P.E.R.C. NO. 84-91

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF METUCHEN,

Respondent,

-and-

Docket No. CO-83-9-31

NEW JERSEY STATE POLICEMEN'S
BENEVOLENT ASSOCIATION -
METUCHEN, LOCAL 60,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission holds that the Borough of Metuchen violated the New Jersey Employer-Employee Relations Act when it unilaterally changed the health insurance carrier for employees represented by New Jersey State Policemen's Benevolent Association - Metuchen, Local 60, thus altering the level of insurance benefits available to employees and the administration of the plan.

P.E.R.C. NO. 84-91

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF METUCHEN,

Respondent,

-and-

Docket No. CO-83-9-31

NEW JERSEY STATE POLICEMEN'S
BENEVOLENT ASSOCIATION -
METUCHEN, LOCAL 60,

Charging Party.

Appearances:
For the Respondent, Sills, Beck, Cummis, Zuckerman, Radin & Tischman, Esqs.
(Jerald D. Baranoff, of Counsel)

For the Charging Party, Robert Bradley Blackman, Esq.

DECISION AND ORDER

On July 14, 1982, the New Jersey State Policemen's Benevolent Association -- Metuchen Local 60 ("PBA") filed an unfair practice charge against the Borough of Metuchen ("Borough") with the Public Employment Relations Commission. On July 26, 1982, the PBA amended the charge. The charge, as amended, alleged that the Borough violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"), specifically subsection 5.4(a)(5),[1/] when it unilaterally changed its health insurance carrier after having agreed not to do so without the PBA's consent.

1/ This subsection prohibits public employers, their representatives or agents from: "(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."

On October 19, 1982, the Director of Unfair Practices issued a Complaint and Notice of Hearing. On October 29, 1982, the Borough filed its Answer. It admitted changing insurance carriers from Blue Shield Major Medical to Connecticut General, but denied having agreed not to change the insurance carrier without the PBA's consent. It further asserted it had a non-negotiable managerial prerogative to change the insurance carrier.

On February 24 and March 31, 1983, Commission Hearing Examiner Edmund G. Gerber conducted hearings. The parties examined witnesses and presented exhibits. The parties waived oral argument but filed post-hearing briefs.

On August 25, 1983, the Hearing Examiner issued his report and recommended decision, H.E. No. 84-15, 9 NJPER 524 (¶14212 1983) (copy attached). He found that the change in carriers resulted in an accompanying change in the administration of the insurance plan and the benefits available to employees and concluded that this unilateral change in administration and benefits violated subsection 5.4(a)(5). As a remedy, he recommended that the Commission order the Borough to negotiate before changing health insurance benefits or administration; reimburse PBA members for any losses actually incurred due to the change in health insurance plans; and offer to provide funds to unit members who must pay out money for doctor's fees until they are reimbursed by the insurance carrier and who would not have had to pay out money under the previous plan.

On October 31, 1983, after receiving an extension, the Borough filed exceptions. The Borough asserts that the Hearing Examiner erred in: (1) applying a subjective standard in determining whether the benefits offered by the two carriers were equivalent; (2) finding that the change in carriers had an adverse administrative impact; (3) not comparing the total benefits projected over the life of each plan; (4) not finding that the new plan equalled or surpassed the old plan; (5) finding that the selection of a new carrier was solely economic and not a managerial prerogative; and (6) not offsetting any payments ordered by the additional benefits received by virtue of the change in the insurance carrier.

On November 15, 1983, the PBA filed its cross-exceptions. The PBA asserts the Hearing Examiner erred in: (1) questioning when and how the PBA sought the membership's approval for the change in carrier; (2) finding Blue Shield has a $125 limitation for X-rays and a $25 limitation for lab work and (3) finding that Connecticut General would reimburse monies expended by an eligible employee within ten days of his claim. In all other respects, the PBA urged adoption of the Hearing Examiner's report and recommendations.

We have reviewed the record. The following facts appear.

