I.R. No. 2008-5

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF OCEAN,

Respondent,

-and- Docket No. CO-2008-176

OCEAN TOWNSHIP SUPERIOR
OFFICERS ASSOCIATION,

Charging Party.

SYNOPSIS

A Commission Designee denies an application for interim relief seeking to restrain the Township of Ocean from deducting a co-pay towards health benefit premiums for certain employees represented by the Superior Officers Association. The Designee concluded that insufficient facts were presented to demonstrate a substantial likelihood of success on the merits of the charge. The Designee also found that a contractual clause upon which the Township relies for its actions is subject to interpretation by an arbitrator. Although the interim relief application was denied, the Designee retained jurisdiction for thirty days to consider any evidence of specific employees inability to afford the co-pay amount.

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Appearances:

For the Respondent, Ruderman & GLickman, P.C., attorneys (Mark S. Ruderman, of counsel)

For the Charging Party, Szaferman, Lakind, Blumstein, Blader & Lehmann, P.C., attorneys (Sidney H. Lehmann, of counsel)

INTERLOCUTORY DECISION

On December 27, 2007, the Ocean Township Superior Officers Association (SOA) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the Township of Ocean (Township) violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act). The charge specifically alleges that 5.4a(1), (2), (3), (5) and (7)[1/]

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. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (3) Discriminating in regard to hire or tenure of employment or any term or condition of (continued...)

of the Act were violated when the Township announced it would begin deducting a co-payment toward the cost of health insurance premiums based on the plan selected by the employee effective January 11, 2008, the first pay period in January. While the SOA acknowledged that Article XVIII, Section 1 of the health insurance clause in its collective agreement contained certain co-pay language requiring premiums for dependent coverage, it did not concede that contractual language permitted the co-pay deduction at this time, and it argued that the Township implemented the co-pay in retaliation for the SOA not agreeing to health insurance language for a successor collective agreement.

The charge was accompanied by an application for interim relief. An Order to Show Cause was signed on December 27, 2007 scheduling a telephone conference call return date for January 9, 2008. Both parties submitted briefs and affidavits and argued orally on the return date.

The Township argued that Article XVIII permitted its collection of premium co-pay in conjunction with a change in N.J.S.A. 52:14-17.38, and it denied that its implementation of

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1/ (...continued)
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."

the clause/co-pay was in retaliation for not reaching an agreement for successor health benefit language.

The following pertinent facts appear:

The parties collective agreement which expired on December 31, 2007, includes the following pertinent language:

> Article XVIII
> Section 1. The Township shall continue to provide enrollment in the New Jersey State Health Benefits Program for all employees and their families as defined by the insurance carrier. Dependent premiums will be paid by the Township up to a maximum of the rates in effect through 30 April 1987. Any increase in this rate will be paid fifty percent (50%) by the insured employee and fifty percent (50%) by the Township.*
>
> *This provision of co-pay shall not be in force so long as it is in conflict with any State of New Jersey law, rule or regulation.

Since at least 1990, the premium co-pay language in Article XVIII, Section 1 could not be exercised because it would have been in conflict with N.J.S.A. 52:14-17.38 and N.J.A.C. 17:9-5.4(b) (now 17:9-5.3). As a result, the parties entered into an agreement in 1990 that no deductions for dependent health care premiums could be made as long as it would be inconsistent with the above rule.

In April 2007, the Legislature amended N.J.S.A. 52:14-17.38 to allow counties to negotiate premium sharing with each separate unit. Consequently, the language in Article XVIII, Section 1 in the collective agreement was no longer in conflict with any law.

Language has also been proposed to change N.J.A.C. 17:9-5.3 which would remove any pre-existing conflict to the language in Article XVIII.

In April 2007, the Township notified the SOA by memorandum that it believed it had the right to implement the payroll deduction provided for in Article XVIII, but would first explore another "accommodation" with the SOA. The parties, however, did not reach an agreement over health insurance language for a successor contract. In November 2007, the Township notified the SOA that it would implement premium co-pay deductions effective January 1, 2008.

The Township has not yet decided whether to implement a premium co-pay deduction for dependent coverage provided for in a collective agreement covering certain other Township employees which expires December 31, 2008.

ANALYSIS

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).

The SOA argues that it has met its substantial likelihood of success burden based upon its argument that the Township implemented the premium co-pay in retaliation for not agreeing to new health benefit language and in large part because the Township has not implemented similar deductions for employees in other units or for unrepresented employees. The Township disputes the retaliation argument and also claims the contract as a defense to its actions.

Even considering the relative harms to the parties here, there is insufficient basis to conclude at this stage of the proceedings that the Township implemented the premium co-pay in retaliation for the SOA's refusal to agree to successor health benefit language. Based upon that conclusion and the fact that the meaning of Article XVIII must be interpreted by an arbitrator, I cannot find that the SOA has established a substantial likelihood of success on the merits of this case. A plenary hearing is needed to make that conclusion. Consequently, the interim relief application is denied. This charge will be sent to conference for further processing.

While I have denied the application, I am retaining jurisdiction to consider evidence the SOA may present on any

individual employee's inability to pay his/her particular deduction for the premium co-pay. Any such evidence should be submitted within thirty (30) days of this decision.

Accordingly, based upon the above findings and analysis, I issue the following:

ORDER

Subject to the thirty (30) day retained jurisdiction, the application for interim relief is denied.

Arnold H. Zudick
Commission Designee

DATED: January 15, 2008
Trenton, New Jersey