I.R. NO. 99-22

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF HILLSIDE,

Respondent,

-and- Docket No. CO-99-339

HILLSIDE PUBLIC WORKS UNION,
OFFICERS' ASSOCIATION,

Charging Party.

TOWNSHIP OF HILLSIDE,

Respondent,

-and- Docket No. CO-99-340

HILLSIDE MUNICIPAL CLERICAL EMPLOYEES
ASSOCIATION,

Charging Party.

TOWNSHIP OF HILLSIDE,

Respondent,

-and- Docket No. CO-99-343

HILLSIDE POLICE DEPARTMENT SUPERIOR
OFFICERS' ASSOCIATION,

Charging Party.

TOWNSHIP OF HILLSIDE,

Respondent,

-and- Docket No. CO-99-344

HILLSIDE F.M.B.A. LOCAL 35,

Charging Party.

TOWNSHIP OF HILLSIDE,

Respondent,

-and- Docket No. CO-99-345

HILLSIDE FRATERNAL ORDER OF POLICE, LODGE NO. 82,

Charging Party.

TOWNSHIP OF HILLSIDE,

Respondent,

-and- Docket No. CO-99-346

HILLSIDE FIRE SUPERIOR OFFICER'S ASSOCIATION,

Charging Party.

SYNOPSIS

The Township of Hillside appears to have unilaterally discontinued the prescription drug program mid-term of the various collective agreements covering Township employees. Several employee organizations filed unfair practice charges accompanied by applications for interim relief seeking an order directing the Township to reinstate the program. The Commission Designee found that the employee organizations met the requirements to obtain interim relief and ordered the Township to immediately reinstate the prescription drug program and take steps to reimburse employees for out-of-pocket expenditures made from the time the program was discontinued.

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ASSOCIATION,

Charging Party.

Appearances:

For the Respondent,
Murray, Murray & Corrigan, attorneys
(David F. Corrigan, of counsel)

For the Charging Party - Hillside Public Works Union,
Hillside Municipal Clerical Employees Association,
Weissman & Mintz, attorneys
(Mark Rosenbaum, of counsel)

For the Charging Party - Hillside Police Department SOA,
Hillside FMBA Local 35, Hillside FOP Lodge No. 82,
Hillside Fire SOA,
LaCorte, Bundy & Varady, attorneys
(Robert F. Varady, of counsel)

INTERLOCUTORY DECISION

On April 29, 1999, the Hillside Public Works Union (PWU) and Hillside Municipal Clerical Employees Association (HMCEA) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the Township of Hillside (Township) committed an unfair practice within the meaning of the

New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act). On May 4, 1999, Hillside FOP Lodge No. 82 (FOP), Hillside Police Department Superior Officers Association (Police SOA), Hillside FMBA Local No. 35 (FMBA), and Hillside Fire Superior Officers Association (Fire SOA) also filed unfair practice charges with the Commission alleging violations of the Act. The HMCEA and the HPU contend that the Township violated N.J.S.A. 34:13A-5.4a(1) and (5).1/ The FOP, Police SOA, FMBA and Fire SOA allege that in addition to 5.4a(1) and (5), the Township also violated a(3) of the Act.2/ All of the unfair practice charges were accompanied by applications for interim relief.3/ On May 7, 1999, orders to show cause were executed and a return date was scheduled for May 27, 1999. The Charging Parties submitted briefs, affidavits and exhibits in accordance with Commission rules prior to the return date.

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. (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."

2/ This provision prohibits public employers, their representatives or agents from: "(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."

3/ On May 7, 1999, the Hillside Fire Superior Officer's Association withdrew its application for interim relief.

In correspondence dated May 24, 1999, the Township submitted a letter indicating that it does not oppose the entry of orders granting the relief sought by the Charging Parties and advising that the mayor will take the appropriate steps to insure implementation.