This case arises out of the Borough's decision, on June 28, 1982, to substitute Connecticut General for Blue Shield as

carrier for the "major medical" portion of the health insurance coverage provided Borough employees. Prior to the change, health insurance coverage had been provided by the combination Blue Cross-Blue Shield plan. The Borough retained the Blue Cross coverage for hospitalization.

The Borough refused to negotiate prior to the change, despite the PBA's demand to do so.[2/] Rather, the Borough made the change based on the savings of approximately $12,000 per year which would result from the lower premiums of the Connecticut General plan and its belief that this plan would provide benefits which were equal to or better than that provided by Blue Shield.

The Connecticut General plan adopted by the Borough does not duplicate, item by item, the benefits previously supplied by Blue Shield. Rather, the plan is designed to be comparable to or better than the prior plan on a "total benefits analysis."

There are instances where the Connecticut General plan provides benefits in excess of those provided by Blue Shield. For example, the Connecticut General plan has a lower deductible and a higher percentage of employer co-payment than Blue Shield's plan. In addition, the Connecticut General plan provides some new benefits, such as an "additional accident benefit" and a "family security benefit." Moreover, the Borough's administrator

---

2/ The Hearing Examiner so found and the Borough does not contend otherwise. Given this fact, we do not dwell upon the negotiations which led to the 1982-1983 collective agreement. The Hearing Examiner's findings of fact regarding the negotiations (at 2-4) are supported by substantial evidence and need not be repeated here.

testified that, based on his 1982 claims experience, he received greater benefits than he would have under Blue Shield. The Borough also submitted a "sample plan" prepared by Connecticut General [involving a radical mastectomy] to establish that employees would receive better benefits under the Connecticut General plan.

It is equally clear that, in certain situations, the Blue Shield plan offers greater benefits than Connecticut General. In particular, under the U.C.R. (usual, customary, and reasonable) aspect of the Blue Shield plan, certain "covered" benefits do not require any payment by the employee, provided the benefit is performed by one of 8000 "participating" physicians in New Jersey. Rather, the physician has agreed tc accept payment from Blue Shield as full satisfaction for the services rendered. Thus, under the Blue Shield plan certain benefits are considered "first-dollar benefits," while under Connecticut General all the covered medical expenses are subject to deductibles and co-insurance payments. The PBA submitted examples of such benefits. The Blue Shield plan also covers "treatment of teeth or peridontium" which the Connecticut General plan does not.[3/]

3/ Although such treatment is covered by a dental plan for unit members, this dental plan provides for a lower employer co-payment provision in the first years of the program. Thus, the members of the unit are detrimentally affected by the change.

Thus, it is clear, as both parties recognize, that the level and nature of benefits provided are different. The better plan, from an employee's view, would necessarily be dependent upon the services he requires.

Finally, with respect to administration, the PBA contends the Blue Shield plan is superior because it provides for direct payment from the carrier to the provider while Connecticut General provides for reimbursement of employees during a "turn-around period" of about ten days. It appears from the record, however, that the providers of the services have been content to bill for services and await reimbursement from Connecticut General. Thus, no employees have had to pay money "upfront."

This case requires us to apply the principles articulated in In re City of Newark, 7 NJPER 439 (¶12195 1981) ("Newark"). In that case, which involved a scope of negotiations determination with respect to police and fire employees, we held that:

> the identity of an insurance carrier is a permissive subject for negotiations and is only negotiable and arbitrable upon mutual agreement. However, where changing the identity of the carrier affects terms and conditions of employment, i.e., the level of insurance benefits, and the administration of the plan, it is a mandatory subject for negotiations. [Id. at 440]

Unlike Newark, this case has arisen in the context of an alleged unfair practice. Therefore, we need only consider whether the instant change of insurance carriers was a mandatory subject of negotiations since the subsection allegedly violated only prohibits unilateral changes in mandatorily negotiable terms

and conditions of employment. See In re Township of Jackson, P.E.R.C. No. 82-79, 8 NJPER 129 (¶13057 1982); In re City of East Orange, P.E.R.C. No. 84-___, 9 NJPER ___ (¶_____ 1983).

