

I.R. No. 2011-15

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ELIZABETH BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-2011-069

ELIZABETH EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Commission Designee denies an application for interim relief filed by the Elizabeth Education Association. The Association alleged in its unfair practice charge that the Board of Education violated N.J.S.A. 34:13A-5.4a(5) by unilaterally mandating that employees with multiple prescription drug, dental and vision care insurance either give up that coverage by becoming a dependent on the policy of a spouse or partner also having such coverage through their work, or becoming the primary subscriber and having their spouse or partner change to dependent status.

The Designee concludes that because the employer provides prescription drug, dental and vision care coverage outside the State Health Benefits Program or the School Employees Health Benefits Program, P.L. 2010, Ch. 2, mandating that employees covered by those plans give up multiple coverage, did not require the elimination of duplicate coverage where the health plans were not obtained through the SHBP or SEHBP.

However, although the Designee concluded that the Association was likely to succeed on the merits of its charge, interim relief was denied as no showing of irreparable harm had been made. The Association did not demonstrate that, by changing their status from subscriber to dependent, or vice-versa, the affected employees' prescription drug, dental, or vision care coverage would be lost or materially reduced.

I.R. No. 2011-15

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ELIZABETH BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-2011-069

ELIZABETH EDUCATION ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, Karen A. Murray, Labor Counsel

For the Charging Party, Oxfeld Cohen, P.C., attorneys
(Arnold Shep Cohen, of counsel)

INTERLOCUTORY DECISION

On August 12, 2010, the Elizabeth Education Association filed an unfair practice charge and a request for interim relief with the Public Employment Relations Commission. The Association alleges that on July 21, 2010, the Elizabeth Board of Education engaged in unfair practices proscribed by the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., by sending out a notice advising that, effective September 1, "employees, as well as their dependent, can only be covered once in health plans offered by the Elizabeth Board of Education for medical, prescription, vision and dental." The charge asserts that because prescription, vision and dental insurance are not provided by the Board pursuant to the State Health Benefits

Program or the School Employees Health Benefits Program, a new law that eliminates dual coverage for SHBP/SEHBP medical insurance does not apply to optional coverages (prescription, dental, vision) where the employer does not provide them through the SHBP or SEHBP. The Association's charge alleges that the Board's action violates N.J.S.A. 34:13A-5.4a(5),^{1/} and that an order barring the Board from making the change should issue.

An Order to Show Cause was signed on August 10, 2010 setting a return date of August 27 for oral argument. The parties have submitted briefs, certifications and exhibits. They argued orally on the scheduled return date by means of a telephone conference call. The following pertinent facts appear.

The Board and the Association are parties to a collective negotiations agreement effective from July 1, 2009 through June 30, 2012. Articles XVII.A through XVII.D, respectively, describe medical, prescription drug, dental and vision care coverage.^{2/}

^{1/} N.J.S.A. 34:13A-5.4a(5) bars public employers, their representatives or agents from "[r]efusing 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. . ."

^{2/} In the prior contract, Article XVII.A provided that medical coverage would be through the "New Jersey Public Health Benefits Plan." The current contract substituted "through the State Health Benefits Program (SHBP) and its successor replacement the School Employees Health Benefit Program (SEHBP) with a level of benefits equal to or better than the program in effect." The parties also agreed to a waiver of \$2,000.00 with the terms of it to be worked out.

Although the medical insurance described in Article XVII.A is provided through the SHBP/SEHBP the prescription drug, dental and vision care plans are not.

The Board received a letter dated June 2010 and a packet of documents from the Division of Pensions and Benefits advising that P.L. 2010, Ch. 2, effective May 21, 2010, prohibited multiple coverage under SHBP/SEHBP health insurance plans for public employees, their spouses or partners, and their dependents.^{3/} The mailing identified Board employees who were affected by the change in the law and contained a Fact sheet, instructions and forms so that the employees could change their designation from subscriber to dependent (or vice-versa) or to waive coverage in order to obtain, where applicable a payment in consideration for dropping coverage. The packets also included forms allowing similar designations for prescription drug and dental plans.

On July 21, 2010 the Board's Supervisor of Human Resources sent packets to the affected employees with this covering memorandum:^{4/}

-
- 3/ For example, if a teacher employed by the Board was married to a municipal employee receiving health insurance under the SHBP, one would have to become the primary subscriber and the other would be covered as a dependent.
- 4/ The memorandum does not show that the Association was given a copy of it.

Enclosed is your packet concerning Chapter 2, PL 2010 which prohibits multiple coverage under the State Health Benefits Program effective May 21st 2010. Similarly multiple coverage will also be eliminated in the prescription, vision and dental plans offered by the Elizabeth Board of Education using the same guidelines as listed above.

In summary, employees, as well as their dependents, can only be enrolled once in health plans offered by the Elizabeth Board of Education for medical, prescription, vision and dental.

The document also addresses waivers, asks that forms be returned by August 2, 2010, and that the changes would take effect on September 1. It also advises that, absent a response, benefits would be listed under the senior family member.

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).

