

I.R. No. 2011-2

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF PASSAIC,

Respondent,

-and-

Docket No. CO-2010-459

PASSAIC CITY EMPLOYEES
ASSOCIATION (TRAFFIC GUARDS
UNIT),

Charging Party.

SYNOPSIS

A Commission Designee grants an application for interim relief based upon an unfair practice charge filed by the Passaic City Employees Association (traffic guards unit) against the City of Passaic. The charge alleges that the City intends to fire every traffic guard and rehire them in order to disavow its obligation to provide them medical benefits.

The Designee determined that the City's intention to unilaterally discontinue health insurance benefits to eligible traffic guards met the standard for granting relief. The decision restrains the City from discontinuing the benefits, pending resolution or conclusion of the charge.

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Appearances:

For the Respondent, Scarinci Hollenbeck, attorneys
(Sean D. Dias, of counsel)

For the Charging Party, Loccke, Correia, Schlager,
Limsky & Bukosky, attorneys (Michael A. Bukosky, of
counsel)

INTERLOCUTORY DECISION

On May 28, 2010, the Passaic City Employees Association (Traffic Guards Unit) (Association) filed an unfair practice charge against the City of Passaic (City), together with an application for interim relief, a certification, a supporting document and a brief. The charge alleges that the City "inten[ds] to terminate every [crossing guard] and subsequently rehire them solely for the purpose of extinguishing its obligation to provide [them or their dependents] medical benefits . . ." The charge cites a March 22, 2010 newspaper article in "The Record", reporting that the City plans to close a \$5.6m deficit. The article allegedly provides that among the actions,

deficit. The article allegedly provides that among the actions, the City ". . . plans to terminate all crossing guards and hire them back [and] none would receive health benefits . . ."

The charge alleges that the parties had contractually agreed that employees hired on or after June 12, 1998 would be covered by health benefits plans "currently in effect," with dependent coverage optional at the employee's expense. Other provisions extend coverage to retirees on a similar basis. Another provision, also set forth in the current collective agreement, extending from July 1, 2006 through June 30, 2011, states that ". . . no employee hired on a permanent basis on or after July 1, 2003 shall be entitled to any insurance coverage . . ." The Association alleges that the City's conduct violates 5.4a(1), (2), (3), (4), (5), (6) and (7)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq. (Act).

^{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 employment to encourage or discourage employees in the exercise of the rights guaranteed to them by this act. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under 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. (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement. (7) Violating any of the rules and regulations established by the commission."

The application seeks an Order requiring the City to refrain from laying off the subject employees and from "stripping" their health insurance benefits.

On June 14, 2010, I signed an Order to Show Cause, specifying June 29 as the return date for argument on the application in a telephone conference call. I also directed the City to file an answering brief, together with opposing certifications(s) and proof of service upon the Association by June 23, 2010. On the return date, the parties argued their cases in a conference call. The following facts appear.

The City and Association signed a collective negotiations agreement covering the "traffic guards unit" and extending from July 1, 2006 through June 30, 2011.

Article III (Hours of Employment) provides in a pertinent part:

(a) School traffic guards hired on a permanent basis prior to July 1, 2003 shall work four (4) hours a day for a five (5) days week and shall be compensated accordingly. Included within the said four (4) hours shall be thirty (30) minutes travel time so that the actual time on post shall be three and one-half (3 1/2) hours.

(b) School traffic guards hired on a permanent basis on or after July 1, 2003 shall work three and one-half (3 1/2) hours a day for a five (5) day week and shall be compensated accordingly. They shall not be compensated for any travel time.

Article XIV (Insurance) provides in pertinent parts:

(a) Health Benefits (Note Section d)

1. All employees covered by this agreement hired prior to its signing, and the eligible members of their families, shall be covered by the following health benefit plans currently in effect, the premiums of which shall be paid by the City: medical/surgical plan, dental plan, vision plan, and prescription plan. The prescription plan shall be the same coverage as provided to other City employees.

2. All employees covered by this agreement hired on or subsequent to June 12, 1998 shall be covered for the employee only by the following health benefits plans currently in effect, the premiums of which shall be paid for by the City: medical/surgical plan, dental plan, vision plan, and prescription plan. The prescription plan shall be modified to provide the same coverage as provided other City employees. Employees hired on or subsequent to June 12, 1998 shall have the option to purchase depended coverage at their own expense. . . .

(d) Exclusion for Certain Employees

Notwithstanding paragraphs (a) and (b), no employee hired on a permanent basis on or after July 1, 2003 shall be entitled to any insurance coverage, including but no limited to medical, surgical, dental, vision or prescription insurance coverage.

The agreement also provides that the Association will require its members "to perform all the duties of school traffic guards, as assigned, and as contained in N.J.S.A. 40A:9-154.1 et seq."^{2/}

2/ N.J.S.A. 40A:9-154.1 provides, in part:

The governing body, or the chief executive, or the chief administrative officer, as appropriate to the

(continued...)

Article XVIII (Management Rights) provides the City these rights, among others:

4. To hire all employees, and subject to the provision of law, to determine their qualifications and conditions of continued employment, or assignment, and promote and transfer employees.

5. To suspend, demote, discharge or take any other appropriate disciplinary action against any employee for good and just cause according to the law.

6. To layoff employees in the event of lack of work or funds or under conditions where continuation of such work would be inefficient and nonproductive or for other legitimate reasons.

