

I.R. NO. 96-25

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matters of

TOWN OF KEARNY,

Respondent,

-and-

Docket No. CO-96-319

KEARNY PBA LOCAL 21,

Charging Party.

TOWN OF KEARNY,

Respondent,

-and-

Docket No. CO-96-320

KEARNY SUPERIOR OFFICERS ASSOCIATION,

Charging Party.

SYNOPSIS

A Commission Designee declines to restrain the Town of Kearny from changing the carrier of health insurance for employees represented by Kearny PBA Local 21 and Kearny Superior Officers Association. The PBA and SOA claim that the Town failed to provide them with sufficient information in which they could compare the new insurance carrier with the current carrier. There was a factual dispute as to whether the employer provided sufficient information to the Associations. The Town was ordered to contact the new health insurance carrier to get the insurance plan documents for the new policy and provide those documents to the Associations. Otherwise, the application for interim relief was denied.

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Appearances:

For the Respondent,
Shaljian, Cammarata & O'Connor, attorneys
(Thomas J. Cammarata, of counsel)

For the Charging Parties,
Schneider, Goldberger, Cohen, Finn,
Solomon, Leder & Montalbano, attorneys
(James M. Mets, of counsel)

INTERLOCUTORY DECISION

On April 24, 1996, Kearny PBA Local 21 and Kearny Superior Officers Association filed unfair practice charges against the Town of Kearny alleging that on April 9, 1996, the Town advised the PBA and SOA that it would terminate its participation under the New Jersey State Health Benefits Plan and provide health insurance coverage by New York Life (NYL CARE). The insurance coverage also applies to retirees.

The Charging Parties requested a copy of the NYL CARE plan documents from the Town but the Town has never provided such document. The PBA and SOA claimed that the Town provided them with insufficient information in which they could compare the NYL CARE insurance with the plan they currently enjoy under the New Jersey State Health Benefits Plan.^{1/} They also claim that local doctors in the State Health Benefits Plan are not in NYL CARE. It is alleged that this action violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4(a) (1), (2), (5) and (7)^{2/}.

The unfair practice charges were accompanied by orders to show cause which were executed and made returnable for May 7, 1996.

It is not disputed that the Town changed health carrier plans and has contracted to provide health insurance for the affected employees through NYL CARE.

The Town asserts that it did provide the Associations with specimen contracts and the new plan covers retirees. NYL CARE has

^{1/} The SOA also alleged that the Town unilaterally altered the assignment of overtime. That matter is subject to a consent order and is not at issue here.

^{2/} 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. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (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."

agreed to allow local doctors to become participating physicians in its plan and produced a letter from the NYL CARE acknowledging that it was obligated to provide employees with the same level of benefits that they currently enjoy in the New Jersey State Health Benefits Plan.

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. 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).


The level of health insurance benefits is a mandatory subject of negotiations, although the health insurance carrier is not mandatorily negotiable. Accordingly, an employer is obligated to maintain the existing level of benefits if it changes carriers. An employer is also required to provide sufficient information necessary for the employee organization to determine whether the level of benefits is maintained. Borough of Ringwood, I.R. No. 96-12, 22 NJPER 83 (¶27039 1996; City of Atlantic City, P.E.R.C. No. 89-56, 15 NJPER 11 (¶20003 1988).

Nevertheless, 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).

There is a factual dispute here as to whether the employer has provided sufficient information to the Association. However, to ensure the Association received all possible information, I direct that the Town contact NYL CARE to seek the insurance plan documents for the new insurance policy and provide copies of these documents to the Association.

However, the Charging Party has failed to demonstrate that any harm it may be subject to by the change of carriers is irreparable. The Application to restrain the Town of Kearny from changing carriers is denied.

BY ORDER OF THE COMMISSION



Edmund G. Gerber
Commission Designee

DATED: May 10, 1996
Trenton, New Jersey