I.R. NO. 2001-11

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF CLOSTER,

Respondent,

-and- Docket No. CO-2001-208

CLOSTER PBA LOCAL NO. 233,

Charging Party.

SYNOPSIS

A Commission Designee denies the PBA's application for interim relief on its charge that the Town unilaterally changed prescription and health benefits. The Borough agreed to supply a copy of the plan documents, pay for an independent consultant to evaluate the plan for coverage changes, and make employees whole for any difference in benefits. The Commission Designee finds that the PBA has not demonstrated that irreparable harm will result from police officers having to pay for prescriptions and be reimbursed within eight working days.

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Appearances:

For the Respondent,
Breslin & McNerney, attorneys
(Michael J. Breslin, of counsel)

For the Charging Party,
Loccke & Correia, attorneys
(Michael A. Bukosky, of counsel)

INTERLOCUTORY DECISION

On January 31, 2001, Closter PBA Local No. 233 (PBA) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the Borough of Closter (Borough) committed unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act) by violating N.J.S.A. 34:13A-5.4a(1), (3), (5) and (7).1/

1/ These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the

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The PBA contends that the City changed employees' health benefits without negotiations and without complying with the 90-day notice requirement pursuant to the parties' collective negotiations agreement.

The unfair practice charge was accompanied by an application for interim relief pursuant to N.J.A.C. 19:14-9. On February 5, 2001, I issued an order to show cause scheduling the return date on the interim relief application for February 27, 2001. The return date was postponed while the parties engaged in settlement discussions, which ultimately proved unsuccessful. The parties submitted briefs and affidavits in accordance with Commission rules. The parties argued orally on the rescheduled return date of May 3. The following facts appear.

PBA Local 233 is the majority representative of the Borough's patrolmen, sergeants, lieutenants and captains. In the Fall 2000, the PBA and the Borough were engaged in negotiations for a successor agreement. The parties apparently reached impasse, and the PBA invoked interest arbitration pursuant to N.J.S.A.

1/ Footnote Continued From Previous Page

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 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."

34:13A-16. With the arbitrator acting as a mediator, the parties reached a tentative agreement on terms and conditions for a successor collective agreement, and signed a memorandum of understanding on November 22, 2000.2/

Effective March 1, 2001, the Borough discontinued health care coverage with a private insurance carrier and implemented a plan with the New Jersey State Health Benefits Commission. The PBA alleges that the coverage through the new carrier has changed employees' benefits; specifically, PBA asserts that the new plan has higher deductibles for covered family members ($100 for each family member, whereas under the prior plan employees and their families paid a $100 maximum copayment for the whole family). In addition, employees no longer have a prescription drug card which can be presented for direct billing at the pharmacy. Instead, employees must now pay the pharmacy on the spot for their prescriptions and then await reimbursement from the insurance carrier. (The covered amount for prescriptions is either 80% or 90% of the prescription cost, depending on the coverage plan the employee selects, as opposed to 80% under the old carrier.) The PBA also complains that it has not been provided with a copy of the plan contract documents for both the old and the new carriers.

2/ The memorandum of understanding was not submitted into the record.

The PBA asks that I order interim relief in this matter as follows: (1) that the Borough be required to reinstate the prior insurance coverage, specifically including the former major medical deductible of $100 per family, and a prescription drug program which permits employees to direct bill the carrier for 80% of the cost of prescriptions; (2) that the Borough pay for an independent insurance consultant to evaluate the new plan and determine the precise extent of any change in coverage; (3) that officers be made whole for out of pocket expenses incurred since March 1 for medical expenses which would have been paid under the prior insurance plan; and (4) that the Borough provide the PBA with the master plan documents of the old and new insurance plans.

The Borough argues that while the change in carrier did change the amount the carrier would pay, it is self-insuring for the difference. Therefore, it asserts, employees' coverage has not changed. With regard to the prescription plan, the Borough points out that the benefit to the employee remains unaltered at a minimum of 80% of the cost per prescription. The Borough argues that the employee's outlay of cash is insignificant since the carrier's contract requires employee reimbursement within eight business days of the bill's submission. Finally, the Borough has expressed a willingness to pay for the independent consultant to evaluate the respective plans for possible reductions in coverage.

* * *

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 PBA maintains that it has a substantial likelihood of success on the merits. It argues that changes in health care coverage made during negotiations are violations of 5.4a(5) of the Act. It cites particularly Borough of Closter, P.E.R.C. 86-95, 12 NJPER 202 (¶17078 1986), aff'g H.E. No. 86-25, 12 NJPER 65 (¶17026 1985) wherein the Commission adopted a hearing examiner's report finding that the Borough committed such a violation.

