H.E. NO. 2012-011

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of
LAKELAND REGIONAL BOARD OF
EDUCATION,
Respondent,

-and-
LAKELAND EDUCATIONAL SECRETARIES'
ASSOCIATION,
Charging Party,

-and-
LAKELAND REGIONAL BOARD OF
EDUCATION,
Respondent,

-and-
LAKELAND REGIONAL HIGH SCHOOL
TEACHERS' ASSOCIATION,
Charging Party.

Docket No. CO-2009-454

Docket No. CO-2009-455

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission found that the Lakeland Regional High School Board of Education violated the New Jersey Employer Employee Relations Act when it unilaterally changed the health care provider which resulted in a change in the level of health care benefits for employees included in the Lakeland Education Association. The Hearing Examiner found that the Board had a contractual right to change health care providers, but also had a contractual obligation to maintain health care benefits at a level that was "equal to or better than" the level of benefits enjoyed by unit employees prior to the change in carriers. The Hearing Examiner found that the level of benefits were reduced as the result of the change of carriers and, thus, the Board repudiated the collective agreement in violation of the Act. The Hearing Examiner recommended that the Commission order the Board to take various steps to ensure that employees would be made whole for any loss of benefit levels which included the creation of a fund for employees to draw upon in the event they encountered any out-of-pocket costs arising for the reduced benefit levels.

A Hearing Examiner's Report and Recommended Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission, which reviews the Report and Recommended Decision, any exceptions thereto filed by the parties, and the record, and issues a decision that may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law. If no exceptions are filed, the recommended decision shall become a final decision unless the Chair or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

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LAKELAND REGIONAL BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-2009-454

LAKELAND EDUCATIONAL SECRETARIES' ASSOCIATION,

Charging Party,

-and-

LAKELAND REGIONAL BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-2009-455

LAKELAND REGIONAL HIGH SCHOOL TEACHERS' ASSOCIATION,

Charging Party.

Appearances:

For the Respondent,
Adams, Stern, Gutierrez and Lattiboudere, LLC,
attorneys
(Derlys M. Guitierrez, of counsel)

For the Charging Party,
Zazzali, Fagella, Nowak, Kleinbaum and Friedman,
attorneys
(Richard A. Friedman, of counsel)

**HEARING EXAMINER'S REPORT AND RECOMMENDED DECISION**

On January 9, 2009, the Lakeland Educational Secretaries' Association (Secretaries' Association)(C-3)[1/] and the Lakeland Regional High School Teachers' Association (Teachers' Association)(C-4) filed respective unfair practice charges against the Lakeland Regional High School Board of Education (Board).[2/] The Associations allege that the Board unilaterally changed the health insurance carrier and, thereby, reduced the level of benefits in contravention of the Associations' respective collective negotiations agreements and in violation of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act), specifically N.J.S.A. 34:13A-5.4a(1) and (5).[3/](1T14-1T15).

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1/ "C" refers to Commission exhibits received into evidence during the hearing, "CP" and "R" refer to Charging Party and Respondent exhibits, respectively. Transcript references for the hearing are "1T_" representing the transcript dated April 21, 2011.

2/ For purposes of this report, the Teachers' Association and the Secretaries' Association will be collectively referenced as the "Associations" or "Charging Parties" or individually as the "Teachers' Association" or the "Secretaries' Association."

3/ 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

(continued...)

On April 15, 2010, the Director of Unfair Practices issued a Complaint and Notice of Hearing and an Order Consolidating the Charging Parties' charges (C-1). On May 11, 2010 the Board filed a copy of its July 17, 2009 position statement to be used as its Answer (C-5). In its Answer, the Board denied that it committed any unfair practices since it attempted to engage in negotiations with the Associations concerning changes in the health benefit program.

A hearing was conducted on April 21, 2011. The parties examined witnesses and presented documentary evidence. On November 14, 2011, the Charging Parties and the Board timely filed their initial briefs. On December 8, 2011, the Charging Parties filed a post-hearing reply brief. Upon the entire record, I make the following:

## FINDING OF FACTS

1. The Lakeland Educational Secretaries' Association and the Lakeland Regional High School Teachers' Association are public employee organizations within the meaning of the Act. The Lakeland Regional High School Board of Education is a public employer within the meaning of the Act (1T16). In the spring of 2010, subsequent to the filing of the above-referenced unfair practice charges, the Lakeland Educational Secretaries'

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3/ (...continued)
refusing to process grievances presented by the majority representative."