We are convinced that the Borough's unilateral change in insurance carriers, under all the circumstances of the instant case, constituted an unfair practice. We reject the Borough's argument that the new coverage was "substantially equivalent to, if not better than, that previously afforded by Blue Shield." The plain fact is that the level of insurance benefits under the new plan was different from and, in certain important respects, lower than that previously provided. The change in insurance carriers clearly resulted in a change in benefit levels and coverage and therefore the Borough violated subsection 5.4(a)(5) when it refused to negotiate prior to effectuating such a change. Newark. See also, City School District of the City of Corning, 16 NY PERB 4569, 4571 (¶16-4533, 1982); Houghton Lake Education Ass'n v. Houghton Lake Community Schools Board of Education, 109 Mich. App. 1, 310 N.W.2d 888 (Ct. App. 1981). It would be inconsistent with the purposes of the Act to permit one party to determine unilaterally which insurance plan is better for the other party, thus disturbing the other party's expectations. Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n, 78 N.J. 25, 43 (1978).[4/]

4/ We reject the Borough's argument that it had a non-negotiable managerial prerogative to change insurance carriers so that all its full-time employees would be covered by one plan.

That certain benefits of the new plan are greater is essentially irrelevant in determining whether there has been an unfair practice. The National Labor Relations Board ("NLRB"), in rejecting an identical argument in Keystone Consolidated Industries, 237 NLRB No. 91, 99 LRRM 1036 (1978), stated:

> while certain aspects of Metropolitan's performance as administrator may appear superior to Blue Cross' performance, the issue is not whether one or the other insurance administrators is preferable, but only whether the identity of the administrator/processor is a mandatory subject of bargaining, i.e., whether the identity of the administrator/processor has a significant impact on the wages, hours, or working conditions of the unit employees. If the choice of an administrator makes a difference, then the parties must bargain about the choice. [99 LRRM at 1039]

In its affirmance of the NLRB's remedial order, the Seventh Circuit adopted this analysis, stating, "we should not, and do not, consider the merits of the Company's action. That the Metropolitan plan offers some additional benefits to employees is irrelevant. The relevant fact is that the union never consented to the change." NLRB v. Keystone Consolidated Industries, 653 F.2d 304, 107 LRRM 3143, 3146, n. 2 (7th Cir. 1981) ("Keystone").

The Borough also excepts to the following statement in the Hearing Examiner's report:

> The representative is the one who makes the judgment as to whether different benefits are substantially equivalent. If, in the representative's judgment, the plans are not equivalent then there must be good faith negotiations before any change can be made. (slip opinion at 7, emphasis added).

The Borough argues that the Hearing Examiner incorrectly applied a "subjective" standard in determining whether the replacement plan changed the level of benefits instead of analyzing the actual level of benefits under the two plans. We agree, as Newark implicitly held, that the charging party must establish that the level of benefits actually did change. See Connecticut Light & Power Company, 476 F.2d 1079, 82 LRRM 3121, 3123 (2d. Cir. 1973) (change in insurance carrier not an unfair practice in absence of specific proof of changes in coverage, levels or administration of the plan). Generalized dissatisfaction with a plan is not sufficient to require negotiations. We are satisfied, however, based on our independent review of the record that the level and nature of benefits here did change.

The Borough also excepts to the particular remedies claiming that it is entitled to a set-off for the increased benefits that some members of the unit would receive under the new plan. Thus, as we understand the Borough's argument, the loss suffered by some PBA members is entitled to be set-off by the gain that other PBA members would receive under other medical proceedings. We disagree.

N.J.S.A. 34:13A-5.4(c) grants the Commission, when it finds an unfair practice, the power to issue:

> ...an order requiring such party to cease and desist from such unfair practice and to take such reasonable affirmative action as will effectuate the policies of this act.

