I.R. No. 2012-1

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MILLBURN TOWNSHIP
BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-2011-488

MILLBURN EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Commission Designee grants an application for interim relief based upon an unfair practice charge filed by the Millburn Education Association against the Millburn Township Board of Education. The charge alleges that on May 26, 2011, during collective negotiations, the Business Administrator for the school district issued a memorandum notifying the Association that the Board was making substantial changes to health insurance coverage for Board employees, effective July 1, 2011. The Board's conduct allegedly violated 5.4a(1) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

The Designee determined that the change in health benefit coverage would eliminate the traditional plan, and increase out-of-pocket costs through increased co-pays and deductibles. The Designee found that the standard for granting relief was met and ordered the Board to create a fund available to pay or reimburse those costs imposed upon unit employees as a result of the Board's changes in health insurance coverage, pending the resolution or conclusion of the charge.

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Appearances:

For the Respondent, Lindabury, McCormick, Estabrook & Cooper, P.C. (Anthony P. Sciarrillo, of counsel)

For the Charging Party, Bucceri and Pincus, attorneys (Gregory T. Syrek, of counsel)

INTERLOCUTORY DECISION

On June 20, 2011, Millburn Education Association (Association) filed an unfair practice charge against Millburn Township Board of Education (Board), together with an application for interim relief, a certification, supporting documents and a brief. The Association alleges that the Board violated the New Jersey Employer-Employee Relations Act (Act), N.J.S.A 34:13A-5.44(1) and (5)[1/], when the Business Administrator for the school

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 (continued...)

district issued a memorandum to the Association and its members indicating that on July 1, 2011, the Board would make changes to the health insurance coverage provided to employees, thereby changing the level of employee health benefits without negotiations. Specifically, the Association alleges that the changes to health insurance coverage include the elimination of the traditional plan, requiring employees with that coverage to move to a POS plan, as well as increases in co-pays and deductibles.

The Board's action occurred during collective negotiations for a successor agreement. The parties met on February 15, 2011 and exchanged negotiations proposals. On February 28, 2011, the Association filed an unfair practice charge, alleging that the employer failed to negotiate in good faith. That charge is pending. No agreement has been reached as of this date, but the parties have continued to meet, and a mediator has been assigned to assist the parties.

The Association seeks an order directing the Board to (1) restore the level of health insurance benefits for unit members to the levels provided prior to the unilateral change, (2) establish a fund to compensate unit members for any extra out-of-pocket costs incurred as a result of the change, (3) compensate

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1/ (...continued)
conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

unit members for any additional out-of-pockets costs incurred as a result of the change, and (4) grant interest on all sums owing.

An Order to Show Cause was signed on June 23, 2011, setting a return date of June 29, 2011 for oral argument. The Order also directed the Board to file a brief, together with any other pertinent documents, and proof of service upon the Association. The parties argued orally on the scheduled return date. The following pertinent facts appear.

The Board and the Association are parties to a collective negotiations agreement for the period from July 1, 2008 to June 30, 2011. Article XVII of the collective negotiations agreement, "Insurance Protection" is applicable to annually contracted full-time unit employees, and also continues coverage for all paraprofessionals who worked less than twenty-five hours per week as of June 30, 1999, and were receiving benefits as of that date. Article XVII obligates the Board to provide one hundred percent (100%) of the cost of health benefits "for the indemnity or managed care plans on an employee and covered dependent basis for all employees on the payroll on or before June 30, 1996." Employees who were hired on or before June 30, 1996 and who were enrolled in the "Traditional/Indemnity" (traditional) insurance plans could receive one-time payments to move from the traditional to the POS plan, with the amount of the payment varying based on whether the employee migrated to the POS from the traditional plan during the 2009-10 school year or the 2010-

11 school year. The amount of the one-time payment was higher if the migration to the POS plan occurred in the 2009-10 school year. Subject to provisions which create reimbursements for prior movements to POS plans from traditional coverage, employees could return to traditional coverage.

Employees on the payroll on or after July 1, 1996 are "entitled to coverage under a managed care health insurance program offered by the Board with one hundred percent (100%) of the cost of the plan paid by the Board." Employees choosing to be covered by the indemnity plan must pay one hundred percent (100%) of the cost difference of the indemnity and managed care plans.