Association merged with the Lakeland Regional High School Teachers' Association. The Lakeland Educational Secretaries' Association is now defunct (1T13, 1T24). The Lakeland Regional High School Teachers' Association has changed its name to the Lakeland Education Association (1T13). The Lakeland Education Association is the surviving employee organization comprised of all teachers, guidance counselors, nurses, federal/state project personnel, child study team personnel, student assistance counselors, library media specialists, athletic trainers and all secretarial personnel (J-1; J-3).

2. The Board and the Associations are parties to respective collective negotiations agreements. The last collective agreement between the Board and the Secretaries' Association covered the period of July 1, 2006 through June 30, 2009 (J3). No successor agreement has been reached since the expiration of the Secretaries' collective agreement (1T23-1T25).

3. Article III of the Teachers' Association's collective agreement (J-2) sets forth the grievance procedure. Article III of the Secretaries' Association's agreement (J-3) sets forth the grievance procedure for that unit. The grievance procedures for both Associations allow for arbitration of disputes, but the arbitrator's decision is advisory only.

4. Article XIV, Insurance Protections contained in the Secretaries' agreement (J-3) states in pertinent part, the following:

> **FULL HEALTH CARE COVERAGE**
>
> The Board shall provide for each member, and where appropriate, for family coverage, medical, surgical and Major Medical benefits through Horizon Blue Cross/Blue Shield with the following exception: Should the benefit provider change during the life of this contract, all active members will receive **equal to or better than** the plan in effect at the time of the change in health coverage. [emphasis added]
>
> Any individual hired from outside the district after the date of the benefit provider change will receive the appropriate single or family Point of Service (POS) Benefit program with the full premium paid by the Board. Those individuals will be eligible to procure any upgrade available by paying the difference between the POS coverage provided by the Board and the total cost of the upgrade option.
>
> **WAIVER OPT-OUT**:
>
> When a bargaining UNIT employee chooses to decline their current coverage, the Board will pay a stipend of 50% of the school year premium. Said employee shall complete the required forms acceptable to the Business Administrator and provide proof of other health insurance coverage by the date of the open enrollment deadline. The payments shall be split; the first year 50% employee, 50% Board and each proceeding year shall be 40% employee, 60% Board. The stipend would be paid in six (6) month intervals with the 1st six (6) month stipend paid up front in the first pay check. The second and subsequent six (6) month interval payments would be paid

> at the end of the period, before June 30th and December 31st of each year.
>
> Any person in the existing unit, wishing to change from the Traditional Plan to the Point of Service (POS) Plan, must sign up by the open enrollment deadline for the Point of Service (POS) Benefit Program coverage. The savings would be split as follows: a one time payment in the first year of 70% employee and 30% Board. This change shall remain for the balance of this contract. This stipend will be paid in the first month of the implementation of this clause.

5. The Board and the Secretaries' Association engaged in neither discussions nor negotiations regarding a change in the health insurance carrier prior to the changes of carrier on July 1, 2009 (1T27, 1T31). Elizabeth Savage, a member of the Secretaries' Association's negotiating team, learned of the change in health insurance carriers on May 4, 2009, upon receipt of a memorandum issued by the Board's Business Administrator Michael Leary, advising all employees that the Board would be changing carriers from Horizon Blue Cross/Blue Shield to the School Employees Health Benefits Plan (SEHBP)(CP-1; 1T27, 1T31). On May 7, 2009, a representative of the Secretaries' Association sent a letter to the Board objecting to the health insurance change and requesting additional information (CP-2).

6. Article XXII, Insurance Protection, contained in the collective agreement between the Board and the Teachers' Association covering the period July 1, 2007 through June 30, 2010 (J-2) stated, in pertinent part, the following:

**FULL HEALTH COVERAGE**

a. The Board shall pay the full premium to provide each member employee, and in cases where appropriate for family coverage, for medical insurance coverage in the health plan currently in effect.

b. If, during the time that this contract is in effect, the Board elects to change insurance carriers, the Board agrees to provide coverage **equal to or better than** the health plan currently in effect as per (a) above. {emphasis added]

c. Effective upon ratification of this agreement, all new hires will receive the appropriate single or family Non-Traditional PPO Benefit Program with the full premium paid by the Board for the first three years of employment. Those individuals will be eligible to procure any upgrades available by paying the difference between the Non-Traditional PPO Benefit program coverage provided by the Board and the total cost of the upgrade option. After three years they will receive the same health benefits package as those hired prior to September 1, 2007.

d. Members wishing to take advantage of the provisions identified below will have to declare their intention during the Open Enrollment in June to be effective July 1 of that calendar year.