In determining an appropriate remedy, the Supreme Court has specifically held that "experience and adjudications" under the federal Labor-Management Relations Act, 29 U.S.C. §141 et seq.,

are "particularly appropriate with respect to the interpretation of unfair practice provisions of N.J.S.A. 34:13A-5.4, as these parallel the unfair labor practice provisions of the LMRA in many respects." Galloway Tp. Bd. of Ed. v. Galloway Tp. Ass'n of Ed. Sec., 78 N.J. 1, 9 (1978).

We are satisfied that the Borough should not receive an offset for any increased benefits inuring to other PBA members resulting from its unilateral change. The employer raised and lost this same point in Keystone. The Court's reasoning applies here:

> When the [employer] unilaterally changed insurance plans, its action resulted in some favorable and some unfavorable changes to the employees. The Board's policy in cases of combined favorable and unfavorable unilateral changes is to order a return to the status quo ante with regard to the unfavorable changes, but to not penalize employees by ordering revocation of the favorable changes...We endorse the Board's policy. In effect, the favorable change becomes the established condition of employment. An employer can change this condition only as it can change any condition - by giving notice of the proposed change and by successfully bargaining with the union to secure the union's approval.
>
> The Board's policy is entirely consistent with the purposes of the Act. The refusal to revoke favorable changes simply ensures that, under whatever formula the Company implements to restore the employees' health benefits, the Company cannot use the Board's order as a license to abolish or alter any of the favorable changes resulting from its unlawful conduct without fulfilling its statutory duty to bargain. That some employees ultimately may receive greater benefits than they would have received if the Company had not acted illegally is not, therefore, the result of any defect in the Board's order. Rather, any potential for greater benefits is due entirely to the Company's unfair labor practice. Thus, the Board is not impermissibly dictating terms of the parties'

> contract. It is merely ordering its traditional remedy of a return to the status quo ante, combined with its traditional refusal to penalize employees by revoking benefits conferred as a result of an unfair labor practice.
> [107 LRRM at pp. 3146-47].

Accordingly, we do not believe that the Borough is entitled to an offset based upon the increased benefits that other PBA members would receive. However, this does not mean that the benefits under the old plan is not to be considered. To determine the amount of reimbursement required, the Borough is entitled to a deduction from the amount that the new plan provides. Thus, if a member would have received $300 under the new plan, but $500 under the old plan, he is entitled to $200 from the Borough.

The Borough also excepts to the recommended order's requirement that it "offer to provide funds to those unit members who have to pay out money for doctor's fees until they are reimbursed by the insurance carrier." Given that no employee has been required to pay for a doctor's fees in advance, we will not require such an order. In all other respects, we adopt the recommended order.[5/] The PBA's claim for the money the Borough saved by changing carriers is without merit.

ORDER

The Public Employment Relations Commission orders the Borough of Metuchen to:

A. Cease and desist from:

5/ We will not consider whether it would be appropriate to require a return to the previous plan in the absence of a specific exception raising that point.

1. Refusing to negotiate with the PBA before changing health insurance carriers when the level of benefits and the administration of the health insurance plan are being changed.

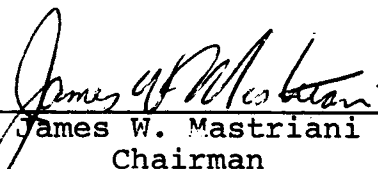
B. Take the following affirmative action:

1. Reimburse any PBA member for any financial loss actually incurred due to the change in health insurance from Blue Shield Major Medical to Connecticut General;

2. Post in all places where notices to employees are customarily posted copies of the attached notice marked as Appendix "A." Copies of such notice on forms to be provided by the Commission, shall be posted immediately upon receipt thereof and, after being signed by the Respondent's authorized representative shall be maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken by the Respondent to ensure that such notices are not altered, defaced or covered by other materials; and

3. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply herewith.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Hipp, Newbaker and Suskin voted in favor of this decision. However, Commissioner Butch dissented from the portion of the Order in (B)(1). Commissioners Graves and Hartnett were not present.

