I.R. NO. 2008-18

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CAMDEN COUNTY COLLEGE,
Respondent,

-and- Docket No. CO-2008-295

CAMDEN COUNTY COLLEGE ASSOCIATION
OF ADMINISTRATIVE PERSONNEL,
Charging Party.

CAMDEN COUNTY COLLEGE,
Respondent,

-and- Docket No. CO-2008-299

CAMDEN COUNTY COLLEGE FACULTY
ASSOCIATION,
Charging Party.

SYNOPSIS

The Camden County College Association of Administrative Personnel and the Camden County College Faculty Association filed unfair practice charges, accompanied by applications for interim relief, alleging that Camden County College unilaterally altered terms and conditions of employment by changing health insurance carriers resulting in a different level of benefits. The College admitted changing health care carriers and argued that it acted pursuant to the terms of the respective collective negotiations agreements. The College claimed that the new plan was equivalent to the old, as required by the language contained in its contracts. The Commission Designee denied interim relief on the grounds that arbitration was the appropriate process to determine whether the new health plan was equivalent to the old, as required by contract, and, therefore, found that the Charging Parties had not established the requisite likelihood of success element for issuance of interim relief.

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Charging Party.

Appearances:

For the Respondent, Brown & Connery, attorneys (Christine P. O'Hearn, of counsel; Gary M. Whalen, consultant, on the brief)

For the Charging Party, Selikoff & Cohen, attorneys (Keith Waldman, of counsel)

INTERLOCUTORY DECISION

On April 7, 2008, the Camden County College Association of Administrative Personnel (AAP) filed an unfair practice charge, accompanied by an application for interim relief seeking temporary restraints, with the Public Employment Relations Commission (Commission) alleging that the Camden County College

(College) violated 5.4a(1) and (5)[1/] of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act) and N.J.S.A. 34:13A-33[2/], when on April 1, 2008, the College's Board of Trustees affirmatively voted to replace the existing AmeriHealth PPO Plan with the New Jersey State Health Benefits Program.[3/] On April 10, 2008, as the result of the same change in the health benefits program, the Camden County College Faculty Association filed an unfair practice charge, accompanied by an application for interim relief seeking temporary restraints,

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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; (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."

2/ N.J.S.A. 34:13A-33 states:

> Notwithstanding the expiration of a collective negotiations agreement, an impasse in negotiations, an exhaustion of the commission's impasse procedures, or the utilization or completion of the procedures required by this act, and notwithstanding any law or regulation to the contrary, no public employer, its representatives, or its agents shall unilaterally impose, modify, amend, delete or alter any terms and conditions of employment as set forth in the expired or expiring collective negotiations agreement, or unilaterally impose, modify, amend, delete, or alter any other negotiable terms and conditions of employment, without specific agreement of the majority representative.

3/ The change in health plans is to be implemented on June 1, 2008.

alleging a violation of N.J.S.A. 34:13A-5.4a(1) and (5). The Charging Parties assert the same claims and arguments in support of their respective charges with the addition, however, that the AAP argues that the change in the health benefits plan was done during ongoing negotiations for a successor agreement thereby also violating N.J.S.A. 34:13A-33. The College contends that the change is permissible under the parties' extant collective negotiations agreements and, therefore, does not constitute a unilateral change in terms and conditions of employment.

On April 9 and April 10, 2008, I executed the AAP's and the Faculty Association's respective orders to show cause, denying temporary restraints, and setting a return date of May 1, 2008, for oral argument. On April 21, 2008, the College advised that it would seek to retain special labor counsel for this matter and sought a postponement of the return date for approximately two weeks. As the result of discussions among the parties, it was determined that the return date would be rescheduled to May 8, 2008. The parties submitted briefs, affidavits and exhibits and argued orally on the scheduled return date. The following facts appear.

The Camden County College Association of Administrative Personnel is the exclusive representative of a negotiations unit consisting of all administrative employees of Camden County College. The Camden County College Faculty Association is the

exclusive representative of a unit consisting of all full-time faculty employed by the College. The Charging Parties and the College, respectively, have entered into a series of collectively negotiated agreements. The Faculty Association's agreement expires June 30, 2009 and the AAP's agreement expired June 30, 2007.

The College and the AAP have been engaged in successor negotiations since March 28, 2007. Health benefits have been at issue throughout. During a meeting on or about January 28, 2008, the AAP advised that the College could save $1.8 million by switching to the New Jersey State Health Benefits Program from AmeriHealth. The AAP indicated that it would agree to such change in return for the College dropping its demand for unit employees to make contributions toward the health insurance premium. The issue of employee premium contributions remains a subject of on-going negotiations and no change in premium contributions has been implemented.

On May 22, 2007, the parties jointly declared impasse. On or about February 27, 2008, during a mediation session conducted by the factfinder, health benefits was again discussed, yet no agreement was reached. The College would not agree to withdraw its demand for premium contributions and the AAP would not agree to a change in health benefit carriers. During negotiations, the College sent plan comparisons to the AAP. A summary prepared by

the College and submitted as Exhibit B by the Charging Parties details the AmeriHealth PPO and the New Jersey State Health Benefits plans, showing changes in health benefits levels. Exhibit B shows that some elements under the State Health Benefits Plan are better than AmeriHealth, some are the same, and some are not as good.

