D.U.P. NO. 98-16

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

In the Matter of

HACKENSACK BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-96-378

HACKENSACK 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 issues a complaint and notice of hearing on the remaining allegations in the charge. The Association alleges that the Board refused to provide information to the Association regarding the new health insurance plan. Additionally, the Association alleges that the new health insurance plan unilaterally selected by the Board provides reduced benefits to Association unit members.

Deferral of the change in the level of benefits allegation is not appropriate because although binding grievance arbitration appears in the contract, the Board refused to waive procedural and scope of negotiations defenses to a grievance.

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Appearances:

For the Respondent,
Sills, Cummis, Zuckerman, Radin, Tischman, Epstein & Gross, attorneys
(Cherie L. Maxwell, of counsel)

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

DECISION

On May 28, 1996, the Hackensack Education Association filed an unfair labor practice charge alleging that the Hackensack 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/] through actions it has taken concerning

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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."

health insurance coverage for Association-represented employees of the Board. First, on April 22, 1996, the Board announced effective July 1, 1996, it was unilaterally changing health insurance carriers from the State Health Benefits Plan ("SHBP") to a Joint Insurance Fund ("JIF") administered by Insurance Design Associates ("IDA"). The Association further alleges that by changing carriers, the Board reduced the level of health benefits provided to unit members, and unilaterally did so without negotiations with the Association. Finally, as expressed in count 2 of the charge, the Association alleges that despite their demand that the Board provide specific, detailed, written information regarding all aspects of the coverages to be provided through the JIF, the Board has refused to supply the Association with the details and documents describing the new health insurance plan.

The Board denies violating the Act asserting that it has a managerial prerogative to change carriers, that the level of benefits provided by the JIF is equal to those provided by the SHBP, and that it has provided information received from the JIF to the Association.

An employer has the right to select which carrier will provide the agreed upon level of health insurance benefits. 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 (¶16178 1985). Accordingly, an allegation in a charge asserting that an employer changed insurance carriers without negotiating with a majority representative will be dismissed. Tp. of Irvington, D.U.P. No. 94-31, 20 NJPER 144 (¶25069 1994).

A complaint will normally issue on the allegations which assert that the employer refused to negotiate a change in the level of health benefits. Employees have a statutory right under subsection 5.4(a)(5) not to have their health insurance benefits unilaterally reduced when an employer changes carriers. The case cannot be dismissed as a mere breach of contract dispute. See City of So. Amboy, P.E.R.C. No. 85-16, 10 NJPER 511 (¶15234 1984); Metuchen. The parties' collective bargaining agreement for the term of July 1, 1994 through June 30, 1997 does include health insurance benefits language and binding grievance arbitration. Although it is Commission policy to defer such allegations to arbitration, the employer here refuses to waive procedural and scope defenses. Accordingly, there is a significant question here as to whether the underlying merit of the unfair practice charge will be reached. Deferral is not appropriate. State of New Jersey (Department of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).

Finally, an employer is obligated to provide specific documents and information about any change in a health insurance plan. It is alleged here that the employer refused to provide this information in violation of the Act. See Lakewood Bd. of Ed., P.E.R.C. No. 97-44, 22 NJPER 397 (¶27215 1996).

Pursuant to the Commission's case precedent, I dismiss the allegation in the charge asserting that the Board changed health insurance carriers without negotiating with the Association.

However, I will issue a Complaint and Notice of Hearing concerning the other allegations raised by the Association. N.J.A.C. 19:14-2.1(a) and 2.3.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES

Edmund G. Gerber, Director

DATED: September 5, 1997
Trenton, New Jersey