

I.R. NO. 2008-16

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF KEYPORT,

Respondent,

-and-

Docket No. CO-2008-313

PBA LOCAL 223,

Charging Party.

SYNOPSIS

A Commission designee denies an application for interim relief on charges alleging that Keyport Borough violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et. seq., by changing health benefits and not making the new plan documents available. Keyport Borough argued that a new plan was not being implemented and that the only change being made to the existing plan was to the provider network. A dispute over material facts existed that prevented the PBA from establishing the standards for interim relief.

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Appearances:

For the Respondent, Ansell, Zaro, Grimm and Aaron,  
attorneys (Gordon N. Litwin, of counsel)

For the Charging Party, Loccke, Correia, Schlager,  
Limsky & Bukosky, attorneys (Marcia Tapia, of counsel)

INTERLOCUTORY DECISION

On April 18, 2008, Keyport PBA Local No. 223 filed an unfair practice charge with the Public Employment Relations Commission alleging that the Borough of Keyport violated N.J.S.A. 34:13A-5.4a(1), (2), (3), (5) and (7)<sup>1/</sup> of the New Jersey Employer-

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<sup>1/</sup> 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"; (2) "dominating or interfering with the formation, existence or administration of any employee organization"; (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 (continued...)"

Employee Relations Act, when it announced that, as of May 1, 2008, it would modify the level of health benefits. The PBA alleges that the change will substantially lessen the level of health benefits.

The unfair practice charges were accompanied by an application for interim relief. An Order to Show Cause was executed on April 21, 2008, scheduling a return date of April 30. Both parties submitted briefs, affidavits and exhibits in support of their respective positions in accordance with Commission rules and argued telephonically on the return date.

The PBA seeks to restrain the Borough from modifying the level of health benefits. The Borough opposes any restraint arguing that the standards for interim relief have not been met.

The Borough and the PBA are parties to a collective negotiations agreement that expired on December 31, 2007. The parties are currently negotiating a successor agreement. Article XXVII, Section D of the expired agreement states that "[t]he Borough reserves the right to change insurance carriers or implement a self insurance program, so long as substantially similar benefits are provided at no extra cost to the Employees covered by this Agreement." Section E states "[i]n the event the

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1/ (...continued)  
the majority representative"; and (7) "violating any of the rules and regulations established by the commission."

Employer plans to make a change, the Union will be provided with copies of the new plan twenty-one (21) days in advance."

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. DeGioia, 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).

The record establishes an obvious dispute over substantial and material facts. The PBA asserts that as of May 1, 2008, the level of health benefits will be lessened by a change in provider, benefits, coverage and plan administration. It also argues that it has not been given the new plan documents to enable it to assess the extent of the changes to be made. The Borough responds that there is not a "new" plan being implemented and that the provider will remain Blue Cross Blue Shield. The Borough further asserts that the sole change being made on May 1 is to the provider network, from the "Blue Card PPO Network" to the "Direct Access Network." The Borough argues that since there

is not a "new" plan being implemented, there are no "new" plan documents to make available to the PBA. It contends that the list of the new provider network was made available by sending directions on how to access the new provider list to the President of the PBA on March 13, as well as providing the information in book format on March 14.

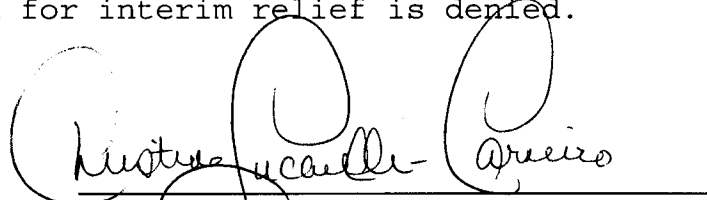
As the parties are unable to define the disputed issues, it is impossible at this juncture to conclude that the charging party has a substantial likelihood of success on its claim.<sup>2/</sup> E.g., City of Newark, I.R. No. 2003-11, 29 NJPER 162 (¶47 2003); Monmouth Cty. (Dept. of Corrections and Youth Services), I.R. No. 2005-13, 31 NJPER 135 (58 2005). Thus, the PBA has not established a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations, a required element of the test to obtain interim relief. Consequently, I decline to grant the PBA's application for interim relief. This case will proceed through the normal unfair processing mechanism.

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<sup>2/</sup> Subsequent to oral argument, I received a submission from the PBA indicating that it was seeking plan documents for the existing plan. It acknowledged that it had received a list of physicians as well as a summary of benefits, but contended that full plan documents for the existing plan had not been made available. This issue appeared to be cured by the Borough's response, in which it indicated that a list of plan documents for the existing plan had been simultaneously emailed to counsel for the PBA.

ORDER

The PBA's application for interim relief is denied.

A handwritten signature in black ink, appearing to read "Christine Lucarelli-Carneiro", is written over a horizontal line. The signature is stylized with large loops and a cursive script.

Christine Lucarelli-Carneiro  
Commission Designee

DATED: May 5, 2008  
Trenton, New Jersey