DATED: Trenton, New Jersey
January 18, 1984
ISSUED: January 20, 1984

H. E. No. 84-15

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF METUCHEN,

Respondent,

-and-

Docket No. CO-83-9-31

N.J. STATE POLICEMEN'S BENEVOLENT ASSOCIATION - METUCHEN LOCAL #60,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission finds that the Borough of Metuchen violated the Public Employer-Employee Relations Act when it unilaterally changed the carrier of health insurance for members of the New Jersey State PBA, Metuchen Local #60. Although the Borough maintained that the new plan was substantively equivalent to the old one, there were clear differences in benefits to subscribers between the old and new plans. Further, the administration of the new plan lacked a provision for direct payment by the insurance carrier to the provider of medical services, whereas the old plan had such a provision.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law.

H. E. No. 84-15

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF METUCHEN,

Respondent,

-and-

Docket No. CO-83-9-31

N.J. STATE POLICEMEN'S BENEVOLENT ASSOCIATION - METUCHEN LOCAL #60,

Charging Party.

Appearances:

For the Respondent, Martin A. Spritzer, Esq.

For the Charging Party, Robert Bradley Blackman, Esq.

HEARING EXAMINER'S RECOMMENDED REPORT AND DECISION

An Unfair Practice Charge was filed by the New Jersey State Policemen's Benevolent Association - Metuchen Local #60 (PBA) with the Public Employment Relations Commission (Commission) alleging that the Borough of Metuchen (Borough) committed certain unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. (Act). The charge was filed with the Commission on July 14, 1982 and amended July 26, 1982 alleging that the Borough violated §5.4(a)(5) when the Borough unilaterally changed the carrier of health insurance for the PBA.

It appearing that the allegations of the charge, if true, might constitute an unfair practice within the meaning of the Act,

the Director of Unfair Practices issued a Complaint and Notice of Hearing on October 19, 1982. Hearings were held on February 24 and March 31, 1983, at which time both parties were given an opportunity to examine and cross-examine witnesses, introduce evidence, argue orally and present briefs. Briefs were submitted by May 25, 1983.

An Unfair Practice Charge having been filed with the Commission, a question concerning an alleged violation of the Act exists and the matter is appropriately before the Commission by its designated Hearing Examiner for determination.

The Borough and the PBA were engaged in collective negotiations for a new contract. The PBA as well as the other employees of the Borough were covered by Blue Cross-Blue Shield Rider J and major medical insurance. As part of its negotiations demands the PBA wanted a better Blue Cross-Blue Shield, the 1420 Plan. The Borough pointed out that the current plan was the best Blue Cross offered. Blue Cross-Blue Shield would not write a 1420 plan for the Borough because the Borough's employment force is too small. The PBA dropped the demand but then sought prescription drug and eyeglass plans.

In response to this demand the Borough negotiator suggested a different health plan with better coverage such as an HMO or the Connecticut General plan.

The negotiations continued and on March 22, 1982 a memorandum of agreement was signed which, among other things, set new wage rates for the 1982-1983 contract. The memorandum was silent as to any change in health benefits.

The PBA witnesses testified that there was a side-bar agreement that before any new health care plan is instituted the PBA would have the right to take such a plan back to the membership for approval. The PBA officers thereafter witnessed presentations by both Connecticut General and Blue Shield. The PBA ultimately rejected the Connecticut General proposal. It wanted to stick with Blue Shield-Major Medical and so notified the Borough. The Borough refused to negotiate in spite of the prior understanding and effective July 1, 1982 the PBA membership lost its Blue Shield and Major Medical coverage and became covered by a Connecticut General Group Medical Expense Insurance Policy. (Blue Cross coverage remained in effect.)

The Borough witnesses' testimony is at odds with that of PBA witnesses. They maintain PBA negotiators were never given the right of rejecting the insurance carrier and they were invited to a presentation by the two carriers only as a matter of courtesy.

The Borough claimed they had no obligation to negotiate over the carrier and since the level of benefits was substantively equivalent between the old and new plans they never had an obligation to negotiate and did not do so.