A change in carriers resulting in a unilateral change in coverage during the parties' negotiations is usually an unfair practice. City of South Amboy, P.E.R.C. No. 85-16, 10 NJPER 511 (¶15234 1984); Borough of Metuchen, P.E.R.C. No. 84-91, 10 NJPER 127 (¶15065 1984). When a change in insurance carriers is alleged to have changed the level of contractual benefits, an unfair practice charge will normally be deferred to arbitration. Cape May County

Sheriff, P.E.R.C. No. 92-105, 18 NJPER 226 (¶23101 1992); Stafford Tp. Bd. of Ed., P.E.R.C. No. 90-17, 15 NJPER 527 (¶20217 1989); Pennsauken Tp., P.E.R.C. No. 88-53, 14 NJPER 61 (¶19020 1987).

The PBA argues that the change in coverage here creates irreparable harm because the Borough implemented the change during collective negotiations and the pendency of interest arbitration, creating a chilling effect on negotiations. It also maintains the prescription coverage change causes irreparable harm because it denies employees access to necessary medications. The PBA cites Cranford Tp., I.R. No. 2000-4, 26 NJPER 233 (¶31093 2000), and Hillside Tp., I.R. No. 99-22, 25 NJPER 315 (¶30135 1999) in support of its demand for interim relief.

The Borough asserts that Cranford is inapplicable. Unlike Cranford, the Closter PBA is no longer in negotiations or interest arbitration -- the Borough argues that the November 2000 memorandum of understanding concluded the parties' negotiations in a settlement agreement. The Borough asserts that the PBA thereafter prepared a draft of the full contract, and the parties have some disagreement over "minor language" items.

It is well settled that a unilateral change in terms and conditions of employment during negotiations has a chilling effect on employee negotiations and undermines labor stability. As the New Jersey Supreme Court observed in Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Assn., 78 N.J. 25, 48 (1978):

> ...an employer's unilateral alteration of the prevailing terms and conditions of employment

> during the course of collective bargaining concerning the affected conditions constitutes an unlawful refusal to bargain, since such unilateral action is a circumvention of the statutory duty to bargain.... The basis of the rule prohibiting unilateral changes by an employer during negotiations is the recognition of the importance of maintaining the then-prevailing terms and conditions of employment during this delicate period until new terms and conditions are arrived at by agreement. (emphasis added).

Indeed, the Commission has granted injunctive relief in situations where terms and conditions of employment have been unilaterally modified during the course of collective negotiations or interest arbitration. See Nutley Tp., I.R. No. 99-19, 25 NJPER 262 (¶30109 1999); Cherry Hill Tp., I.R. No. 96-30, 25 NJPER 212 (¶30096 1996); Harrison Tp., I.R. No. 83-3, 8 NJPER 462 (¶13217 1982). Moreover, N.J.S.A. 34:13A-21 expressly prohibits any change in terms and conditions of employment while the parties are engaged in the interest arbitration process.

Here, however, the PBA has not established that the parties were in negotiations when the Borough changed carriers on March 1. It appears that negotiations had reached a settlement in November 2000, thus stabilizing terms and conditions of employment. Therefore, I find Cranford Tp. inapplicable. Here, the PBA has not established a chilling effect on collective negotiations, since negotiations appear to have been concluded.

In addition, Hillside is distinguishable. First, in Hillside, the town discontinued prescription coverage altogether. Here, the employees apparently have the same level of prescription

benefits as before -- at least 80% of the cost of prescriptions are covered by insurance. The Borough alleges that the carrier guarantees employee reimbursement of the prescription's cost within eight business days. In Hillside, the Commission designee found irreparable harm, based upon "numerous affidavits" indicating that "many employee were foregoing medically necessary prescription drugs because they were unable to make the substantial monetary expenditures" required to purchase the medications. Therefore, the Commission designee found that the town's discontinuation of its prescription drug program denied employees access to necessary medication, which, under the specific facts of that case, constituted irreparable harm.

The facts which appeared in Hillside have not been demonstrated here. The PBA submitted an affidavit from its local president speculating that it was likely members would forego filling expensive prescriptions because of the expenditure required to purchase the medications. However, the PBA has not established that employees will be denied access to needed medications because they are unable to purchase medications.

Therefore, I find in this matter, that the PBA has not demonstrated irreparable harm which cannot be remedied at the conclusion of this case. To the extent that the PBA alleges a change in employee benefits, such a claim is capable of a remedial order if a violation is so found. It is well established that money damages are not irreparable. Montclair Tp., I.R. No. 98-2, 23 NJPER 475 (¶28225 1997); City of Jersey City, P.E.R.C. No. 77-13, 2 NJPER 293 (1976). Based upon the foregoing, interim relief must be denied.

The Borough has expressed its willingness to cover the cost of an outside consultant to compare the former plan to the new plan, and has indicated that the PBA may participate in selecting the independent consultant. The Borough has also indicated its intention to turn over any outstanding plan documents the PBA believes it has not yet received. Therefore, there is no need to consider relief on these issues.

ORDER

The Charging Party's application for interim relief is denied.

Susan W. Osborn
Susan Wood Osborn
Commission Designee

DATED: May 9, 2001
Trenton, New Jersey