I.R. NO. 2000-4

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF CRANFORD,

Respondent,

-and- Docket No. CO-2000-60

PBA LOCAL 52 and SOA,

Charging Party.

TOWNSHIP OF CRANFORD,

Respondent,

-and- Docket No. CO-2000-61

FMBA LOCAL 34 and FSOA,

Charging Party.

SYNOPSIS

The Township of Cranford apparently unilaterally changed the level of health care benefits during the course of collective negotiations. The Commission Designee restrained the Township from unilaterally changing the level of health care benefits and ordered it to make employees whole for any economic loss sustained and demonstrated by the employee as the result of the apparent change.

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Appearances:

For the Respondent,
Stender and Hernandez, attorneys
(Albert N. Stender, of counsel)

For the Charging Parties,
S.M. Bosco Associates
(Simon M. Bosco, consultant)

INTERLOCUTORY DECISION

On September 23, 1999, the Cranford PBA Local No. 52, Cranford Superior Officers Association, Cranford FMBA Local No. 34 and Cranford Firefighters Superior Officers Association (Charging Parties) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the Township of

Cranford (Township) 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 5.4a(1), (3) and (5) of the Act.[1/] The unfair practice charges were accompanied by applications for interim relief. On October 4, 1999, an order to show cause was executed and a return date was scheduled for October 28, 1999. The charging parties submitted briefs, affidavits and exhibits in accordance with Commission rules. The Respondent filed a responsive letter and an exhibit. The parties argued orally on the return date. The parties alleged the following facts.

The Township and the Charging Parties have entered into an agreement dated January 1, 1996 through December 31, 1998. The parties are currently engaged in negotiations for a successor agreement. The parties have reached agreement in principle on all or nearly all issues, however, continue to negotiate final contract language. The successor collective agreement has not yet been signed.

1/ These provisions 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. (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."

On or about July 1, 1999, the Township changed insurance carriers from NYLCare to Aetna US Healthcare. The Charging Parties contend that certain coverage levels and/or employee medical costs have been changed as the result of the Township's unilateral switch to Aetna US Healthcare. The Charging Parties submitted comparisons of the level of benefits provided by NYLCare with the level of benefits provided by Aetna US Healthcare. Numerous differences are apparent in the level of benefits provided by the respective health insurance carriers.

The Township argues that it was not its intention to alter the level of benefits which had previously been provided to unit employees when it changed health care carriers. Additionally, it asserts that in order to identify changes in the level of benefits, a factual determination of the Charging Parties' allegations require an exhaustive analysis of each of the many facets of the elements of the health care program. The Township's argument is otherwise unsupported by certification or affidavit.

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).

A unilateral change in terms and conditions of employment during any stage of the negotiations process has a chilling effect on employee rights guaranteed under the Act and undermines labor stability. Galloway Tp. Bd. of Ed. v. Galloway Tp. EA, 78 NJ 25 (1978). The level of health care benefits is mandatorily negotiable. Newark Bd. of Ed., P.E.R.C. No. 94-52, 19 NJPER 588 (¶24282 1993). A change in the identity of the health care carrier sometimes changes the level of benefits and the administration of the health plan. In such cases, the public employer must negotiate concerning the level of benefits. Borough of Closter, P.E.R.C. No. 86-95, 12 NJPER 202 (¶17078 1986); 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 carrier 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).

In the instant case, it appears that the change in the insurance carrier from NYLCare to Aetna US Healthcare has changed the level of health care benefits in the period during which

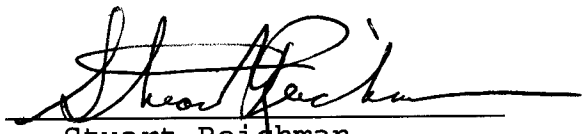
collective negotiations were ongoing. Accordingly, I find that the Charging Parties have established a substantial likelihood of prevailing in a final Commission decision.2/ Moreover, under Galloway, I find that the Township's unilateral change in the level of health care benefits during the course of negotiations undermines the Charging Parties ability to represent its membership and results in irreparable harm.

Considering the public interest and the relative hardship to the parties, I find that the public interest is furthered by adhering to the tenants expressed in the Act which require the parties to negotiate prior to implementing changes in terms and conditions of employment. Maintaining the collective negotiations process results in labor stability and promotes the public interest. In assessing the relative hardship to the parties, I find that the scale tips in favor of the Charging Parties. The Township experiences a lesser degree of hardship by being required to adhere to the previously agreed-upon terms of the collective agreement. However, the Charging Parties are irreparably harmed as the result of any unilateral change in terms and conditions of employment made during the course of the collective negotiations process.

2/ By finding that the Charging Parties have a substantial likelihood of success on their respective unfair practice charges, I do not suggest that the above-captioned cases should not ultimately be processed in accordance with Commission policy providing for deferral to arbitration. Pennsauken Tp.

ORDER

The Township is restrained from unilaterally changing the level of health benefits. Since the Charging Parties have not requested the cancellation of the Aetna US Healthcare contract, I do not order its recision. However, the Township is ORDERED to make unit employees whole for any economic loss sustained and demonstrated by the employee as the result of the change in the benefit coverage provided by Aetna US Healthcare. This interim order will remain in effect pending a final Commission order, closure or withdrawal of these unfair practice charges. The respective unfair practice charges will proceed through the normal unfair practice processing mechanism.



Stuart Reichman
Commission Designee

DATED: November 4, 1999
Trenton, New Jersey