

P.E.R.C. NO. 2011-43

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE-OPERATED SCHOOL DISTRICT  
OF THE CITY OF PATERSON,

Petitioner,

-and-

Docket No. CO-2009-048

PATERSON EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint based on an unfair practice charge filed by the Paterson Education Association against the State-Operated School District of the City of Paterson. The charge alleges that the District violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it unilaterally diminished health insurance coverage. The Commission grants summary judgment for the District, finding that the parties' contract provides for benefits at the level set by the State Health Benefits Program (SHBP) and that the District did not repudiate the contract when it enrolled in the School Employees Health Benefits Program, which had the same level of benefits as the SHBP.

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.

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Appearances:

For the Petitioner, Bauch Zucker Hatfield, LLC,  
attorneys (Richard H. Bauch, of counsel and on the  
brief; Elizabeth Farley Murphy, on the brief)

For the Respondent, Zazzali, Fagella, Nowak, Kleinbaum  
& Friedman, attorneys (Richard A. Friedman, of counsel  
and on the brief; Marissa A. McAleer, on the brief)

DECISION

This case comes to us by way of cross-motions for summary judgement in an unfair practice case filed by the Paterson Education Association against the State-Operated School District of the City of Paterson. The charge alleges that the District violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1), (3) and (5),<sup>1/</sup> when it

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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 . . . (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or  
(continued...)

unilaterally diminished health insurance coverage. We grant summary judgment for the District.

The Association filed its unfair practice charge on August 5, 2008. On August 6, 2009, a Complaint and Notice of Hearing issued on the 5.4a(1) and (5) allegations only. On August 20, the District filed its Answer denying the material allegations and claiming that the charge was untimely.

On April 8, 2010, the Association file a motion for summary judgment. On May 3, the District filed a cross-motion. The parties filed their responses by May 25.

The material facts are not in dispute.

The Association represents certain certificated and non-certificated District employees. The parties entered into a collective negotiations agreement effective from July 1, 2004 through June 30, 2008. Article 26 provides, in pertinent part:

26:1-2 Carrier

Notwithstanding any past practice to the contrary, effective July 1, 1992, the health insurance carrier shall be the New Jersey State Public and School Employees Health Benefits Plan. The District may change the

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1/ (...continued)  
discourage 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."

carrier(s) only if all of the following procedures are complied with:

26:1-2.1

Any proposed new carrier or plan must offer benefits equal to or better than those provided by the New Jersey State Public and School Employees' Health Benefits Plan.<sup>2/</sup>

26:1-2.3

In any dispute over the award of benefits which arises between an employee and the New Jersey State Health Benefits Plan, the district agrees to support the employee with appropriate documentation and information to assist with the claim and/or appeal process.

26:1-3.6

The parties agree that Sections 29:1-2.3, 29:1-2.4, and 29:1-2.5 of the 1988-91 Agreement, along with the total emergency room coverage provided in 29:1-1.7 will remain in effect if the District is covered by an insurance carrier other than the New Jersey State Health Benefits Plan.

The reference to the New Jersey State Public and School Employees Health Benefit Plan has been part of the parties' agreements since 1974. The requirement for equal to or better benefits has been in the agreements since 1979. The only State plan available during those years was the New Jersey State Health Benefits Program, N.J.S.A. 52:14-17.25 et seq. (SHBP), and the parties agree that the contract should be construed to refer to the SHBP.

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<sup>2/</sup> Later references are to the New Jersey State Health Benefits Plan.

On April 1, 2008, pursuant to P.L. 2007, c. 103, the SHBP instituted changes in benefits that included the replacement of the Traditional Plan with NJ Direct 10 and the replacement of the NJ Plus plan with NJ Direct 15. Also under that statute, as of July 1, 2008, employees of school districts could no longer be enrolled or remain in the SHBP. As of July 1, the School Employees Health Benefits Program (SEHBP) would be available to school districts, their employees and dependents. All school districts that were currently enrolled in the SHBP that did not affirmatively opt out would be automatically enrolled in the SEHBP.

On January 15, 2008, the District began notifying unit members about the upcoming changes in health benefits.

The District did not opt out and was automatically enrolled in the SEHBP. The State Health Benefits Commission (SHBC) and the School Employees Health Benefits Commission also agreed to implement a program to assist active and retired school employees in the transition from the Traditional Plan to the successor plan. The SHBC and the New Jersey Education Association entered into an agreement endorsing the transition program.

The Association did not demand negotiations over any of the changes to the health benefits before the filing of its unfair practice charge on August 5, 2008.

In its motion, the Association argues that Article 26 refers to the SHBP and that the District violated the agreement and repudiated its contractual obligation when it failed to provide benefits at or greater than the level provided under the SHBP; the District violated the agreement when it voluntarily chose to provide benefits less than those provided for under the SHBP and required by the agreement; and the level of benefits provided to unit members under the SEHBP is less than the benefits that would have been and would currently be provided under the SHBP so therefore, choosing to enroll in the SEHBP violated the agreement.

In its response, the District states that the parties agreed to provide benefits in accordance with the SHBP's plan for school district employees; the District complied with its obligations under the agreement; and the District continues to provide the level of benefits that unit members received while enrolled in the SHBP.

In its motion, the Board argues that the charges should be dismissed as untimely; the Complaint is devoid of any facts to support an allegation of interference, restraint or coercion in violation of 5.4a(1); and the District did not refuse to negotiate in violation of 5.4a(5) because the parties agreed to the level of benefits provided under the SHBP.

In its response to the District's motion, the Association argues that its unfair practice charge was timely filed; the District repudiated the parties' agreement by unilaterally changing the level of benefits; and negotiations were not preempted by the statute implementing the SHBP and SEHBP.

Summary judgment will be granted if there are no material facts in dispute and the movant is entitled to relief as a matter of law. N.J.A.C. 19:14-4.8(d); Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 540 (1995); Judson v. Peoples Bank & Trust Co., 17 N.J. 67, 73-75 (1954).

There are no material facts in dispute. The key facts are that the parties' collective negotiations agreement provides that the health insurance carrier shall be the New Jersey State Public and School Employees Health Benefits Plan and that any new carrier or plan must offer benefits equal to or better than those provided by the New Jersey State Public and School Employees Health Benefits Plan. The Association asserts and the District does not dispute that the baseline plan is the SHBP.

As of April 1, 2008, changes were made in the SHBP, including replacement of the Traditional Plan with NJ Direct 10. Those changes took effect for District employees. As of July 1, the District was moved into the SEHBP. The SEHBP continued the same level of benefits that existed in the SHBP as of April 1. Thus, movement into the SEHBP on July 1 did not set a level of

benefits different from the level of benefits set by the SHBP as of April 1. Accordingly, the District did not repudiate the parties' negotiated level of benefits when it enrolled in the SEHBP.<sup>3/</sup> We therefore deny summary judgment for the Association, grant summary for the Board, and dismiss the Complaint.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION

Commissioners Fuller, Krengel and Watkins voted in favor of this decision. Commissioners Colligan and Voos voted against this decision. Commissioner Eaton and Chair Hatfield abstained.

ISSUED: November 23, 2010

Trenton, New Jersey

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<sup>3/</sup> The Association has submitted an exhibit comparing benefits under the Traditional Plan with benefits under Direct 10. That comparison is not relevant to this case because as of April 1, 2008, the SHBP eliminated the Traditional Plan. The Association has not identified any differences between the benefit levels in the SHBP and SEHBP as of July 1, 2008.