I.R. No. 2010-18

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF MILLVILLE,

Respondent,

-and- Docket No. CO-2010-348

MILLVILLE POLICE BENEVOLENT ASSOCIATION, LOCAL 213; MILLVILLE POLICE SUPERVISORS ASSOCIATION; NJ CIVIL SERVICE ASSOCIATION, COUNCIL 18; FIREMAN'S MUTUAL BENEVOLENT ASSOCIATION, LOCAL 63,

Charging Parties.

SYNOPSIS

A Commission Designee denies a request to restrain the City of Millville from changing its health insurance carrier to the State Health Benefit Plan, and denies the request to require the City to create a fund to cover any differences in co-pays. The parties had negotiated a provision giving the City the right to change carriers as long as the new plan was comparable, or not materially or appreciably different. A dispute over whether those articles were violated should be decided through the parties' arbitration provisions. The parties agreed upon a procedure to move related grievances to arbitration.

Finally, the charge was dismissed with regard to retirees. They are not protected by the Act.

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Appearances:

For the Respondent, Gruccio, Pepper, De Santo & Ruth, P.A. (Lawrence A. Pepper, Jr., of counsel)

For the Charging Parties, O'Brien, Belland & Bushinsky, LLC, attorneys (Kevin D. Jarvis, of counsel)

INTERLOCUTORY DECISION

On March 9, 2010, Millville Police Benevolent Association, Local 213 (PBA); Millville Police Supervisors Association (PSA); NJ Civil Service Association, Council 18 (Council 18); and Fireman's Mutual Benevolent Association, Local 63 (FMBA) (Charging Parties) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the City of Millville (City) violated 5.4a(1) and (5)[1/] of the

1/ These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with, (continued...)

New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act). The Charging Parties alleged that the City violated the Act by changing health insurance carriers and certain benefit levels when it switched from a plan administered by Horizon, to one administered by the State Health Benefits Commission (SHBP).

The unfair practice charge was accompanied by an application for interim relief. An order to Show Cause was executed on March 15, 2010 scheduling a telephone conference call return date for April 15, 2010. Both parties submitted briefs, certifications and exhibits in support of their respective positions and argued orally on the return date.

The Charging Parties argued that the unilateral change in carriers violated the Act. They alleged that there were a number of changes in prescription and doctor co-pays affecting active employees and retirees, and alleged issues concerning whether non-dependent children in divorce situations, and certain disabled dependents would be covered by the SHBP. The Charging Parties are seeking to restrain the change in carriers and/or an order requiring the creation of a fund to pay employees any

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1/ (...continued)
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."

difference between the prior co-pays and the new co-pays. The City opposed any restraint or fund. It raised both legal and contractual defenses to its actions. It argued that it was in compliance with the parties' agreements, that in some instances the new prescription co-pays were less than the prior co-pay structure, and it represented that between it and the SHBP it would make certain that all individuals - even certain non-dependents, that were lawfully entitled to coverage under the prior carrier - would be entitled to coverage under the new carrier.

The following pertinent facts appear.

The four negotiations units had separate collective agreements. The PBA and PSA agreement had expired on December 31, 2006 and both units are awaiting interest arbitration decisions. Council 18's contract expires on December 31, 2010, and the FMBA's contract expires on December 31, 2011. Each contract contains a clause permitting the City to change insurance carriers. They provide as follows:

PBA Contract Article XIII Section 1C:

> The Employer may, at its option, change any of the existing insurance providers or carriers providing such benefits so long as comparable benefits are provided to the employees and their dependents.

PSA Contract Article XIII Section 1D:

> The Employer may, at its option, change any of the existing insurance plans or carriers

> providing such benefits so long as the change in carriers has no appreciable effect on the level of benefits which are provided to the employees and their dependents.

Council 18 Contract Article 16 Section 1E:

> The City may, at its option, change any of the existing insurance plans or carriers providing the benefits under Sections A, B, C and D above, so long as the change in carriers has no material effect on the benefits which are provided to the employees and their eligible dependents.

FMBA Contract Article 14 Section 1E:

> The City may, at its option, change any of the existing insurance plans or carriers providing such benefits so long as on-balance comparable benefits are provided to the employees and their eligible dependents.

Each agreement also contains a provision for prescription co-pays. They provide as follows:

PBA and PSA Contracts, Article XIII Section 2

$0 - generic $10 - brand

Council 18 Contract Exhibit A and FMBA Contract Exhibit B

$10 - generic $20 - brand (in-pharmacy or mail order)

By January 2010, the City, facing a significant increase in health premiums, explored the cost of switching carriers. It determined it could save approximately $1,600,000 by switching to the SHBP and conducted meetings with the unions on January 20 and February 16, 2010 regarding the change. The switch to the SHBP was effective on April 1, 2010. The SHBP prescription coverage

provides for $3 - generic, $10 - brand in-pharmacy and $5 - generic, $15 brand for mail order.

The Charging Parties's filed grievances regarding the effects of the change in carrier and - to my knowledge - have argued that the change violates some or all of the above respective contract articles. Each contract provides for binding arbitration.

Recognizing the need to resolve those grievances and their disagreement over whether the contract was violated, the parties agreed during oral argument that within thirty (30) days of this decision the Charging Parties will provide the written details supporting their grievances and how they believe the contracts were violated. The City will have up to thirty (30) days to respond. The parties agree that at the conclusion of that process, they will try to resolve as many of the grievances as possible, but absent a resolution those grievance's will be moved to arbitration.