The City of Passaic is a civil service jurisdiction. On April 7, 2010, the Civil Service Commission authorized a "temporary layoff plan," allowing the City to layoff employees in various departments on 12 designated dates in fiscal year 2011. On April 26, 2010, the Civil Service Commission approved a demotional layoff of 128 police and fire department employees, effective June 18. On May 17, 2010, the Civil Service Commission approved an "additional layoff plan" for the City, authorizing the layoff of 18 police officers, 10 firefighters, 1 fire

2/ (...continued)
form of government of any municipality, may appoint adult school crossing guards for terms not exceeding one year and revoke such appointments for cause and after proper hearing before the chief of police or other chief law enforcement officer of the municipality.

prevention specialist, 1 construction official and 3 laborers in the department of public works, effective July 2.

The City Business Administrator, Anthony Iacono, certifies:

As a result of economic difficulties the City is facing and for reasons of economy, the City will appoint traffic guards in or about September 2010 for a new term of one year and there will be a reduction in traffic guards' weekly hours. In addition, newly appointed traffic guards will not receive health benefits consistent with the agreement. . . .

As of this date [June 23, 2010], traffic guards have not lost any health benefits that they received during their appointment from September 2009 through June 2010 [i.e., June 24].

An unspecified number of traffic guards on unspecified dates applied for and received unemployment compensation after completing their one year term. No facts indicate if any recipient commenced traffic guard employment in the September following completion of a term.

During the June 29 conference call on the application, Respondent acknowledged that all traffic guards commencing employment in September 2010 will be considered "newly appointed" (and ineligible for medical benefits), as represented by the City business administrator in his certification. Neither party could confirm that traffic guards eligible for and receiving medical insurance benefits through 2009 were denied or ineligible for medical benefits during the summer months in any year.

ANALYSIS

A charging party may obtain interim relief in certain cases. 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).

Health benefits is a mandatorily negotiable term and condition of employment and may not be changed unilaterally. Piscataway Tp. Bd. of Ed., P.E.R.C. No. 91, 1 NJPER 49 (1975). Unilateral changes in health benefits violate the duty to negotiate in good faith. Metuchen Boro., P.E.R.C. No. 84-91, 10 NJPER 127 (¶15065 1984).

Traffic guards hired on a "permanent basis" before July 1, 2003 are contractually entitled to health insurance coverage. Traffic guards hired after June 12, 1998 and before July 1, 2003 are covered individually and may purchase dependent coverage. The City does not dispute that traffic guards hired and employed continuously after June 12, 1998 and before July 1, 2003 received

uninterrupted health insurance coverage from July 1, 2003 through June 2010, notwithstanding N.J.S.A. 40A:9-154.1.

The City concedes that all traffic guards will be deemed "newly appointed" in September 2010, regardless of their initial dates of hire, hours worked per day or years of employment. New hires will be considered ineligible for health insurance coverage, pursuant to Article XIV(d) of the collective agreement.

I am satisfied that these facts demonstrate that the Association has a substantial likelihood of succeeding on the merits in a plenary hearing. My determination extends only to those traffic guards initially hired before July 1, 2003 who have been eligible for and received or should have received health insurance benefits, as delineated in the agreement.

I am not persuaded that N.J.S.A. 40A:9-154.1 preempts negotiations or provides the City an express or implied right to impose a change - in this case, a discontinuation of health insurance benefits - without negotiations. See Middletown Tp. and Middletown PBA Local 124, P.E.R.C. No. 98-77, 24 NJPER 28 (¶29016 1998) aff'd 334 N.J. Super. 512 (App. Div. 1999), aff'd 166 N.J. 112 (2000).

The City similarly argues that a "break in service" is implicitly described in N.J.S.A. 40A:9-154.1 and means that traffic guards will no longer be eligible for health care insurance under an amendment to the New Jersey State Health Benefits Program Act, N.J.S.A. 52:14-17.25 et seq. The amendment

provides that a non-State full-time employee working less than 25 hours per week is ineligible for State health benefits. The City cites an April 1, 2010 memorandum issued by the Chief of the Health Benefits Bureau of the Division of Pensions and Benefits describing changes to the State Health Benefits Program. The memorandum provides in a pertinent part: "Any employee or officer of the local employer of the State who met the minimum work hour requirements prior to May 21, 2010 will be eligible for continued coverage under the SHBP provided there is no break in the employee's service or reduction in hours."

The merits of the City's argument largely depends upon the identical or mutually referencing meaning of ". . . for terms not exceeding one year" in N.J.S.A. 40A:9-154.1 and ". . . no break in the employee's service . . ." in the Chief's memorandum. I do not draw such an inference, especially because the City has never before defined N.J.S.A. 40A:9-154.1 to deny health insurance coverage to otherwise eligible traffic guards.

I also find that the Association has demonstrated the requisite standard of irreparable harm. Not only will a denial of health insurance benefits to otherwise eligible employees result in substantial costs to them for health care, it may cause them to forego such care. See Franklin Tp., P.E.R.C. No. 2006-103, 32 NJPER 246, 247 (¶102 2006).

I must also consider the relative hardship to the parties and the public interest in granting or denying relief. Despite

the layoffs which the City has enacted, it has not specifically identified harm it will endure by restoring or retaining the status quo. The financial liability individual traffic guards face without health insurance is substantial or unlimited. I find that the hardship to employees would outweigh hardship to the City, pending the completion of litigation over this unfair practice charge. Finally, the public interest underlying the Act disfavors the unilateral imposition of such a significant change in a term and condition of employment and no countervailing public interest in permitting the unilateral change has been identified.

ORDER

The Association's request for a restraint is granted to the extent that the City shall maintain health insurance coverage for traffic guards initially hired before July 1, 2003 who have been eligible for and received health insurance benefits, as delineated in current collective negotiations agreement.

This order shall remain in effect until the underlying charge is resolved.



Jonathan Roth
Commission Designee

DATED: July 2, 2010
Trenton, New Jersey