When a member chooses to decline their current coverage, the Board will pay a stipend of 50% of the school year premium. Said employee shall complete the required forms acceptable to the Business Administrator and provide proof of insurance coverage by the date of the open enrollment deadline. The payments shall be split the 1st year 50% employee, 50% Board and each subsequent year shall be 40% employee, 60% Board. The stipend will be paid in two equal payments to be paid in conjunction with the January 30th and June 30th payroll each year.

> Any person in the existing unit, wishing to change from the Traditional to the Non-Traditional PPO Plan must sign up by the open enrollment deadline for the PPO Plan coverage. The savings would be split as follows: a one time payment in the first year of 70% employee and 30% Board. This change will remain for the balance of this contract. This stipend will be paid in the first month of the implementation of this clause.
>
> These conditions listed above shall remain in effect until a successor agreement is ratified by both parties.

7. In the Spring of 2008, the Board was advised by its health insurance provider Horizon Blue Cross/Blue Shield, that for school year 2008-2009 the Board faced a 66% increase in its premium (1T106). The Board ultimately negotiated that premium increase down to 30%, amounting to $535,000 (R-2; 1T106). The Board sought bids from other health insurance providers, however, none were willing to proffer a quote (R-1).

8. Given the health insurance premium increase, Superintendent Albert Guazzo called a meeting of all staff in June 2008 to discuss health insurance but reassured staff that health insurance coverage would be maintained (1T78, 1T92). In August 2008, Lakeland Regional High School Teachers' Association President Anthony Caleca received a phone call from Guazzo requesting that he (Caleca) meet with him on September 4, 2008. In light of the comments Guazzo made during the June staff meeting, Caleca believed health insurance would be discussed. When Caleca got to the September 4th meeting, he was also joined

by other Association members and representatives from the Administrators', Secretaries', Cafeteria Workers' and Maintenance Workers' Associations. Also in attendance was the Board's president who made a presentation in which she asked for everyone's help by voluntarily moving all employees out of the traditional plan and into the PPO plan (1T78-1T80, 1T120-1T121). The attendees were advised that the Board was seeking the group's cooperation because of exorbitant increases in the cost of health benefits in the next school year (1T122, 1T150).

9. During the winter months of the 2008-2009 school year, Leary began preparing the 2009-2010 budget. Horizon Blue Cross/Blue Shield advised the Board that its health insurance premium would increase approximately 80% for 2009-2010 (1T106-1T107). By changing its insurance brokers, the Board was able to reduce the amount of increase to 50%, which still amounted to more than $1 million (1T107). At that time, the Board was limited to a total budget increase under the budget cap law of 4% or $ 590,000. Had the 50% increase in health insurance premium been effectuated, the Board would have had to implement significant layoffs of teachers and support staff, reduce transportation, cut cafeteria services, and make other across-the-board cuts (1T107-1T108). One reason for the dramatic premium increase was due to the severe illness, and thus large health insurance claim, filed by an employee who was not included

in the negotiations unit yet was nonetheless covered under the Board's health insurance plan. (1T132).

10. During the fall of 2008 and into the winter months of 2008-2009, Caleca had periodic informal meetings with Leary and Guazzo about the cost of health benefits and other issues. There were discussions about modifications in the health plan for unit employees in return for compensation for those affected (1T85, 1T93-1T94, 1T123). No formal agreement was reached as the result of these discussions.