The Charging Parties also raised doubt over whether children of divorced parents who had been receiving coverage from a parent who was not claiming the child as a dependent could be covered under the SHBP. It also raised doubt over whether certain disabled or handicapped individuals who had been covered under the prior plan would be covered through the SHBP.

The City represented - after consultations with it's

insurance consultant - that all individuals who were legally entitled to coverage under the prior plan would be entitled to coverage under the new plan or it would obtain appropriate coverage for such individuals provided the employee filed any required application documentation and all required information. The City represented that in a divorce situation, a court order requiring an employee to provide health insurance to a child or children who is (are) not listed as a dependent would entitle that child or children to coverage through the SHBP. The City further represented that regarding coverage in certain specific situations discussed during oral argument individuals who were lawfully entitled to coverage will be covered retroactive to April 1, 2010.

The City disputed certain Charging Party provided certifications regarding prescription and other co-pay costs.

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 Commission has held that the level of health benefits is mandatorily negotiable and may not be unilaterally changed, Piscataway Tp. Bd. Ed., P.E.R.C. No. 91, 1 NJPER 49 (1975), but that the identity of the insurance carrier was not negotiable for civilian employees, and only permissively - not mandatorily - negotiable for police and fire employees. Twp. of Union, P.E.R.C. No. 2002-55, 28 NJPER 198, 199 (¶33070 2002); City of Newark, P.E.R.C. No. 82-5, 7 NJPER 439, 440 (¶12195 1981).

In addition to the above legal principles, each Charging Party in this case negotiated with the City, giving the City what appears to be the contractual right to change carriers. Given the City's legal and apparent contractual right to change carriers, I cannot conclude that the Charging Parties have a substantial likelihood of prevailing on their argument that the City was required to negotiate prior to changing carriers. Consequently, the request to restrain the City from changing to the SHBP is denied.

The next issue is whether the City violated the Act by changing certain benefit levels as a result of its change in carries. The City argued a contract defense, that the SHBP was in many instances better than the prior plan and certainly

comparable to and/or not appreciably or materially different than the prior plan. The City, for example, argued that in several instances the SHBP prescription coverage was better than the coverage as provided in the Charging Parties agreements. To the extent Charging Parties certifications claimed a significant difference, the City disputed such assertions.

The City also answered each of the Charging Parties' concerns over coverage under the SHBP for specific circumstances. It represented that everyone who was lawfully covered under the prior plan would be covered retroactively under the new plan or the City would obtain other coverage and bear the responsibility to provide coverage provided all required applications and documentation was submitted.

Given the City's representation in both its certifications and in oral argument, there is insufficient basis upon which to conclude that anyone who should be covered is not or will not be covered. What remains is a dispute over whether co-pay differences resulting from the change violates the "comparable" or "appreciably or materially" different language in the respective agreements. Given the wording of those specific articles, I simply cannot conclude that the Charging Parties have met the difficult burden of establishing a substantial likelihood of success on the merits. See County of Camden, P.E.R.C. No. 2010-64, ___ NJPER ___ (¶ 2010). The issue of whether the

changes complied with the contracts is more appropriate for resolution through the parties' respective grievance procedures. Buena Regional Bd. Ed., I.R. No. 2010-7, 35 NJPER 326 (¶111 2009); Borough of Avalon, I.R. No. 2009-28, 35 NJPER 178 (¶67 2009); Camden County College, I.R. No. 2008-18, 34 NJPER 104 (¶45 2008), rec. denied P.E.R.C. No. 2008-67, 34 NJPER 254 (¶89 2008). I note the parties have agreed upon a procedure to move related grievances to a quick resolution of that issue.

For the same reasons discussed in the preceding paragraph, the Charging Parties' request to require the City to provide a fund to pay any differences in co-pays is denied. The arbitrator has the authority to fashion appropriate remedies if he/she finds contractual violations.

Finally, the Charging Parties' application and charge on behalf of retirees is denied and dismissed. Retirees are not public employees within the meaning of the Act and the Commission lacks jurisdiction to take action on their behalf. IAFF Local 2081, P.E.R.C. No. 2009-47, 35 NJPER 66 (¶25 2009); Borough of Belmar, P.E.R.C. No. 89-27, 14 NJPER 625 (¶19262 1988); Union Twp., I.R. No. 2002-7, 28 NJPER 86 (¶33031 2001); PBA Local 245, D.U.P. No. 97-27, 23 NJPER 72 (¶28043 1996).

Based upon the above, I issue the following:

ORDER

The Charging Parties' request to restrain the City from

continuing health insurance coverage through the SHBP, and its request that the City create a fund to reimburse employees for co-pay differences is denied.

The City, as represented in its certifications and oral argument, shall take the necessary action to ensure that all individuals who were lawfully entitled to coverage under the prior plan are provided coverage under the new plan or are provided appropriate coverage from another City provided plan.

As agreed upon by both parties, within thirty days of this decision, the Charging Parties will provide specific written information to the City to support its grievances over health care changes. The City shall respond within thirty days of receipt of the Charging Parties information. Any disputes that cannot be resolved will proceed to arbitration.[2/]

Arnold H. Zudick
Commission Designee

DATED: April 20, 2010
Trenton, New Jersey

2/ This charge will be returned to the Director of Unfair Practices for further processing which may include the deferral of this charge to arbitration.