

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CAMDEN COUNTY AND  
CAMDEN COUNTY PROSECUTOR,  
Respondents,

-and-

Docket No. CO-2009-76

CAMDEN COUNTY ASSISTANT  
PROSECUTORS ASSOCIATION,  
Charging Party.

SYNOPSIS

The Public Employment Relations Commission grants the request of Camden County and the Camden County Prosecutor for reconsideration of I.R. No. 2009-7. In that decision, a Commission designee denied a request for interim relief filed by the Association in conjunction with an unfair practice charge filed against Respondents. The charge alleges that the Respondents unilaterally changed terms and conditions of employment and repudiated the parties' collective negotiations agreement by charging employees represented by the Association for dental plans that had previously been provided to the employees free of charge and failing to implement a contractual agreement to offer employees, at a cost, an improved dental plan that was available to other County employees. The designee found that the Association had not shown that it is substantially likely to prevail on the merits of the first allegation and that the Association did not establish that it would be irreparably harmed because any premiums improperly collected could be recouped at the end of the proceeding. As to the second allegation, the designee found that the Association was likely to prevail on the merits, but that the Association did not establish that unit members would be irreparably harmed because failing to honor an agreement to improve existing dental benefits, where current benefit levels have been maintained is different from cases where an employer has unilaterally reduced health benefits. The Commission grants reconsideration and orders the County to provide access to the improved dental plan finding that repudiation of an agreement to improve benefits can constitute irreparable harm.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

P.E.R.C. NO. 2009-27

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Appearances:

For the Respondents, Brown & Connery, LLP, attorneys  
(William M. Tambussi, of counsel)

For the Charging Party, Loccke, Correia, Schlager,  
Limsky & Bukosky, attorneys (Michael A. Bukosky, of  
counsel)

DECISION

On October 7, 2008, the Camden County Assistant Prosecutors Association moved for reconsideration of I.R. No. 2009-7, 34 NJPER 295 (¶105 2008). In that decision, a Commission designee denied the Association's application for interim relief pending a final decision on the unfair practice charge it filed against Camden County and the Camden County Prosecutor. The Association alleges that the respondents unilaterally changed terms and conditions of employment and repudiated the parties' collective negotiations agreement by: (1) charging employees represented by the Association for dental plans that had previously been

provided to the employees free of charge; and (2) failing to implement a contractual agreement to offer employees, at a cost of \$10 per paycheck, an improved dental plan that was available to other County employees.

The designee found that the Association had not shown that it is substantially likely to prevail on the merits of the first allegation. In addition, he concluded that even if the Association had shown that it was substantially likely to prevail on the merits, it did not establish that it would be irreparably harmed because any premiums improperly collected could be recouped, with interest, at the end of an unfair practice proceeding.

As to the second allegation, the designee found that the Association was likely to prevail on the merits, but that the Association did not establish that unit members would be irreparably harmed because failing to honor an agreement to improve existing dental benefits, where current benefit levels have been maintained, is different from cases where an employer has unilaterally reduced health benefits and has thereby denied or limited employee access to treatments or medications that were previously available.

The Association argues that: the designee failed to apply Commission precedent when he failed to find that repudiation of a contract term for no reason creates irreparable damage; the

designee mischaracterized the status quo; reconsideration is warranted in cases where fundamental mistakes have been made concerning health benefits; and the designee improperly based his decision upon facts not in the record.

The respondents argue that there are no extraordinary circumstances warranting reconsideration and that the designee properly denied interim relief. The respondents also assert that there is no proof that the County offers any improved dental plan to other employees.

Reconsideration will be granted in extraordinary circumstances, but only in cases of exceptional importance will we intrude into the regular interim relief process by granting a motion for reconsideration of an interim relief decision by the full Commission. City of Passaic, P.E.R.C. No. 2004-50, 30 NJPER 67 (¶21 2004); N.J.A.C. 19:14-8.4. We grant the Association's motion on one ground.

The designee found that a contract provision on dental plans was ambiguous as to whether unit employees could be required to pay for the cost of all dental plans, including the plans they previously had for free. There are no extraordinary circumstances warranting reconsideration of the decision to deny interim relief on this aspect of the dispute. The contract language can be read in more than one way and if the Association

ultimately prevails on its interpretation of the contract, employees can be reimbursed for any premiums improperly paid.

The second part of the designee's decision involves a claim that the respondents have denied employees their contractual right to enroll in better dental plans offered to other employees. In its response to the Association's motion for reconsideration, the respondents assert that:

there is absolutely no proof in the record that the County offers any "improved plan" to other employees of the Prosecutor's Office. In fact, the contrary is true. The Association is provided access to the same plans available to other employees of the Prosecutor's Office.

However, this assertion is not supported by the record and is inconsistent with the designee's finding that the respondents do not dispute the Association's claims that improved dental coverage, available to other employees of the Prosecutor's Office, has not yet been made available to Assistant Prosecutors. In addition, neither the respondents' brief in response to the application for interim relief nor the supporting certification address this aspect of the charge or request for interim relief.

After finding that the Association had shown that it was more likely than not that the respondents repudiated the contractual obligation to grant Assistant Prosecutors access to an improved dental plan enjoyed by other Prosecutor Office employees, the designee concluded that failing to honor an

agreement to improve benefits does not constitute irreparable harm. On this second important point, we disagree and find that our reconsideration standards have been met because we think it important to clarify that repudiation of an agreement to improve benefits can constitute irreparable harm, even if there has been no diminution in benefits. If, in fact, an improved dental plan that was promised has not been made available, that harm is irreparable because there is no way for employees to recoup that benefit at the end of the unfair practice case. This is not an issue of cost, but an issue of access. Once denied, that access cannot be made up. Under these circumstances, we will order the respondents to make any improved dental plan available to Assistant Prosecutor's consistent with the parties' contract.<sup>1/</sup>

ORDER

Reconsideration is granted. The County of Camden and the Camden County Prosecutor are ordered to make available to Assistant Prosecutors represented by the Camden County Assistant Prosecutors Association, any improved dental plan available to

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<sup>1/</sup> To obtain interim relief, the moving party must also show that the public interest would not be injured by an interim relief order and that the relative hardship to the parties in granting or denying relief must be considered. Crowe v. DeGioia, 90 N.J. 126, 132-134 (1982). Because by contract, the cost of access to an improved plan will be borne by the employee, we discern no harm to the public interest or the respondents in ordering the respondents not to repudiate this aspect of the contract provision.

other employees of the Prosecutor's Office. This order shall remain in effect pending a final Commission decision in this matter.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Branigan, Buchanan, Fuller, Joanis and Watkins voted in favor of this decision. None opposed.

ISSUED: November 25, 2008

Trenton, New Jersey