D.U.P. NO. 93-45

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

In the Matter of

TOWNSHIP OF ANDOVER,

Respondent,

-and-

Docket No. CO-93-66

IUE LOCAL 417,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge alleging that the public employer unilaterally required employees to submit co-payments on medical plan subscriptions with health maintenance organizations. The collective agreement has a provision requiring the Township to pay the "full cost" of all insurance coverage. The employer allegedly violated subsections 5.4(a)(1), (2) and (3) of the Act.

The Director determined that N.J.A.C. 17:9-5.6 and other regulations preempt negotiations on health maintenance organization costs which exceed traditional plan costs. Accordingly, negotiations are preempted under Bethlehem Tp. Bd. of Ed. v. Bethledhem Tp. Ed. Ass'n, 19 N.J. 38 (1982) and the charge was dismissed.

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Appearances:

For the Respondent
McGovern & Roseman, attorneys
(Stephen Roseman, of counsel)

For the Charging Party
Alex M. Antoniades, Business Agent

REFUSAL TO ISSUE COMPLAINT

On August 18, 1992, Local 427, International Union of Electronic, Electrical, Technical, Salaried Machine and Furniture Workers, AFL-CIO, filed an unfair practice charge alleging that the Township of Andover violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (2) and (5).[1/] The charge alleges that on or about

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1/ These subsections 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. (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."

June 28, 1992, the Township unilaterally required employees to submit co-payments on medical plan subscriptions with health maintenance organizations. The co-payments, varying between $5.63 and $7 per employee each pay period, were allegedly imposed over the union's objection and violate Article XXV A of the current collective negotiations agreement. The provision states:

> The Township shall pay the full cost to provide and maintain all insurance coverage that is in force and effect at the inception of this agreement.

On February 1, 1993, the Township filed a response, denying that it engaged in any unfair practice. It asserts that state regulations preempt collective negotiations on the matter and that the contract provision is not binding.

On June 11, 1993, I issued a letter, tentatively dismissing the charge.

N.J.A.C. 17:9-5.6 is entitled, "Health maintenance organization charges" and it limits employer-paid insurance premiums. It states:

> For purposes of State and local coverage, the employer who pays any portion of the cost for the employee and for dependent coverage cannot pay any more for the same type of coverage if the employee enrolls himself or herself and his or her dependents in a health maintenance organization as an alternative program. If the cost of the coverage in the alternative plan exceeds the cost of the State program, the additional charge would be collected by payroll deductions from the employee.

N.J.S.A. 26:2J-29, "Enrollment of State employees" also limits contributions. It states:

> Any employee of the State or any subdivision of the State or any institution supported in whole or in part by the State may elect to enroll in a health maintenance organization and have all deductions from salary or wages and all contributions being paid by his employer to any health insurer paid instead to a health maintenance organizarion; provided, however, in no event, shall an employer under this section make a contribution to any alternative health benefits program greater than the contribution being made to any health plan pursuant to a contract in existence on the effective date of this act. Any such employee shall at least annually be allowed to choose an alternative health benefits program made available through his employer.

The Township asserts that when the contract provision was negotiated, there were no additional charges for health maintenance organization coverage. When the additional charges for the HMO were added, the State Health Benefits Program subsequently billed the Township additional charges for the HMO coverage that exceeded costs of the traditional State plan. The Township financial officer was then made aware of Section 159-3 of the 1991 State Health Benefits Manual, which states:

> ...In no event shall an employer make a contribution to the HMO for such employee which is greater than that which the employer may be making to the Traditional Plan.

Co-payments were then deducted from the enrolled employees' salary, pursuant to the "instructions."

The preemption test is stated in Bethlehem Tp. Bd. of Ed. v. Bethlehem Tp. Ed. Ass'n, 19 N.J. 38 (1982). Negotiations are preempted only if the regulation fixes a term and condition of employment "expressly, specifically and comprehensively." The

legislation must "speak in the imperative and leave nothing to the discretion of the public employer." Bethlehem at 44.

The Union has not contested the relevance of the cited regulations or the assertion that enrollment in the health maintenance organization plans exceed costs under the State plan. Considering the regulations and the charge, I find that the legistation preempts collective negotiations on the Township's duty to contribute to health plan subscriptions which exceed the cost of the traditional State plan. The regulations (particularly the administrative provision) "speak in the imperative", leaving nothing to the Township's discretion. Accordingly, I find that the contract provision, providing for the Township's payment of all costs associated with health insurance coverage is beyond the scope of negotiations; and no complaint may issue. See Local 195, IFPTE v. State, 88 N.J. 393 (1982). Accordingly, the unfair practice charge is dismissed.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES

Edmund G. Gerber, Director

DATED: June 29, 1993
Trenton, New Jersey