, and our conclusion in this case does not compel such access.
>
> [Morris Cty., 371 N.J. Super. at 253, 260.]

Therefore, Michelson and OPRA are not applicable to the determination of what types of confidential information may be disclosed to a majority representative in the context of labor relations under the Act.[6/]

6/ Though unnecessary to our determination under the Act and applicable case law, we note that Michelson did permit the disclosure of employees' names and associated health coverage selection information (but not personal health

(continued...)

We find that the Boards violated 5.4a(5) and (1) of the Act by failing to provide the Associations with employees' names in conjunction with employees' level of health insurance coverage and employee costs for such coverage since such information is needed to represent employees in collective negotiations and contract administration.

ORDER

The Boards are ordered to:

A. Cease and desist from:

1. Interfering with, restraining, or coercing employees in the exercise of the rights guaranteed to them by the Act, in particular by refusing to provide the Associations with a list of all negotiations unit employees, along with employees' level of health of health insurance coverage (single, employee and spouse, family etc.) and employee costs for such coverage.

2. Refusing to negotiate in good faith with the Associations, in particular by refusing to provide them with a list of all negotiations unit employees along with their level of health insurance coverage and employee costs for such coverage.

6/ (...continued)
information or names/addresses of dependents) to a member of the public under the common law right to inspect public records. Michelson 379 N.J. Super. at 626.

B. Take this action:

1. Provide the Associations within twenty (20) days with a list of all negotiations unit employee names along with their level of health insurance coverage and employee costs for such coverage.

2. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix A. Copies of such notice shall, after being signed by the Respondent's authorized representative, be posted immediately and maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

3. Notify the Chair of the Commission within thirty (30) days of receipt what steps the Respondent has taken to comply herewith.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Jones and Voos voted in favor of this decision. None opposed. Commissioner Boudreau was not present.

ISSUED: September 27, 2018

Trenton, New Jersey

NOTICE TO EMPLOYEES

PURSUANT TO
AN ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION
AND IN ORDER TO EFFECTUATE THE POLICIES OF THE
NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,
AS AMENDED,

We hereby notify our employees that:

WE WILL cease and desist from interfering with, restraining, or coercing employees in the exercise of the rights guaranteed to them by the Act, in particular by refusing to provide the Associations with a list of negotiations unit employee names along with their level of health insurance coverage (single, employee and spouse, family etc.) and employee costs for such coverage.

WE WILL cease and desist from refusing to negotiate in good faith with the Associations, in particular by refusing to provide them with a list of negotiations unit employee names along with their level of health insurance coverage (single, employee and spouse, family etc.) and employee costs for such coverage.

WE WILL provide the Associations within twenty (20) days with a list of negotiations unit employee names along with their level of health insurance coverage (single, employee and spouse, family etc.) and employee costs for such coverage.

Docket No. CO-2018-126 / CO-2018-128 / CO-2018-151

MOUNT HOLLY TOWNSHIP BOARD OF EDUCATION
BURLINGTON TOWNSHIP BOARD OF EDUCATION
GLOUCESTER TOWNSHIP BOARD OF EDUCATION
(Public Employer)

Date: _____ By: _____

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State Street, PO Box 429, Trenton, NJ 08625-0429 (609) 292-9830

APPENDIX "A"