Each of the Charging Parties is a party to a collective negotiations agreement which is currently in effect with the Township. Each collective agreement contains a provision providing for unit employees to receive the benefits of a prescription drug program. Apparently, on or about April 15, 1999, the Township informed its employees that it would no longer provide a prescription drug program. It appears from affidavits submitted by Charging Parties that as a result of the Township's action, employees either had to make out-of-pocket expenditures for prescription medications or forego the purchase of the prescribed drugs. Additionally, each of the Charging Parties submitted affidavits from employees attesting to the fact that the Township unilaterally discontinued the prescription drug program required by the terms of the respective collective agreements or establishing that some employees had to forego the purchase of expensive prescription medications because s/he could not afford to make the out-of-pocket expenditures.

To obtain interim relief, the moving party must demonstrate both that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations and that

irreparable harm will occur if the requested relief is not granted. Further, the public interest must not be injured by an interim relief order and the relative hardship to the parties in granting or denying relief must be considered. Crowe v. De Gioia, 90 N.J. 126, 132-134 (1982); Whitmyer Bros., Inc. v. Doyle, 58 N.J. 25, 35 (1971); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Little Egg Harbor Tp., P.E.R.C. No. 94, 1 NJPER 37 (1975).

N.J.S.A. 34:13A-5.3 states, in relevant part, the following:

> Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established. In addition, the majority representative and designated representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievances, disciplinary disputes, and other terms and conditions of employment.
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> When an agreement is reached on the terms and conditions of employment, it shall be embodied in writing and signed by the authorized representatives of the public employer and the majority representative.

Thus, the statute prohibits employers from unilaterally changing terms and conditions of employment without engaging in prior negotiations. Woodstown-Pilesgrove Reg. H.S. Bd. of Ed. v. Woodstown-Pilesgrove Reg. Ed. Ass'n, 81 N.J. 582 (1980); Local 195, IFPTE v. State, 88 N.J. 393 (1982). Where the condition of employment is expressly set by the terms of the collective agreement, neither party incurs an obligation to reopen negotiations

on such issue during the term of the agreement and the condition of employment remains set for the duration of the contract. Middlesex Bd. of Ed., H.E. 93-26, 19 NJPER 279 (¶24143 1993) adopted P.E.R.C. No. 94-31, 19 NJPER 544 (¶24257 1993).

The prescription drug benefit for unit employees appears to be expressly set in the respective collective agreements. Further, it appears that the Township has unilaterally discontinued the prescription drug program without prior negotiations in contravention of 5.3 of the Act. Accordingly, I find that the Charging Parties have demonstrated that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations.

The numerous affidavits submitted by the Charging Parties indicate that many employees are foregoing the purchase of medically necessary prescription drugs which have been prescribed by their physicians because they are unable to make the substantial monetary expenditures required to purchase the medications. I find that losing access to necessary medications constitutes the type of irreparable harm required by the standard established to obtain interim relief.

Weighing the relative hardship to the parties by granting interim relief, I find that the balance tips in favor of the Charging Parties and the employees which they represent. The Township has committed in the respective collective agreements to provide a prescription drug program for its employees. The hardship suffered by employees clearly outweighs any hardship on the Township

resulting from an order requiring the Township to adhere to the terms of its collective agreement. Moreover, the public interest is served by requiring parties to adhere to the express provisions of a collective agreement.

ORDER

The Township of Hillside will immediately reinstate the prescription drug program consistent with the respective employee organizations' collective agreements for all employees included in negotiations units represented by the above-captioned Charging Parties. The Township will take steps to reimburse unit employees upon proper submission of proof for all out-of-pocket expenditures for prescription drugs made by the employees since the termination of the program on or about April 15, 1999. This interim order will remain in effect pending a final Commission order in this matter. The respective unfair practice charges will proceed through the normal unfair practice processing mechanism.

Stuart Reichman
Commission Designee

DATED: May 25, 1999
Trenton, New Jersey