

I.R. No. 2010-7

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BUENA REGIONAL BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-2010-058

BUENA REGIONAL EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Commission Designee denies a request to require the Buena Regional Board of Education to pay employees the difference in the level of benefit coverage between certain Horizon plans and the New Jersey School Employees Health Benefits Plan. The Board raised a contractual defense for its actions which it claims is consistent with the parties collective agreement. Only an arbitrator can determine whether the Board's action complies with the agreement.

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Appearances:

For the Respondent, Capizola, Pancari, Lapham &
Fralinger, attorneys (Barbara R. Lapham, of counsel)

For the Charging Party, Selikoff & Cohen, P.A.,
attorneys (Keith Waldman, of counsel)

INTERLOCUTORY DECISION

On August 19, 2009, Buena Regional Education Association (Association) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the Buena Regional Board of Education (Board) violated 5.4a(1) and (5)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A.

^{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."

34:13A-1 et seq. (Act). The Association claims that the Board violated the Act by unilaterally altering the level of health insurance benefits during negotiations for a new collective agreement. The Board switched from plans administered by Horizon/Blue Cross/Blue Shield (Horizon) to the New Jersey School Employees Health Benefits Plan (School Plan), a plan administered by the New Jersey State Health Benefits Program (SHBP).

The unfair practice charge was accompanied by an application for interim relief. An Order to Show Cause was executed on August 24, 2009, scheduling a return date for September 9, 2009. The parties submitted briefs, certifications and exhibits in support of their respective positions and argued orally in a telephone conference call on the return date.

On April 28, 2009, the Board approved a resolution to replace certain Horizon health benefit plans with the School Plan to be effective September 1, 2009. The Association argued that the switch in health benefit carriers affected benefit levels during negotiations and therefore violated the Act. The Board raised a contract defense for its action arguing it complied with the contract and, therefore, did not change terms and conditions of employment.

The following facts appear:

The Board and the Association were parties to a collective agreement effective from July 1, 2005 until June 30, 2008. The

parties are in negotiations for a new collective agreement. After determining it could substantially reduce its health benefit costs, the Board, on April 28, 2009, decided to change carriers from Horizon to the SHBP.

Article XXI, the Insurance Protection clause in the 2005-2008 agreement, provided, in pertinent part:

21.1 - The Board shall provide each employee, upon completion of appropriate forms, insurance coverage equal to or greater than N.J. State Health Benefits Plan with full family and dependency coverage for each teacher when eligible. The health care out of network deductible is \$200.00 for single coverage and \$400.00 for family coverage. The current coverage is provided through the Aetna/U.S. Healthcare Quality Point of Service Program, however, the choice of carrier is reserved to the Board. Employees have their choice during the open enrollment periods of selecting either the PATRIOT V (PPO) Plan or the PATRIOT X (Traditional) Plan. PATRIOT X has a deductible of \$200 single, \$400 family and PATRIOT V has a deductible of \$100 single, \$200 family.

The language in the first sentence of that article is the same as in the parties 1993-96; 1996-99; 1999-01; and their 2001-02 collective agreements.

There are a number of differences in benefit levels between the Horizon plans and the School Plan including differences in co-pays, certain deductibles and maximums. A certification provided by the Association claims that:

By contract and established practice between the [parties], with regard to health benefits, is that if the Board makes a change

in health benefits, the new plan(s) must provide benefit levels equal to or greater than the previous health plan. See Exhibit A.

Exhibit A included the language in section 21.1 of Article XXI of the 2005-2008 agreement.

No facts were presented showing any difference between plans administered by the SHBP.

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 documents provided by the Association presented this case as the difference between the benefit levels contained in the Horizon plans and those provided by the School Plan. The Board argued that even if the School Plan was not overall "equal to or greater" than the Horizon plans -- a matter it disputes -- it could not have violated the Act because, it argues, its only

obligation was to provide coverage equal to or greater than the SHBP which it did by switching to the School Plan.

While the Association's certification claims that the "contract" requires that a new plan must provide benefits equal to or greater than the previous plans, I could not find such language in the relevant sections of the agreement.

Interim relief is an extraordinary remedy and requires a showing that the moving party has a substantial likelihood of succeeding on the merits of the application. Based upon the contract language at issue here, the Association has not met that burden. Interim relief is not the forum to resolve issues of contract interpretation.

During oral argument the Association claimed that the School Plan was different than the "N.J. State Health Benefits Plan" as contained in Article XXI, but no supporting evidence was provided, and even if there are differences between SHBP plans, only an arbitrator can interpret the contract clause to determine whether the Board's action violated the contract.

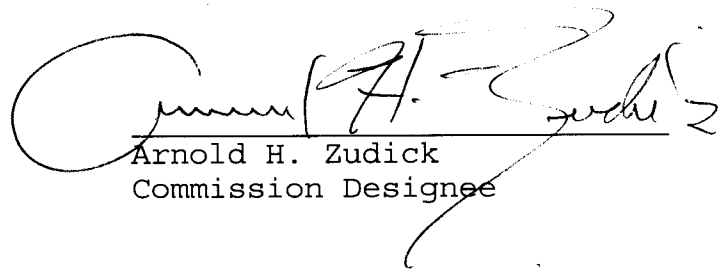
This case is similar to our decisions in Borough of Avalon, I.R. No. 2009-28, 35 NJPER 178 (¶67 2009); and Camden County College, I.R. No. 2008-18, 34 NJPER 104 (¶45 2008), recon. denied P.E.R.C. No. 2008-67, 34 NJPER 254 (¶89 2008), where we denied interim relief when contract language provided a defense that

could only be reviewed/resolved through the parties arbitration procedure.

Based upon the above findings and analysis, I issue the following:

ORDER

The application for interim relief is denied.^{2/}



Arnold H. Zudick
Commission Designee

DATED: September 21, 2009
Trenton, New Jersey

^{2/} The charge will be returned to the Director of Unfair Practices for further processing.