

I.R. NO. 98-15

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF SEASIDE HEIGHTS,

Respondent,

-and-

Docket No. CO-98-122

SEASIDE HEIGHTS PBA, LOCAL 252,

Charging Party.

SYNOPSIS

A Commission Designee refuses to restrain the Borough of Seaside Heights from changing health insurance carriers. To the extent Seaside Heights PBA Local 252 identified a change in the level of benefits (specifically, the imposition of a \$1 co-pay for generic drugs) such an allegation should be deferred to arbitration.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF SEASIDE HEIGHTS,

Respondent,

-and-

Docket No. CO-98-122

SEASIDE HEIGHTS PBA, LOCAL 252,

Charging Party.

Appearances:

For the Respondent,
Gilmore & Monahan, attorneys
(Charles W. Hutchinson, of counsel)

For the Charging Party,
Loccke & Correia, attorneys
(Charles E. Schlager, of counsel)

INTERLOCUTORY DECISION

On October 10, 1997, Seaside Heights PBA Local No. 252 filed an unfair practice charge with the Public Employment Relations Commission alleging that the Borough of Seaside Heights committed unfair practices within the meaning of N.J.S.A. 34:13A-5.4a(1), (3), (5) and (7)^{1/} when during the course of interest arbitration

^{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. (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

the Borough changed the carrier of health insurance for unit members.

On December 31, 1996, the collective negotiations agreement between the Borough of Seaside Heights and PBA Local 252 expired and on January 13, 1997, the PBA filed a petition to initiate compulsory interest arbitration. To date, an interest arbitrator has been appointed and the parties have had a mediation session with the interest arbitrator but there has yet to be a hearing.

Local 252 also filed an application for interim relief. An order to show cause was executed and made returnable for November 12, 1997. Both parties submitted documents and argued orally.

On September 18, 1997, the governing body of the Borough took action to drop a private sector health plan and enter the State Health Benefits Plan. Local 252 has received plan documents from the Borough but maintains it has not had sufficient time to determine if the level of benefits provided by the new plan has changed from that provided by the existing plan. It has determined, however, under the old plan there was no co-pay for generic prescription drugs while there is a \$1 co-pay for generic prescription drugs in the State Health Benefits Plan.

1/ Footnote Continued From Previous Page

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. (7) Violating any of the rules and regulations established by the commission."

The Borough concedes that if there is a change in the level of benefits, it is required to make up the difference. The recently expired contract at Article XIII, Hospital and Medical Insurance provides:

Section 1. All employees covered by this Agreement and their families shall be covered by the Employer's prevailing hospitalization and medical/surgical plan. In no event shall the Employer provide Employees and their families with any less coverage than exists on the date of the execution of this Agreement.

Section 2. The Borough effective 7/1/92 shall implement a zero (\$0.00) dollar co-pay for generic drugs and a five (\$5.00) dollar co-pay for name brand drugs for all members of the Department.

Local 252 argues that not only is it an unfair practice to change the level of co-pay for drugs, it is an unfair practice for the Borough to change insurance carriers during interest arbitration particularly since the level of benefits is an issue in interest arbitration; by changing carriers before the arbitrator renders his/her decision, the arbitrator is severely limited in his/her ability to order a change in the level of benefits.

To obtain interim relief, the moving party must demonstrate both that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations and that irreparable harm will occur if the requested relief is not granted. Further, the public interest must not be injured by an interim relief order and the relative hardship to the parties in granting or denying relief must be considered. Crowe v. De Gioia, 90 N.J. 126, 132-134 (1982); Whitmyer Bros., Inc. v. Doyle, 58 N.J. 25, 35

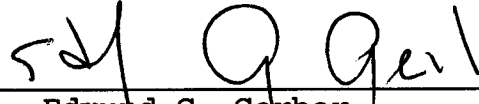
(1971); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Little Egg Harbor Tp., P.E.R.C. No. 94, 1 NJPER 37 (1975).

The Commission has consistently held "changing health insurance carriers falls within an employer's managerial prerogative." Town of Kearny, I.R. No. 96-12, 22 NJPER 207 (¶27109 1996); Borough of Ringwood, I.R. No. 96-12, 22 NJPER 83 (¶27035 1996); City of Atlantic City, P.E.R.C. No. 89-56, 15 NJPER 11 (¶20003 1988) and it is Commission policy to defer cases concerning disputes over the level of benefits to binding arbitration. Township of Pennsauken, P.E.R.C. No. 88-53, 14 NJPER 61 (¶19020 1987).

Here, the Borough has acknowledged it is obligated to make up the difference in cost between the old and new plans and the only difference identified by Local 252 is the \$1 co-pay for generic prescriptions. If this dispute is not amicably resolved, Local 252 can take the co-pay issue to arbitration.

While I recognize, as a result of the interest arbitrator's decision, the Borough may expose itself to the financial cost of having to change the level of benefits after changing insurance carriers, the Borough made the change of carriers at its peril. The Borough's managerial prerogative to change the plan is not altered simply because it can make the potential, financial mistake of changing insurance carriers before the issuance of the arbitrator's award.

Local 252's application for interim relief is denied.



Edmund G. Gerber
Commission Designee

DATED: November 19, 1997
Trenton, New Jersey