

D.U.P. NO. 98-26

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF SEASIDE HEIGHTS,

Respondent,

-and-

Docket No. CO-98-122

SEASIDE HEIGHTS PBA, LOCAL 252,

Charging Party.

SYNOPSIS

The Director of Unfair Practices refuses to issue a complaint on a charge alleging that the employer, the Borough of Seaside Heights, unilaterally changed insurance carriers during the course of interest arbitration. The identity of the carrier which provides health insurance is a managerial prerogative a unilateral change in carriers is not an unfair practice.

It is noted that the interest arbitrator potentially could enter an award requiring a change in the level of benefits even though the employer changed carriers.

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Appearances:

For the Respondent,  
Gilmore & Monahan, attorneys  
(Charles W. Hutchinson, of counsel)

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

REFUSAL TO ISSUE COMPLAINT

On October 10, 1997, Seaside Heights PBA Local No. 252 filed an unfair practice charge alleging that the Borough of Seaside Heights committed an unfair practice within the meaning of N.J.S.A. 34:13A-5.4a(1), (3), (5) and (7)<sup>1/</sup>. It is specifically alleged

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<sup>1/</sup> 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 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. (7) Violating any of the rules and regulations established by the commission."

that the collective negotiations agreement between the Borough and Local 252 expired on December 31, 1996. On January 13, 1997, the PBA filed a petition to initiate compulsory interest arbitration. An interest arbitrator was appointed and, to date, the parties have had a mediation session with the interest arbitrator but there has yet to be a hearing.

The recently expired agreement at Article XIII, Hospital and Medical Insurance provides:

Section 1. All employees covered by this Agreement and their families shall be covered by the Employer's prevailing hospitalization and medical/surgical plan. In no event shall the Employer provide Employees and their families with any less coverage than exists on the date of the execution of this Agreement.

Section 2. The Borough effective 7/1/92 shall implement a zero (\$0.00) dollar co-pay for generic drugs and a five (\$5.00) dollar co-pay for name brand drugs for all members of the Department.

The contract also provides for grievance arbitration.

On September 18, 1997, Borough Administrator John Camera notified Local 252 that the Borough took action to change from a private insurance carrier to the New Jersey State Health Benefits Plan (SHBP). Camera asserted that the coverage offered by the SHBP "is better than that which we currently have."

The charge alleges that this change of carriers during interest arbitration is itself an unfair practice since the level of

benefits is an issue in the interest arbitration. This conduct, it is alleged, circumvents the collective negotiations process.<sup>2/</sup>

An employer has the right to select which carrier will provide the contractual level of health insurance benefits, so long as a change in carriers does not change the level of benefits provided. Bor. of Metuchen, P.E.R.C. No. 84-91, 10 NJPER 127 (¶15065 1984); City of Newark, P.E.R.C. No. 82-5, 7 NJPER 439 (¶12195 1981); Bor. of Paramus, P.E.R.C. No. 86-17, 11 NJPER 502 (¶16178 1985). Changing health insurance carriers falls within an employer's managerial prerogative. Town of Kearny, I.R. No. 96-12, 22 NJPER 207 (¶27109 1996); Borough of Ringwood, I.R. No. 96-12, 22 NJPER 83 (¶27035 1996); City of Atlantic City, P.E.R.C. No. 89-56, 15 NJPER 11 (¶20003 1988).

The change in carriers does not insulate the Borough from the interest arbitration process; it does not absolve its obligation to negotiate the level of insurance benefits. Its timing of this change in carriers may expose it to additional costs if the arbitration award requires a change in the level of benefits. The Borough made this change at its peril. Under these facts, the identify of the insurance provider remains a managerial prerogative.

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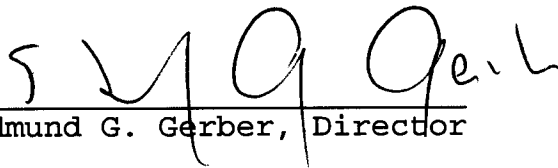
<sup>2/</sup> Local 252 also alleged that the Borough refused to supply information about the new health insurance plan. Subsequently, the Borough supplied this information and Local 252 has withdrawn this allegation of its unfair practice charge.

Accordingly, the allegation that an employer changed insurance carriers without negotiating with a majority representative will be dismissed. Tp. of Irvington, D.U.P. No. 94-31, 20 NJPER 144 (¶25069 1994).

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).

The unfair practice charge is dismissed as to the allegation that the Borough of Seaside Heights committed an unfair practice when it changed health insurance carriers during interest arbitration. Any dispute over a change in the level of benefits is deferred to grievance arbitration. I decline to issue a complaint.

BY ORDER OF THE DIRECTOR  
OF UNFAIR PRACTICES

  
Edmund G. Gerber, Director

DATED: December 4, 1997  
Trenton, New Jersey