The two PBA witnesses, Weingart and Sebasty, testified as to the conduct of negotiations. They were equivocal in describing their understanding with Councilman O'Brien as to submitting the change in carrier to the PBA members for approval. Further, the timing of and manner in which the PBA sought the membership's approval for the change in carrier is questionable. A sign-in sheet was posted asking unit members to indicate a preference for

Blue Shield or Connecticut General three months after the memorandum of agreement was signed.

Accordingly I find that the PBA failed to prove by a preponderance of evidence that the Borough reneged on an agreement to negotiate.

More importantly, however, there is no dispute that the Borough refused to negotiate either the carrier or the level of benefits.

Robert Wojcik is a representative of New Jersey Blue Cross. He testified as to the benefits that Blue Shield provided under the Borough's old plan. Pursuant to the plan, if a subscriber went to a participating doctor for a covered medical procedure the subscriber would have no financial obligation, no up front money, no balance billing. Aside from that, the employees also had a major medical plan with a $100 deductible, two deductibles per family and 80 percent coverage. The other 20 percent is the responsibility of the family up to $2,000. Blue Shield covered 100% thereafter for "Major Medical covered expenses, prescription drugs, office visits, sick visits to a doctor and things of that nature." There is limited dental coverage for loss of teeth and due to injury.

There are 8,000 participating Blue Shield physicians within the state or about 70% of all surgeons participate.

David Lance of Connecticut General testified that Connecticut General matched the total benefits package of Blue Shield. Connecticut General did not try to match Blue Shield on an item to item basis but came up with a comparable benefits package. Some

advantages of the new policy over the old are unlimited benefits for lab and X-ray while Blue Shield has a $125 limitation for X-ray and a $25 limit for lab work.

There is a family security benefit. If an employee died the family would continue to be covered for two years with no premium cost.

Connecticut General has a $50 deductible as opposed to $100. Blue Shield has 80% on the first $2,000; Connecticut General had 90% on the first $1,000. Although the deductible portion is chargeable against a surgeon's fees, under Blue Shield the maximum annual cost to individuals would be $150 with Connecticut General. The Blue Shield maximum would be $500.

There is no coverage for dental work arising out of injury. Lance testified that whether a subscriber would have to pay out for services up front would depend upon the provider of service. There is no formal list of providing doctors. However, the normal turnaround time for reimbursement is ten working days.

In <u>City of Newark</u>, P.E.R.C. No. 82-5, 7 <u>NJPER</u> 439 (¶12105 1981) the Commission, in following precedents in both the NLRB and in public sector agencies in other jurisdictions, particularly Iowa [1/] and Wisconsin [2/] held that the selection of an insurance carrier is a permissive subject for police and firemen since it is not a term and condition of employment. Therefore, the unilateral selection of a carrier without negotiations does not violate the Act. (Although for police and firemen, such a selection is negotiable and arbitrable on mutual agreement.) Selection of the carrier is not an inherent

---

1/ <u>In re Sioux City Community School Dist.</u>, 2 <u>NPER</u> 16 - 11004 (Iowa, January 18, 1980).

2/ <u>In re Walworth County Handicapped Children's Bd/Ed</u>, 2 <u>NPER</u> 51111008 (Wisc.) November 19, 1979.

management prerogative related to a public body's mission in providing services to the public. Rather, the selection of a carrier, at least in the instant proceeding, is an economic decision. [3/] Kochel testified that by going to Connecticut General the savings would amount to $12,000.

Selection of a carrier is not a term and condition of employment only to the extent that such selection does not change either the benefits offered under the existing program (for such benefits are terms and conditions of employment) or the administration of the program. The Commission has provided an example of a change in the administration of the program:

> ...whether employees would have to pay first for services and be reimbursed or whether the carrier would pay the dental or physician directly. City of Newark, supra, at p. 6.

