

P.E.R.C. NO. 94-103

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF MORRIS,

Respondent,

-and-

Docket No. CO-93-235

DISTRICT 1199J, NUHHCE,
AFSCME, AFL-CIO,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission sustains the Director of Unfair Practices' refusal to issue a Complaint on a charge alleging that an employer violated a "side-bar agreement" providing an option to unit employees to upgrade health insurance coverage. The Director determined that the purported oral agreement violates the parol evidence rule. D.U.P. 94-27. The Commission finds that any claim under the alleged oral agreement must be pursued through the negotiated grievance procedures.

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Appearances:

For the Respondent, O'Mullan & Brady, attorneys
(Daniel W. O'Mullan, of counsel)

For the Charging Party, Balk, Oxfeld, Mandell & Cohen,
attorneys (Arnold S. Cohen, of counsel)

DECISION AND ORDER

On December 31, 1992, District 1199J, NUHHCE, AFSCME, AFL-CIO filed an unfair practice charge against the County of Morris. The charge alleges that the County violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(3) and (5),^{1/} by failing to offer

^{1/} These subsections prohibit public employers, their representatives or agents from: "(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 concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

unit members Blue Cross/Blue Shield Medallion coverage when non-unit employees are being offered that coverage. On April 22, 1992, the parties entered into a memorandum of agreement providing that, effective June 1, 1992, the contractual health benefits article would be amended to implement a basic hospital wraparound major medical plan instead of Medallion coverage. District 1199J alleges that on that same date, the parties also entered into an oral side-bar agreement providing that if any non-unit County employees were offered Medallion coverage, unit members would have the option of keeping Medallion coverage under the same terms as the non-unit employees.

The County submitted a statement of position. It claims that the only side-bar agreement the parties entered into contains no reference to health insurance.

On February 2, 1994, the Director of Unfair Practices refused to issue a Complaint. D.U.P. No. 94-27, 20 NJPER ____ (¶____ 1994). He found that the clear terms of a collective negotiations agreement cannot be contradicted by outside evidence. He further found that since the alleged oral agreement is "at variance" with the terms of the written agreement, it needed to be memorialized in writing.

On February 9, 1994, District 1199J filed an appeal. It claims that although the memorandum of agreement makes no reference to reverting back to Medallion coverage, it similarly makes no reference to a ban on such a reversion. It asserts that the alleged

oral agreement is not "at variance" with the terms of the memorandum and that it must be permitted to present evidence as to the oral understanding reached by the parties regarding health insurance.

On February 24, 1994, the County filed a statement in opposition to the appeal. It claims that the Director properly applied the parol evidence rule which excludes evidence of an alleged oral agreement when it is offered to vary or contradict the terms of an integrated contract, rather than to interpret and give meaning to ambiguous terms in a contract.

The charge alleges that the employer breached an oral side-bar agreement permitting unit members to keep Medallion coverage should any other County employees be offered Medallion coverage. 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 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.

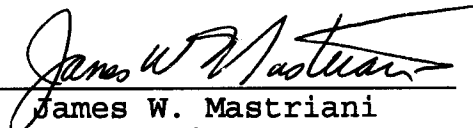
We have applied an exception to the doctrine announced in Human Services in cases where an employer unilaterally reduces health benefits by changing insurance carriers. See, e.g., City of South Amboy, P.E.R.C. No. 85-16, 10 NJPER 511 (¶15234 1984). But even those cases are deferred to arbitration. Stafford Tp. Bd. of

Ed., P.E.R.C. No. 90-17, 15 NJPER 527 (120217 1989). This case does not fit within the South Amboy exception because there is a contract interpretation dispute concerning the nature and extent of the employees' rights. Accordingly, any claim under the alleged oral agreement must be pursued through the negotiated grievance procedures.^{2/}

ORDER

The refusal to issue a Complaint is sustained.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Klagholz, Regan and Smith voted in favor of this decision. Commissioner Wenzler was not present. None opposed.

DATED: April 28, 1994
Trenton, New Jersey
ISSUED: April 29, 1994

^{2/} Given this ruling, we need not consider whether the parole evidence rule applies.