On March 19, 2009, Guazzo, some Board members, and representatives from the Teachers' Association met to discuss a change in health carriers (1T82, 1T125). Caleca asked if the Board wanted to reopen the collective agreement for formal negotiations on the matter; the Board responded that it did not wish to reopen negotiations (1T82). Caleca expressed the position during the meeting that the Board should continue to follow the collective agreement since any change in health benefits would violate the contract (1T80). Caleca told the Board that if any accommodation were to be made regarding a change in insurance carriers, all 108 members of the Teachers' Association would have to receive some beneficial treatment (additional compensation), not just the 34 employees who were then still covered under the traditional health insurance program (1T84, 1T125, 1T154-1T155). The Board indicated that it might be

receptive to some payment to employees, however, the parties could not come to terms on a final agreement (1T85, 1T87, 1T127). Ultimately, Caleca sought an increase in the salary guide of $5000 for each teacher. It was his view that any savings resulting from a change in the insurance carrier and modification in benefit levels should enure to the unit's members and not to the Board. The Board considered a one-time stipend, but was not in agreement with Caleca's viewpoint (1T84, 1T96, 1T154-1T155, 1T165).

11. The Board reached an agreement with the Administrator's Association which allowed for a change in the health insurance carrier to the SEHBP and concomitant level of benefits. The agreement included a program which provided for employees to submit claims the employee believed would have been reimbursed at a higher level under the predecessor plan to an independent third party for review. If the third party agreed with the employee, the employee would be paid the difference between what the SEHBP paid out and what the Horizon Blue Cross/Blue Shield plan would have paid. Thus, the employee would be made whole, which accomplished the Board's stated objective (1T98, 1T137, 1T153, 1T170). The Board told Caleca it would agree to the same third party plan for the teachers (1T137). The "third party plan" would be in effect for 1 year, not the life of the collective agreement (1T139). There were additional elements to the

Administrators' plan which the Board said it would also apply to teachers (1T139-1T140). The Teachers' Association did not agree to the Administrators' plan (1T144).

12. On or about March 19, 2009, the Board decided to change health insurance carriers from Horizon Blue Cross/Blue Shield to the SEHBP effective July 1, 2009 (1T26-1T27, 1T128). On or about that date, Caleca was informed of the possibility of a change (1T129). The Board formally voted to change insurance carriers during a Board meeting conducted on April 21, 2009 (CP-8; 1T86). In school year 2009-2010, the first year of the change in insurance carriers, the Board's cost for health insurance decreased. The savings were used to fund educational programs; none of the savings was provided to employees (1T136).

13. Prior to the July 1, 2009 effectuation of the SEHBP, employees had their choice of two health insurance programs. One plan was the "Hospital/Medical-Surgical Major Medical" plan commonly referred to as the traditional plan. The specific terms of coverage for the traditional plan are detailed in CP-4. The other plan available for employees was the "Horizon Direct Access" plan which is commonly referred to as the PPO plan. The specific coverage terms for the PPO are detailed in CP-5. The coverage details for the SEHBP are contained in CP-6.

14. James Jameson, Associate Director of Research and Economic Services for the New Jersey Education Association, and

accepted by the parties here as an expert witness, compiled a comparison between the traditional plan and the SEHBP (Direct 10) for plan year 2009 (CP-7; 1T41-1T42, 1T52). The Board also commissioned the LDP Consulting Group to prepare a comparison between the traditional plan and the SEHBP (Direct 10) and prepare a comparison between the Direct Access Plan, the plan available to employees prior to the July 1, 2009 change, and the SEHBP (Direct 10). Both Jameson's and LDP's analyses pointed out the differences in the various insurance plans in effect prior to and post July 1, 2009. Both analyses concluded that there were elements in the SEHBP that were more favorable to employees than the predecessor plans, and elements that were not as good (R-4; CP-7; 1T64). For example, for outpatient radiation/chemotherapy treatment, the traditional plan pays 80% of the treatment cost after the employee's deductible. Under the SEHBP (Direct 10) the plan pays 100% of the cost for in-network treatment and 80% after the employee's deductible for out-of network treatment. Thus, based upon data shown in R-4, for outpatient radiation/chemotherapy treatment, the SEHBP's benefits are better than or equal to those previously provided under the traditional plan. R-4 also shows that when comparing the Direct Access Plan which was in effect prior to July 1, 2009 with the SEHBP (Direct 10) for physician services (surgery), the Direct Access Plan paid 100% of the fee for in-network services and 70% (after

