

D.U.P. NO. 99-8

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

CITY OF NEW BRUNSWICK,

Respondent,

-and-

Docket Nos. CO-98-244, CO-98-245
CO-98-246 & CO-98-247

PBA LOCAL 23, PBA LOCAL 23A, FMBA LOCAL 17
FMBA Local 217,

Charging Parties.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint on a charge that the public employer, the City of New Brunswick, violated subsections 5.4a(1) and (5) of the Act when it unilaterally changed its workers' compensation benefits administrator. The Director finds that negotiations over changes resulting from the employer's selection of a workers' compensation benefit administrator are preempted by legislation. See N.J.S.A. 34:15-15 and 34:15-19; Bor. of Perth Amboy, P.E.R.C. No. 97-138, 23 NJPER 345 (¶28159 1997), aff'd 24 NJPER 531 (¶29247 App. Div. 1998).

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Appearances:

For the Respondent,
DeMaria Ellis & Bauch, attorneys
(Brian Flynn, of counsel)

For the Charging Parties,
Marc D. Abramson, Labor Relations Consultant

REFUSAL TO ISSUE COMPLAINT

On January 5, 1998, PBA Local 23, PBA Local 23A, FMBA Local 17, and FMBA Local 217 filed unfair labor practice charges alleging that the City of New Brunswick violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically provisions 5.4a(1) and (5)^{1/} by unilaterally changing

^{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."

unit members' terms and conditions of employment when it began using the services of Mastercare Inc. as its workers' compensation benefit administrator effective September 30, 1997.

The Commission has authority to issue a complaint where it appears that the charging party's allegations, if true, may constitute an unfair practice within the meaning of the Act. N.J.S.A. 34:13A-5.4c; N.J.A.C. 19:14-2.1. The Commission has delegated that authority to me. Where the complaint issuance standard has not been met, I may decline to issue a complaint. N.J.A.C. 19:14-2.3. On the basis of the facts here, I find that the Commission's complaint issuance standard has not been met.

Charging parties allege that by changing the company which administers its workers' compensation benefits program, the City required unit members to seek prior approval from Mastercare Inc. before such member was allowed to visit a physician; required members to select physicians which might or might not be located in the City of New Brunswick; and provided Mastercare, not the unit member, with the discretion to require a second opinion. Charging parties claim that these unilateral changes resulted in a change from a traditional workers' compensation insurance plan to a managed care program. The Charging parties allege that the City's unilateral changes in the workers' compensation insurance benefits violated N.J.S.A. 34:13A-5.4a(1).

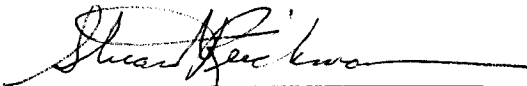
The Commission has previously held that workers' compensation statutes, particularly N.J.S.A. 34:15-15 and 34:15-19,

preeempt collective negotiations over changes in the number and location and physicians, as well as pre-certification requirements, resulting from the employer's change of workers' compensation benefit administrators. The Commission has concluded that the employer has the statutory authority to choose its examining physician. Bor. of Perth Amboy, P.E.R.C. No. 97-138, 23 NJPER 345 (¶28159 1997), aff'd 24 NJPER 531 (¶29247 App. Div. 1998).

ORDER

I decline to issue a complaint.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES



Stuart Reichman, Director

DATED: January 15, 1999
Trenton, New Jersey