Article XVII, entitled "Insurance Protection", addresses a change in health insurance carriers. Paragraph 4 provides that if the Board changes health insurance carriers, "the actual benefits shall be equal to those benefits provided by CIGNA, master contract #3321264, and the network of providers shall be substantially equivalent to that of the New Jersey Blue Cross and Blue Shield (Horizon) provider network." For secretaries and paraprofessionals, Article XVII, paragraph 7 provides that nothing shall "prevent the Board of Education from securing comparable coverage, at its expense or saving, from other insurance agencies or companies."

The parties agree that the CIGNA master contract referenced in Article XVII paragraph 4 has been superceded by the existing

Oxford Plan. The Board's proposed change would modify the current Oxford coverages by eliminating the traditional plan and change copays and other deductibles. These changes, however, would not result in a change of carriers, since the coverage available after the proposed July 1, 2011 change would still be provided by Oxford.

The certification of NJEA Field Service Representative Dennis Grieco, who is assigned to advise and assist the Association, states that although the Association is still attempting to negotiate a successor collective negotiations agreement, on or about May 26, 2011 the Board's Business Administrator issued a memorandum to the Association notifying them that the Board was making substantial changes to the health insurance coverage provided to unit employees. A summary of changes to current employee health insurance coverage was attached to the memorandum. That summary indicates that in addition to the discontinuance of the traditional plan, which would require employees with that coverage to switch to the POS Plan, significant changes and increases in co-pays and deductibles would occur. The changes were not negotiated with the Association, but unilaterally imposed by the Board. Grieco's certification also states that during the negotiations process, the Association proposed changes to the negotiated health insurance coverage that would have resulted in "substantial" cost

savings to the Board. However, the Association's proposal was rejected, and the Board unilaterally imposed its own changes.

Mark Zucker, M.D., a member of the Board of Education and Chair of its Negotiations Committee, provided a certification which states that in anticipation of the negotiations with the Association, the Board was aware of and concerned about pressure from the community to both reduce current health insurance costs, and craft a district budget below the 2% tax levy cap. With awareness of these community sentiments, and mindful of the current economic climate, the 2% cap, and the high health care costs faced by the district, the Board's proposals to the Association included modifications to the district's current health benefit plans, as well as salary increases below 2%. From the first joint negotiation session on February 15, 2011 the Board specifically discussed the "tremendous" health benefit expenses faced by the District for the 2010-2011 school year, as well as the potential increases it faced for the 2011-2012 school year. With respect to health benefit changes, the certification states that the Board proposed elimination of the traditional plan, insurance for all district employees and their dependents under a modified POS plan, effective July 1, 2011, with increased co-pays, prescription costs and deductibles. Changes to the current opt-out waiver amounts were also proposed.

Over a period from February 15, 2011 though June 21, 2011, the Board Negotiations Committee met with the Association's

President and Negotiations Chair to exchange and discuss proposals. At the May 9, 2011 session, the Association presented a proposal which provided for a change from the current health benefit plans to the School Employee Health Benefit Plan (SEHBP). Zucker further states that the Association's May 9 proposal requested salary increases for all unit employees, including: 4.25% inclusive of the cost of increment, each year of a three-year agreement for certificated staff; 4.5%, inclusive of the cost of increment, each year of a three-year agreement for secretaries and paraprofessionals; and a 3.00% increase, inclusive of increment, for each year of the three-year agreement for computer techs and miscellaneous employees. Also part of the Association's proposal was a $1,500 annual pensionable stipend for paraprofessionals who attained and provided proof of a bachelor's degree (an increase of $1,000 over the current $500 stipend), and increases of 3% in each year of the CNA to both coach's salary guides and extra compensation guides. Reimbursement for the statutorily mandated 1.5% base salary contribution towards health insurance was also requested by the Association.

After receipt of the May 9, 2011 proposal, recognizing that the parties were not close to an agreement, and also aware of the timelines associated with a change in health benefit coverage, the Board voted on May 23, 2011 to modify the district's health benefit plans effective July 1, 2011. Prior to voting on the

changes to the health benefit plans, the Board met with and received counsel from its health insurance brokers.

Following the Board's action, the parties continued to meet. Zucker states that the first mediation session scheduled for June 21, 2011 was adjourned at the Association's request in order to permit the parties to continue negotiating. He further explains that following that June 21 meeting, Zucker left with the understanding that the Association would present the terms of the discussion to its leadership and advisors, and the Board's representatives would take the same action with its members.

Samuel D. Levy, a member of the Board, and also of its Negotiations Committee, provided a certification which parallels that of Dr. Zucker.