deductible) for out-of-network services. The SEHBP pays 100% of the in-network surgeon's fee and 80% (after deductible) for out-of-network services. Thus, this example represents an instance where the benefit level has improved under the SEHBP.[4/] R-4 also points out instances where benefits under the SEHBP are not as good as those provided by the predecessor insurance plans. For example, under the traditional plan physical examinations are covered 100%, whereas under the SEHBP a physical examination incurs a $10 co-payment for an in-network provider and are not covered for an out-of-network provider. Comparing the Direct Access Plan and SEHBP (Direct 10), R-4 shows that for a routine vision examination, the Direct Access Plan paid 100% of the fee after a $5 co-payment for an in-network provider and 70% (after deductible) for an out-of-network provider. The SEHBP, for the same service, pays 100% after a $10 co-payment for an in-network provider and nothing for an out-of-network provider. CP-7 lists similar comparisons, primarily between the traditional plan and SEHBP and points out reductions in benefit levels between those insurance plans.

15. While Caleca, Leary and Guazzo engaged in frequent discussions regarding the issue of health benefit premium increases and conversed concerning various ways in which a

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4/ Based upon the amount of the applicable deductible, the deductible might or might not have an effect.

solution to this problem might be achieved, the parties never conducted formal negotiations relative to this issue and never reopened the collective agreements. The parties never entered into an agreement that allowed for a change in health insurance carriers, a change in the level of benefits, or a modification in the terms of the collective agreement (1T82, 1T100-1T101, 1T162-1T163).

**ANALYSIS**

The Commission has long held that the subject of medical benefit levels is a term and conditions of employment and is mandatorily negotiable. Piscataway Tp. Bd. of Ed, P.E.R.C. No 91, 1 NJPER 49 (1975). An employer has the managerial right to select which carrier will provide the agreed-upon level of health insurance benefits. However, the level of benefits may not be altered without good faith negotiations. Borough of Metuchen, P.E.R.C. No. 84-91, 10 NJPER 127 (¶15065 1984). See also, Borough of Paramus, P.E.R.C. No. 86-17, 11 NJPER 502; City of Newark, P.E.R.C. No. 82-5, 7 NJPER 439 (¶12195 1981). This case concerns a claim by the Associations that when the Board changed the insurance carrier, it also unilaterally changed the level of health benefits.

It is evident that the Board committed no unfair practice when it changed health insurance providers from Horizon Blue Cross/Blue Shield to the SEHBP. Each of the collective

agreements for the Associations specifically contain an express provision in the health care article which grants the Board the authority to unilaterally change insurance carriers. In recognition of this provision in the collective agreements, the Associations do not assert that the Board improperly changed insurance carriers. However, the Associations contend that the Board has repudiated a different provision in the health care articles set forth in the respective contracts which requires the Board to provide a level of benefits which is "equal to or better than" the then current level of benefits in the event the Board does change carriers.

As noted above, medical benefits is a mandatory subject of negotiations. When negotiations over a subject culminate in an agreement, the terms of the agreement must be reduced to writing and included in the collective agreement. N.J.S.A. 34:13A-5.3. These written agreements establish the terms and conditions of employment for the duration of the contract unless both of the parties voluntarily agree to change them. Passaic Cty. Reg. H.S. Dist No. 1, P.E.R.C. No. 91-11, 16 NJPER 446 (¶21191 1990); State of N.J., Dept of Veterans Affairs, (Menlo Park Soldiers Home), P.E.R.C. No. 89-76, 15 NJPER 90 (¶20040 1989); Elmwood Park Bd. of Ed. P.E.R.C. No. 85-115, 11 NJPER 366 (¶16129 1985). Accordingly, the Teachers' Association is not required to reopen negotiations on any express term contained in an extant agreement

mid-term. Middlesex Board of Education; P.E.R.C. 94-31, 19 NJPER 544 (¶24257 1993). The Board could not unilaterally change an express provision contained in the Secretaries' agreement during the course of on-going negotiations. Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Assn., 78 N.J. 25, 48 (1978).

