I.R. NO. 94-1

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matters of

TOWNSHIP OF BRIDGEWATER,

Respondent,

-and- Docket No. CO-93-309

BRIDGEWATER PBA LOCAL NO. 174,

Charging Party.

TOWNSHIP OF BRIDGEWATER,

Respondent,

-and- Docket No. CO-93-325

BRIDGEWATER MUNICIPAL EMPLOYEES ASSOCIATION,

Charging Party.

TOWNSHIP OF BRIDGEWATER,

Respondent,

-and- Docket No. CO-93-326

BRIDGEWATER PUBLIC WORKS ASSOCIATION,

Charging Party.

SYNOPSIS

The Bridgewater Municipal Employees Association, the Bridgewater Public Works Association and Bridgewater PBA Local No. 174 brought an Application for Interim Relief when the Township of Bridgewater changed the terms and conditions of employment when it notified employees that those enrolled in HMO medical insurance programs would have to make financial contributions to those programs. The Township argued that in the past, it always deducted from the wages of employees who were members of HMOs, that portion of the cost of the HMOs which exceeds the cost of the State Health Benefits Plan. Given the evidence submitted by the Township in support of that policy, the Association failed to show there was an unlawful change in the terms and conditions of employment.

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Charging Party.

Appearances:

For the Respondent,
William W. Lanigan, attorney

For the Charging Party, Bridgewater PBA Local No. 174,
Abramson & Liebeskind Associates
(Dr. Arlyne K. Liebeskind, Labor Consultant

For the Charging Parties, Bridgewater Municipal Employees Association and Bridgewater Public Works Association,
Klausner, Hunter, Cige & Seid, attorneys
(Stephen E. Klausner, of counsel)

INTERLOCUTORY DECISION

On March 18, 1993, three employee organizations, the Bridgewater Municipal Employees Association ("MEA"), the Bridgewater Public Works Association ("PWA") and Bridgewater PBA Local No. 174 ("PBA") filed separate unfair practice charges against the Township of Bridgewater. All three allege that the Township violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.1 et seq.; specifically, 5.4(a)(1) and (5)[1/] when on or about February 25, 1993, the Township Business Manager, John A. Rice, distributed a memorandum "Notice to Township of Bridgewater Employees Enrolled in H.M.O. Programs" informing them that employees may terminate their HMO membership no later than March 31, 1993 or face payroll deductions for same on April 1, 1993.

The MEA and the PWA, as exclusive representatives of employees, have contracts with the Township providing for the Township to provide medical insurance either through certain selected HMO's or the City's regular plan "at no charge" to employees after the first year of employment. The PBA contract which expired the end of 1992 has an identical contract provision. The Township and the PBA are currently in interest arbitration for a successor agreement.

1/ These subsections 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 three organizations also filed Applications for Interim Relief seeking to restrain the Township from implementing these salary deductions for the payment of HMO medical insurance. The Order was executed and made returnable for March 19, 1993. At that time, the parties entered into an agreement to defer these matters to an expedited arbitration proceeding. Subsequently, a dispute arose as to the scope of the deferral to arbitration agreement and the arbitration proceeding was never held. The three Associations renewed their Applications for Interim Relief. The Applications were granted and a new return date was set for June 29, 1993. A hearing was conducted on that date and the parties were given an opportunity to present evidence, file briefs and argue orally.

The Township opposes the Applications. It claims that between the first return date in March and June 29, the new HMO deductions went into effect. Those employees who elected to remain in the HMOs now have deductions made in their salaries to pay for the increase of the cost of the HMO's so the Application is moot and there is no irreparable harm. It further argues that the issue is one which is preempted by statute and is non-negotiable and cites N.J.S.A. 26:2J-29:

Enrollment of State Employees

> Any employee of the State or any subdivision of the State or any institution supported in whole or in part by the State may elect to enroll in a health maintenance organization and have all deductions from his salary or wages and all contribution being paid by his employer to any health insurer paid instead to a health maintenance organization; [provided, however, in

> no event, shall an employer under this section make a contribution to any alternative health benefits program greater than the contribution being made to any health plan pursuant to a contract in existence on the effective date of this Act.] Any such employee shall at least annually be allowed to choose an alternative health benefits program made available through his employer.
> 1973 C. 337 §29 eff. Dec. 27, 1973

The Township argues that in the past, it always deducted from the wages of employees who are members of HMOs, the portion of the cost of the HMOs which exceeds the cost of the State Health Benefits Plan. In 1990, only five employees in the entire Township work force had any deduction. Only one member of the PBA unit was affected. The amount deducted from that employee's paycheck was $3.56.

Effective January 1992, the Township left the State Health Benefits Plan and became self-insured. Those employees who wished to do so could continue to elect to enroll in a health maintenance organization. At this point, the Board's position is unclear. It introduced evidence that in December 1991 it notified employees that the employer's self-insurance program will be funded at a lower level and employees who wished to remain in HMOs and would have to contribute a greater portion than in the past. The employees monthly contribution ranged from nothing to $89.91 (R-1 in evidence). However, in its brief, the Board claimed that no deductions were made for HMOs in 1992.

In any event, in early 1993, the Township determined the Township's own health coverage over the past year resulted in a

substantial saving and the funding level of its self-insurance program would be further reduced. Accordingly, it announed that those employees who wished to remain in HMOs had to further increase their contribution. For 1993, the monthly rate varied from $34.18 to $257.88.

The standards that have been developed by the Commission for evaluating interim relief requests are similar to those applied by the Courts when addressing similar applications. The moving party must demonstrate that it has a substantial likelihood of success on the legal and factual allegations in a final Commission decision and that irreparable harm will occur if the requested relief is not granted. Further, in evaluating such requests for relief, the relative hardship to the parties in granting or denying the relief must be considered.2/

I do not believe N.J.S.A. 26:2J-29 is controlling. The Township's new self-insurance plan cannot be considered "a contract in existence on the effective date of this Act", i.e., December 27, 1973. The plan is only two years old. Moreover, since it is a self-insurance plan, it is questionable if it qualifies as a "contract". It appears that the Townships reliance on the statute for its action is questionable.

2/ Crowe v. DeGioia, 90 N.J. 126 (1982); Tp. of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Tp. of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975).

Nevertheless, there is evidence that all three Associations knew or should have known that in prior years, under the current contract language, the employer asked employees for contributions, yet, the Association never took action before. This is a matter which might have been raised and resolved before now. Therefore, I do not believe it is appropriate to enter an interim order.

The Application for Interim Relief is denied. This matter shall go forward to a full plenary hearing on the merits.

BY ORDER OF THE COMMISSION

Edmund G. Gerber
Commission Designee

DATED: July 15, 1993
Trenton, New Jersey