I.R. NO. 96-24

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWN OF KEARNY,

Respondent,

-and- Docket No. CO-96-299

KEARNY FMBA LOCAL NO. 18,

Charging Party.

SYNOPSIS

A Commission Designee declines to restrain the Town of Kearny from changing health insurance carriers until it provides sufficient information to the union. There was a factual dispute as to whether the employer had provided sufficient information to the Association. The Town was ordered to seek certain insurance plan documents from the new carrier. However, the application for restraint was otherwise denied.

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Appearances:

For the Respondent,
Shaljian, Cammarata & O'Connor, attorneys
(Thomas J. Cammarata, of counsel)

For the Charging Party,
Loccke & Correia, attorneys
(Charles E. Schlager, Jr., of counsel)

INTERLOCUTORY DECISION

On April 8, 1996, Kearny FMBA Local No. 18 filed an unfair practice charge with the Public Employment Relations Commission alleging that the Town of Kearny violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4(a)(1), (2), (5) and (7)[1/] when it unilaterally changed the carrier of health

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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. (7) Violating any of the rules and regulations established by the commission."

insurance for employees in the unit represented by Local 18 as well as retirees but failed to provide the Associations with sufficient information about the new insurance plan.

The unfair practice charge was accompanied by an order to show cause which was executed and made returnable for April 29, 1996. The Association is seeking an interim order restraining the Town from leaving the State's Health Benefit Plan.

The Town opposes the application, alleging that it had a right to change health insurance carriers and that the level of benefits in the new plan is the same as the old plan. The Town also agreed that it would provide all information it had concerning the level of benefits in the new plan to the Association.

The Town is currently in the State Health Benefits Plan.

On or about March 29, 1996, the Town accepted a bid from New York Life (NYL CARE) for health care. The Town stated, by way of affidavit that NYL CARE agreed it would match or exceed the coverages of the State Health Benefits Plan.

The State Health Benefits Plan was notified of the Town's intent to leave the State Health Benefits Plan effective June 1, 1996.

On April 9, 1996, the Town notified Local 18 of the proposal. Subsequently, it sent the Association a copy of the health benefits proposal and a comparison with the current coverage.

The employer maintains that it received assurances from NYL CARE that they are committed to the same or better coverage than employees currently receive in the State Health Benefits Plan. (See Certification of Robert Czech.) In addition, the Town provided a letter to the Association from NYL CARE which acknowledged to the Town its obligation to provide a benefit package which is equal to or better than the benefits its employees now enjoy in the State Health Benefits plan. Czech also certified that retirees will continue to be covered under the new plan.

At the hearing, the Town expressed a willingness to provide a specimen contract from NYL CARE to Local 18 and the hearing was adjourned. When the Association received a copy of this specimen contract, it objected to the document as being insufficient and it claimed it could not determine if the new plan maintained the same level of benefits as the old plan. The Town maintains it has given to the Association all the documentation concerning coverage it has.

The Town acknowledges that, to the extent it fails to provide the same level of benefits, such a dispute may be resolved through binding arbitration.

The standards that have been developed by the Commission for evaluating interim relief requests are similar to those applied by the Courts when addressing similar applications. The moving party must demonstrate that it has a substantial likelihood of success on the legal and factual allegations in a final Commission decision and that irreparable harm will occur if the requested

relief is not granted. Further, in evaluating such requests for relief, the relative hardship to the parties in granting or denying the relief must be considered. Crowe v. DeGioia, 90 N.J. 126 (1982); Tp. of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Tp. of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975).

The level of health insurance benefits is a mandatory subject of negotiations, although the health insurance carrier is not mandatorily negotiable. Accordingly, an employer is obligated to maintain the existing level of benefits if it changes carriers. An employer is also required to provide sufficient information necessary for the employee organization to determine whether the level of benefits is maintained. Borough of Ringwood, I.R. No. 96-12, 22 NJPER 83 (¶27039 1996; City of Atlantic City, P.E.R.C. No. 89-56, 15 NJPER 11 (¶20003 1988).

Nevertheless, it is Commission policy to defer cases concerning disputes over the level of benefits to binding arbitration. Township of Pennsauken, P.E.R.C. No. 88-53, 14 NJPER 61 (¶19020 1987).

There is a factual dispute here as to whether the employer has provided sufficient information to the Association. However, to ensure the Association received all possible information, I direct that the Town contact NYL CARE to seek the insurance plan documents for the new insurance policy and provide copies of these documents to the Association.

However, the Charging Party has failed to demonstrate that any harm it may be subject to by the change of carriers is irreparable. The Application to restrain the Town of Kearny from changing carriers is denied.

BY ORDER OF THE COMMISSION

Edmund G. Gerber
Commission Designee

DATED: May 10, 1996
Trenton, New Jersey