The evidence establishes that as the result of the change in insurance carriers, the level of benefits changed; some improved, some diminished. Significantly, the elimination of the traditional plan, in itself, exemplifies an important benefit reduction. But the agreements required that the level of benefits be "equal to or better than" the benefit levels in effect prior to the change in carriers. The diminution in the level of benefits repudiates the express terms of the health care provisions in the respective collective agreements since such reduction in the level of benefits is contrary to the "equal to or better than" standard contained in the contracts. The Teachers Association never agreed to reopen its contract on that issue, and during the course of their discussions concerning this issue, both the Board and the Teachers' Association knew that they were not engaging in formal negotiations. Nor did the Board engage in negotiations over a change in the level of benefits with the Secretaries' Association. Even if the back and forth communications between Caleca and Board representatives could be viewed as negotiations, it is clear that neither those parties

nor the Secretaries' Association, ever reached an agreement allowing for a level of benefits which was not "equal to or better than" the benefits provided by the Horizon Blue Cross/Blue Shield plan. Consequently, the Board's unilateral reduction in the level of health benefits which was brought about by its move into the SEHBP, was in contravention of the collective agreement, repudiated the terms of the contract, and violated the Act. See, State of New Jersey (Dept. Of Human Services), P.E.R.C. 84-148, 10 NJPER 419 (¶15191 1984). See also, N.J.S.A. 34:13A-33.

The collective agreements also contained a provision which allowed employees who declined medical insurance coverage to be paid a stipend amounting to 50% of the premium saved in the first year in which coverage was declined, and 40% in each subsequent year. Additionally, the respective agreements allowed unit members wishing to "opt-out" of the traditional plan and move into the Direct Access Plan to receive a one-time payment of 70% of the insurance premium savings. On July 1, 2009, the date of implementation of the change to the SEHBP, these contractually required programs were unilaterally discontinued. The elimination of these benefits repudiated the respective collective agreements.

The Board faced extraordinarily high premium increases for multiple years. The Board knew that had it not addressed the insurance cost issue in some manner, it would have been required

to implement significant staff layoffs and curtail other programs. The Board entered into discussions with representatives from its various negotiations units, achieving agreements with some to modify the health insurance program, but not with the Associations. Given the contract terms in effect, layoffs and other programmatic reductions may have been the only legal courses of action available to the Board. However, faced with significant reductions in force and other programmatic changes, the Associations may have been willing to engage in formal negotiations concerning changes in the level of benefits which could have resulted in a mutually acceptable resolution of this dispute. Instead, the Board never sought to reopen the teachers' collective agreement nor engage in formal negotiations with the Associations' representatives. Rather, the Board chose to take unilateral action which violated the Act.

**CONCLUSION OF LAW**

The Lakeland Regional High School Board of Education violated N.J.S.A. 34:13A-5.4a(1) and (5) when it repudiated the parties' collective negotiations agreement by reducing the level of health benefits mid-contract for employees currently included in the Lakeland Education Association. However, the Board did not violate N.J.S.A. 34:13A-5.4a(5) because it did not refuse to negotiate in good faith with the majority representative concerning terms and conditions of employment. The Association

never sought negotiations over a change in the level of health benefits brought about by the change in insurance carriers.

## RECOMMENDED ORDER

I recommend that the Commission **ORDER** that the Board cease and desist from:

A. Interfering with, restraining or coercing employees included in the Lakeland Education Association in their exercise of the rights guaranteed to them by the Act, particularly by unilaterally reducing the level of health insurance benefits in violations of N.J.S.A. 34:13A-5.4a(1).

B. Repudiating the express terms of the parties' collective negotiation agreement, specifically, by unilaterally reducing certain levels of health benefits mid-contract in violation of N.J.S.A. 34:13A-5.4a(5).

C. The Lakeland Regional High School Board of Education should take the following affirmative action:

1. Until the parties negotiate and agree upon a health insurance program, the Board must establish a fund upon which employees may draw to cover medical costs which would have been, but were not, paid under either the Horizon Blue Cross/Blue Shield traditional plan applicable to unit employees who would have been in that plan after July 1, 2009, had the Board not changed insurance carriers, or the Horizon Direct Access plan applicable to unit employees who would have been in that plan

after July 1, 2009, for covered medical services. Upon provision of acceptable evidence by the employee to the Board establishing the amount of such additional expense incurred resulting from a lesser reimbursement under the SEHBP, the Board will make an up-front payment from the fund to either the employee directly or to the provider of the medical services so that the employee will not be required to make an out-of-pocket payment. The Board will immediately reimburse any employee for any eligible claims under this program upon submission of acceptable evidence by an employee pertaining to covered, eligible medical expenses incurred by an employee since July 1, 2009. The parties are free to negotiate a different payment arrangement for administering the fund. See Borough of East Rutherford v. East Rutherford PBA Local 275, N.J.Super. unpublished, Lexis 1921 (App. Div. Dkt No. A-5310-09T2 2011).