The AAP's recently expired agreement and the Faculty Association's current agreement contain provisions covering health insurance. The language, except for one minor difference, irrelevant to this proceeding, states, in part, the following:

> The College will pay the premium for health insurance **equivalent to** the standard AmeriHealth Personal Choice for each bargaining unit member, and his/her dependents . . . . [emphasis added.]

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).

The Commission has long held that the level of health benefits is mandatorily negotiable and may not be changed by an employer unilaterally. Piscataway Tp. Bd. of Ed., P.E.R.C. No. 91, 1 NJPER 49 (1975). See also Union Tp., P.E.R.C. No. 2002-55, 28 NJPER 198 (¶33070 2002). The identity of an insurance carrier is generally only permissibly negotiable for police and fire employees, and not mandatorily negotiable for civilian employees. City of Newark, P.E.R.C. No. 82-5, 7 NJPER 439, 440 (¶12195 1981). However, when a change in carriers changes the level of benefits, the change is mandatorily negotiable. Boro. of Metuchen, P.E.R.C. No. 84-91, 10 NJPER 127 (¶15065 1984); Union Tp. But the analysis does not stop there. In Union Tp., 28 NJPER at 200, the Commission stated:

> A contract clause requiring the employer to maintain the level of health benefits may create additional protections for employees. It may also provide a contractual defense for the employer to an unfair practice allegation that the employer violated the Act by acting unilaterally. Many contracts permit changes to, for example, 'equivalent' or 'substantially equivalent' benefit plans. An employer satisfies its negotiations obligation when it acts pursuant to the contract. [City of South Amboy, 10 NJPER at 512.]
>
> Even though health benefit changes may violate the Act, unfair practice charges alleging unilateral changes in health benefits will ordinarily be deferred to binding arbitration because the contract often sets the benefit level and the conditions under which the employer may change benefits. Stratford Tp. Bd. of Ed.,

P.E.R.C. No. 90-17, 15 NJPER 527 (¶20217 1988).

In this case, the critical issue to be determined is whether the level of benefits provided by the New Jersey State Health Benefits Program is "equivalent to" the standard AmeriHealth Personal Choice Health Plan as required by the collective agreement. If the College has acted pursuant to the terms of the contract, it has satisfied its obligation to negotiate as no change in terms and conditions of employment has occurred. See, City of Orange, I.R. No. 2005-10, 31 NJPER 130 (¶56 2005).

Charging Parties rely upon Bridgeton Bd. of Ed., I.R. No. 2006-8, 31 NJPER 315 (¶123 2005) in support of their application for interim relief and urge that it be followed. In Bridgeton, the Board of Education voted mid-contract to change health insurance carriers. The collective agreements at issue all contained health insurance articles which provided for the Board to pay the premium ". . . for Blue Cross/Blue Shield or equivalent medical plan. . . ." Id. The Board's health insurance consultant developed a report which included a side-by-side comparison of the two plans. The Commission Designee found that the new plan contained multiple, significant reductions in benefit levels including increased administrative burdens to certain employees with no clear countervailing improvements. Thus, the Commission Designee affirmatively concluded that the

overall benefit levels in the new plan were reduced and, therefore, not equivalent to the old.

I find Bridgeton is distinguishable. Unlike Bridgeton, in this case there are many benefit elements which are the same in both plans; there are some better and some not as good. Absent clear evidence of non-equivalence, as was found in Bridgeton, it appears inappropriate for the Commission Designee in an interim relief case to substitute his/her determination of what constitutes an equivalent plan for that of an arbitrator. Stratford Tp. Bd. of Ed. The "equivalence" standard, as opposed to the "equal to" or "equal to or better than" standards, for example, allows some room for evaluating particular plan factors to determine whether the contractual standard has been maintained. Thus, the determination of whether the State Health Benefits Plan is equivalent to the AmeriHealth Plan is a matter of contract interpretation and resolvable by an arbitrator after careful analysis of the elements comprising both plans in accordance with the negotiated contractual standard. Stratford Tp. Bd. of Ed.

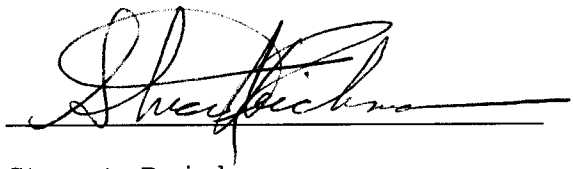
The AAP also contends that the College has violated N.J.S.A. 34:13A-33. This provision of the Act in essence prohibits a county college or other school public employer from unilaterally imposing or otherwise altering terms and conditions of employment as set forth in an expiring or expired collective agreement

absent a specific agreement with the majority representative. At this juncture, I make no finding regarding whether this provision of the Act has been violated. If the College has acted pursuant to the terms of its collective agreement with the AAP, this provision appears to be inapposite. See City of Plainfield, I.R. No. 2000-2, 25 NJPER 439 (¶30193 1999). If the College is ultimately found to have violated the expired contract by unilaterally changing the level of benefits in the midst of successor negotiations, the Commission may find a violation.

Consequently, Charging Parties, at this juncture of the proceeding, have not established that they have a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations, a requisite element to obtain a grant of interim relief. Accordingly, I decline to grant Charging Parties' applications for interim relief. These cases will be forwarded to the Director of Unfair Practices for processing through the normal unfair practice mechanism.

ORDER

The Charging Parties' applications for interim relief are denied.



Stuart Reichman
Commission Designee

DATED: May 12, 2008
Trenton, New Jersey