D.U.P. NO. 98-1

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

WANAQUE BOROUGH BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-97-295

WANAQUE BOROUGH EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an allegation raised by the Association concerning the Board's unilateral change of health insurance carriers. The selection of an insurance carrier is a managerial prerogative.

The Director defers to binding grievance arbitration the Association's allegation that when the Board changed insurance carriers, it unilaterally reduced the level of health insurance benefits provided to Association unit members.

Finally, the Director issues a complaint and notice of hearing on the Association's allegation that the Board refused to provide information to the Association regarding the new health insurance plan.

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Appearances:

For the Respondent,
Schwartz, Simon, Edelstein, Celso & Kessler, attorneys
(Andrew B. Brown, of counsel)

For the Charging Party,
Klausner & Hunter, attorneys
(Stephen B. Hunter, of counsel)

DECISION

On March 3, 1997, the Wanaque Borough Education Association filed an unfair labor practice charge alleging that the Wanaque Board of Education violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1) and (5).1/ The Association alleges that the Board

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."

violated the Act by unilaterally altering unit members health insurance coverage. The Board announced that effective October 1996, it was unilaterally changing health insurance carriers from the State Health Benefits Plan (SHBP) to a Health Insurance Fund (HIF) administered by Insurance Design Associates (IDA). By changing carriers, it is alleged that the Board reduced the level of health benefits provided to unit members. The Association further alleges that the Board has refused to supply the Association with the specific details and documents describing the new health insurance plan.

The Board denies violating the Act, asserting that the benefits provided by the HIF are equal to or better than those previously provided by the SHBP, that it has provided information received from the HIF to the Association, and that the Board has the managerial prerogative to change carriers. The Board is willing to address the health insurance dispute in binding arbitration and will not raise any procedural defenses to the grievance.2/

An employer has the right to select a health insurance carrier. However, the level of benefits may not be altered without good faith negotiations. Bor. of Metuchen, P.E.R.C. No. 84-91, 10 NJPER 127 (¶15065 1984); City of Newark, P.E.R.C. No. 82-5, 7 NJPER 439 (¶12195 1981); Bor. of Paramus, P.E.R.C. No. 86-17, 11 NJPER 502

2/ The Board wants all grievances about the change in benefits consolidated into one arbitration. That is for the Board and the Association to resolve; not for me to determine.

(¶16178 1985). An employer's change of insurance carrier without negotiating with a majority representative does not constitute an unfair practice. Tp. of Irvington, D.U.P. No. 94-31, 20 NJPER 144 (¶25069 1994).

It is Commission policy to defer allegations of a unilateral alteration of health insurance benefits to the parties' grievance arbitration process where the health insurance coverage is a contractually set benefit and it is reasonably probable that the dispute underlying the charge will be resolved in arbitration. Hazlet Tp. Bd. of Ed., P.E.R.C. No. 95-78, 21 NJPER 164 (¶26101 1995); Stafford Tp. Bd. of Ed., P.E.R.C. No. 90-17, 15 NJPER 527 (¶20217 1989); see also, Morris Cty., P.E.R.C. No. 94-103, 20 NJPER 227 (¶25111 1994). Deferral to binding arbitration is the preferred processing mechanism when a charge essentially alleges a violation of subsection 5.4(a)(5) interrelated with a potential breach of the contract. N.J. Department of Human Services, P.E.R.C. 84-148, 10 NJPER 419 (¶15191 1984); Brookdale Community College, P.E.R.C. No. 83-131, 9 NJPER 267 (¶14122 1983).

Finally, an employer is obligated to provide specific documents and information about any change in a health insurance plan. The refusal to provide this information is violative of the Act. See Lakewood Bd. of Ed., P.E.R.C. No. 97-44, 22 NJPER 397 (¶27215 1996).[3/]

3/ The failure to supply information is normally not appropriate for deferral. See generally, NLRB v. Acme Industrial Co., 385 U.S. 432, 64 LRRM 2069 (1967).

I dismiss the allegation asserting that the Board changed health insurance carriers without negotiating with the Association.

The Board has indicated its willingness to waive procedural/timeliness defenses to a grievance involving the change in the level of health insurance benefits. The parties' collective bargaining agreement for the term of July 1, 1994 to June 30, 1997 includes health insurance language and provides for final and binding arbitration of grievances. Therefore, I defer the allegations concerning the change in the level of benefits to the parties' contractual grievance arbitration procedure.

The Board's alleged refusal to provide specific information to the Association about the new HIF, if true, could be an unfair practice. I will issue a Complaint and Notice of Hearing concerning this allegation.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES

Edmund G. Gerber, Director

DATED: July 3, 1997
Trenton, New Jersey