Any employee included in either Association who had completed the required forms acceptable to the business administrator prior to the May 2010 effective date modifying Title 52 concerning waiver of health benefits must be treated in accordance with the terms of the waiver provision in the respective collective agreements. After May 2010, employees eligible to waive health benefits coverage will be subject to the statutory limitations set forth in Title 52.

Any employee included in either Association who was enrolled in the traditional plan on June 30, 2009 and, pursuant to Board determination was moved into the SEHBP on July 1, 2009, shall, under the terms of the collective negotiations agreement receive a one-time payment equaling 70% of the amount saved by the Board in health insurance premium cost resulting from the change.

2. Post in all places where notices to employees are customarily posted copies of the attached notice marked as "Appendix A." Copies of such on forms to be provided by the Commission, will be posted immediately upon receipt thereof and after being signed by the Respondent's authorized representative, will be maintained by it for at least sixty (60) consecutive days. Reasonable steps will be taken by the Respondent to ensure that such notices are not altered, defaced or covered by other materials; and

3. Notify the Chair of the Commission within twenty (20) days of receipt what steps the Respondent has taken to employ with this ORDER.

Wendy L. Young
Hearing Examiner

DATED: June 29, 2012
Trenton, New Jersey

Pursuant to N.J.A.C. 19:14-7.1, this case is deemed transferred to the Commission. Exceptions to this report and recommended decision may be filed with the Commission in accordance with N.J.A.C. 19:14-7.3. If no exceptions are filed, this recommended decision will become a final decision unless the Chairman or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further. N.J.A.C. 19:14-8.1(b).

Any exceptions are due by July 10, 2012.

# NOTICE TO EMPLOYEES

## PURSUANT TO
### AN ORDER OF THE
## PUBLIC EMPLOYMENT RELATIONS COMMISSION
### AND IN ORDER TO EFFECTUATE THE POLICIES OF THE
## NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,
### AS AMENDED,
### We hereby notify our employees that:

**WE WILL** cease and desist from interfering with, restraining or coercing employees included in the Lakeland Education Association in their exercise of the rights guaranteed to them by the Act, particularly by unilaterally reducing the level of health insurance benefits in violations of N.J.S.A. 34:13A-5.4a(1).

**WE WILL** cease and desist from repudiating the express terms of the parties' collective negotiation agreement, specifically, by unilaterally reducing certain levels of health benefits mid-contract in violation of N.J.S.A. 34:13A-5.4a(5).

**WE WILL** take the following affirmative action:

Until the parties negotiate and agree upon a health insurance program, we will establish a fund upon which employees may draw to cover medical costs which would have been, but were not, paid under either the Horizon Blue Cross/Blue Shield traditional plan applicable to unit employees who would have been in that plan after July 1, 2009, had we not changed insurance carriers, or the Horizon Direct Access plan applicable to unit employees who would have been in that plan after July 1, 2009, for covered medical services. Upon provision of acceptable proof by the employee to us (the Board) establishing the amount of such additional expense incurred resulting from a lesser reimbursement under the SEHBP, we will make an up-front payment from the fund to either the employee directly or to the provider of the medical services so that the employee will not be required to make an out-of-pocket payment. We will immediately reimburse any employee for any eligible claims under this program upon submission of acceptable proof by an employee pertaining to covered, eligible medical expenses incurred by an employee since July 1, 2009.

Any employee included in either Association who had completed the required forms acceptable to the business administrator prior to the May 2010 effective date modifying Title 52 concerning waiver of health benefits will be treated in accordance with the terms of the waiver provision in the respective collective agreements. After May 2010, employees eligible to waive health benefits coverage will be subject to the statutory limitations set forth in Title 52.

Any employee included in either Association who was enrolled in the traditional plan on June 30, 2009 and, pursuant to our determination was moved into the SEHBP on July 1, 2009, shall, under the terms of the collective negotiations agreement receive a one-time payment equaling 70% of the amount saved by us in health insurance premium cost resulting from the change.

Docket No. CO-2009-454 & 455

LAKELAND REGIONAL HIGH SCHOOL BOARD OF EDUCATION
(Public Employer)

Date: _____ By: _____

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State Street, PO Box 429, Trenton, NJ 08625-0429 (609) 984-7372

APPENDIX "A"