Laura Fanuele, Vice President of Employee Benefits for Brown & Brown Benefit Advisors stated in her certification that she has been the primary account representative for the Millburn district since 2007. Ms. Fanuele states that the cost of the District's overall health benefits package is significantly higher than the average school district or private employer. The 2011 Oxford renewal cost for traditional family coverage was reported at over $40,700 annually compared to the average of other school districts at less than $30,000 annually. Of the 294 school districts represented by Brown & Brown, Millburn's traditional plan family rate is the highest. The district's POS family renewal rate for 2011 was reported at over $26,000 annually,

compared to the average of other school districts at less than $22,000. A renewal contract with Oxford for the district's current health benefit contract was reported at a 10% increase.

Ms. Fanuele states that the health benefit plan scheduled to become effective on July 1, 2011, while eliminating the traditional plan and requiring the enrollment of all employees in a POS plan provides "for the same actual benefits and level of benefits" as the current plan. The health care provider network for both the current POS and Traditional plans and the July 1, 2011 plan is "identical". However, a member's out-of-pocket exposure under the July 1, 2011 plan for deductibles, co-pays, or co-insurance shared amounts will be greater than under the current traditional and POS plans. Actual covered benefits and eligible expenses remain the same under the current and the July 1, 2011 plans. She notes that under the traditional plan, vision care is not covered, however it will be covered under the new plan.

ANALYSIS

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); Whitmeyer 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 unilaterally by an employer. Piscataway Tp.Bd.of Ed., P.E.R.C. No. 91, 1 NJPER 49 (1975). Unilateral changes in health benefits violate the duty to negotiate in good faith. Metuchen Bor., P.E.R.C. No. 84-91, 10 NJPER 127 (¶15065 1984). Any unilateral change in a term and condition of employment during negotiations has a chilling effect and undermines labor stability. Galloway Tp Bd. of Ed. v. Galloway Tp. Ed. Assn., 78 N.J. 25, 48 (1978).

In this case, the Board unilaterally imposed its health benefits proposal and changed the level of benefits. The change in plan benefits will eliminate the traditional plan, increase out-of-pocket costs in the form of co-pays, deductibles, and out-of-network costs to individuals and families, while providing an additional vision care benefit to those who are currently covered by the traditional plan, where that benefit is not available. Based on Piscataway and Metuchen, it appears that the Board's actions constitute a change in terms and conditions of employment prior to concluding negotiations in violation of the Act. Accordingly, I find that the Association has established the

Commission decision on its legal and factual allegations. I also find that irreparable harm will occur if relief is not granted on the basis of the chilling effect this unilateral change will have with respect to ongoing negotiations. Galloway Tp. Bd. of Ed.

In cases where the Commission has found unilateral changes in benefit levels, it has ordered interim relief by requiring employers to create a fund to reimburse employees for any losses suffered as the result of such violation. Union Tp., P.E.R.C. No. 2002-55, 28 NJPER 198 (¶33070 2002); Chatham Bd. of Ed., I.R. No. 2002-5, 28 NJPER 84 (¶33030 2001). Although here the Board's changes to the benefit levels are not accomplished through a change in carrier, the alteration to the plan design, including the elimination of the traditional plan, are substantial and create, in effect, a new plan.

The public interest will not be harmed by an order requiring the Board to create a fund for reimbursing or paying costs imposed upon unit employees under the July 1, 2011 Oxford plan, pending the conclusion of this charge. Franklin Lakes Bd. of Ed., I.R. No. 2010-5, 35 NJPER 465 (¶153 2009).

In considering the relative hardship to the parties, I find that the Association will suffer the greater harm as a result of the unilateral change as compared to the Board. An employer-created fund for timely reimbursement(s) and/or payment of costs will place the parties in an approximate status quo ante during the adjudication of this case.

ORDER

The Board shall create a fund available to pay or reimburse costs to unit employees representing the difference, if any, between benefits provided by the Oxford plan in place after July 1, 2011 and those that would have been provided under the former Oxford plan.

The Board shall notify and provide the Association and its unit employees with the name of an individual or office to whom or where claims should be submitted. Reimbursement claims may be verified and disbursements must be made within a reasonable time from the date of submission.

This order shall remain in effect until the underlying charge is resolved.

Gayl R. Mazuco
Commission Designee

DATED: July 12, 2011
Trenton, New Jersey