Counsel for the Borough has argued that it was never demonstrated that any employees in fact had to pay for services out of pocket. However the Connecticut General spokesman conceded that there was no provision in the plan for such direct payment and it was conceded by the City Administrator Kochel that employees were required to initially at least pay more money out of pocket under the new plan. [4/]

Several members of the PBA testified as to their financial experience with both plans. Detective Sergeant Siecinski related how he had two identical operations; one was covered under the new Connecticut General plan. Siecinski had to pay $98. The other operation was under Blue Shield and he had to pay $50. Similarly

3/ Woodstown-Pilesgrove Bd/Ed, 81 N.J. 582 (1980.

4/ Vol. 2, p. 79.

Patrolman Kolbus testified as to his experience under the two plans and how his children had the same problem with their feet and they both required orthotics. His son's orthotics were covered under Blue Shield and Major Medical, but under the Connecticut General policy his daughter's orthotics were not a covered expense.

The Borough and the PBA both testified as to how one plan or the other is more advantageous under certain hypothetical situations.

The Borough's argument here that the plan, although not identical, is substantively equivalent is misplaced. Once there is a change in the benefits under an insurance plan, for better or worse, there is necessarily a change in terms and conditions of employment. The employer has no right to substitute its judgment as to what is an "equivalent plan" for that of the designated majority representative of its employees. The representative is the one who makes the judgment as to whether different benefits are substantially equivalent. If, in the representative's judgment, the plans are not equivalent then there must be good faith negotiations before any change can be made.

This is no different than any other change in terms and conditions of employment.

Moreover, there is clearly a change in the administration of the plans. Under Blue Shield the employee could opt to use a participating doctor. There is no such option under the current Connecticut General Plan.

Accordingly, it is recommended that the Commission find when the Borough of Metuchen changed the carrier of insurance they

altered the terms and conditions of employment of unit members. In failing to negotiate in good faith before they changed insurance carriers, the Borough violated §5.4(a)(5) of the Act.

It is hereby recommended that the Commission

ORDER

The Borough cease and desist from

1) Refusing to negotiate with the PBA before changing health insurance carriers when the level of benefits and the administration of the health insurance plan is being changed.

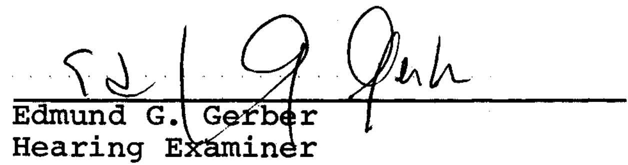
2) Take the following affirmative action:

A) Reimburse any PBA member for any financial loss actually incurred due to the change in health insurance from Blue Shield Major Medical to Connecticut General.

B) Offer to provide funds to those unit members who have to pay out money for doctor's fees until they are reimbursed by the insurance carrier. This is to apply only to those situations where a unit member would have otherwise been able to use a participating doctor under Blue Shield.

C) Post in all places where notices to employees are customarily posted copies of the attached notice marked as Appendix "A." Copies of such notice on forms to be provided by the Commission, shall be posted immediately upon receipt thereof and, after being signed by the Respondent's authorized representative shall be maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken by the Respondent to ensure that such notices are not altered, defaced or covered by other materials.

D) Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply herewith.



Edmund G. Gerber
Hearing Examiner

Dated: August 25, 1983
Trenton, New Jersey

Recommended Posting
Appendix "A"

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL NOT refuse to negotiate with the PBA before changing health insurance carriers when the level of benefits and the administration of the health insurance plan is being changed.

WE WILL reimburse any PBA member for any financial loss actually incurred due to the change in health insurance from Blue Shield Major Medical to Connecticut General.

WE WILL offer to provide funds to those unit members who have to pay out money for doctor's fees until they are reimbursed by the insurance carrier. This is to apply only to those situations where a unit member would have otherwise been able to use a participating doctor under Blue Shield.

BOROUGH OF METUCHEN
(Public Employer)

Dated ______________ By ______________________________
(Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with James Mastriani, Chairman, Public Employment Relations Commission, 429 E. State State Street, Trenton, New Jersey 08608 Telephone (609) 292-9830.