Absent preemption, the level of health benefits is mandatorily negotiable and may not be changed unilaterally. County of Hudson., P.E.R.C. No. 91-36, 16 NJPER 544, 545 (¶21245 1990). Negotiations will not be preempted unless a statute or regulation leaves no room to alter an employment condition by fixing it specifically, expressly and comprehensively. Bethlehem Tp. Bd. of Ed. v. Bethlehem Ed. Ass'n, 91 N.J. 38 (1982).

Unilateral changes in health benefits violate the duty to negotiate in good faith. Borough of Metuchen., P.E.R.C. No. 84-91, 10 NJPER 127 (¶15065 1984). Where changing the identity of the health insurance carrier affects terms and conditions of employment, e.g., the level of insurance benefits or the administration of the plan, an alternative carrier is a mandatory subject for negotiations. City of Newark, P.E.R.C. No. 82-5, 7 NJPER 439, 440 (¶12195 1981). If benefit levels and plan administration are unaffected, a public employer is not required to negotiate a change in carrier. Hunterdon Central H.S. Bd. of Ed., P.E.R.C. No. 87-83, 13 NJPER 78, 82 (¶18036 1986). If a public employer unilaterally terminates health benefits, injunctive relief during the pendency of unfair practice proceedings challenging that action is appropriate. See Piscataway Tp. Bd. of Ed., P.E.R.C. No. 91, 1 NJPER 49 (1975), app. dis'd as moot App. Div. Dkt. No. A-8-75 (6/24/76), certif. den. 70 N.J. 150 (1976).

The Association asserts that the Board is acting unilaterally in contravention of the parties' contract by no longer permitting multiple coverage for negotiating unit members regarding prescription drug, dental and vision care insurance. It contends that the Board's action is not mandated by the change in the law as those coverages are not provided by the SHBP/SEHBP. The Association argues that absent a stay of the Board's directive, irreparable harm will occur because employees affected by it will be "stripped of multiple coverage," and will "unjustly lose significant medical benefits."

The Board responds that there are no grounds for the issuance of injunctive relief because: (1) the employees were not asked to make changes in their benefit plans; and (2) they were not forced to cancel their benefits and be put in a position where they were without coverage. The only result of its action, the Board argues, was to give employees with dual coverage the choice of receiving benefits as a subscriber or a dependent, but not both. It asserts that requiring such a choice does not demonstrate that the employees will be irreparably harmed.

Although the Board does not dispute that its prescription, dental and vision care coverages are not provided through the SHBP/SEHBP, it reasons that, as employees who have their supplemental health coverage through those programs must give up multiple coverage, it is logical to extend that principle to all

benefit plans provided by public employers, irrespective of whether the plan is provided through the SHBP/SEHBP or via some other arrangement.

I find that the Association is substantially likely to prevail on the merits of its charge. The SHBP/SEHBP allows a covered employer to provide supplemental health insurance through outside providers. See N.J. Policemen's Benev. Ass'n v. N.J. State Health Benefits Comm'n, 153 N.J. Super. 152, 157 (App. Div. 1977); N.J.S.A. 52:14-17.29(H).^{5/} Accordingly, P.L. 2010, Ch. 2, is not preemptive as it does not, expressly, specifically and comprehensively, authorize the Board to unilaterally require affected employees to drop multiple coverage on prescription

5/ This statute provides:

The commission may purchase a contract or contracts to provide drug prescription and other health care benefits or authorize the purchase of a contract or contracts to provide drug prescription and other health care benefits as may be required to implement a duly executed collective negotiations agreement or as may be required to implement a determination by a public employer to provide such benefit or benefits to employees not included in collective negotiations units.

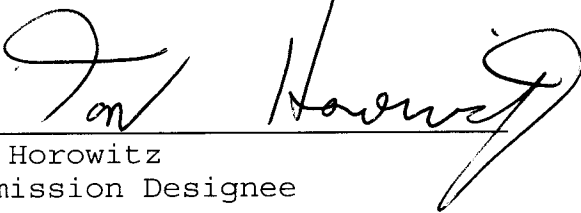
See also N.J.A.C. 17:9-8.1 and 9.1, regulations implementing this statute with regard to prescription drug and dental plans, respectively. The SEHBP also contemplates that supplemental coverages may be provided outside that program, N.J.S.A. 52:14-17.46.6f(2), and generally provides that it is to be administered in the same manner as the SHBP. See N.J.S.A. 52:14-17.46.11.

drug, dental or vision care programs, especially where, as here, the parties' agreement predated passage of that law.^{6/}

However, I decline to restrain the Board from implementing its directive as the Association has not demonstrated that it, or the affected employees it represents, will be irreparably harmed. The Association has not shown that the employees, who are being required to forego multiple coverage will have their benefits materially reduced or that any employee will lose coverage.^{7/}

ORDER

The Association's request for interim relief is denied.^{8/}



Don Horowitz
Commission Designee

Dated: August 27, 2010
Trenton, New Jersey

6/ The charge is not rendered moot in whole or in part even if some employees have submitted forms changing their coverage status (e.g. from subscriber to dependent). As the majority representative, the Association, rather than any individual employee, has standing to pursue a charge alleging that the Board has violated N.J.S.A. 34:13A-5.4a(5) or to arbitrate a grievance seeking to enforce its agreement with the Board. See Red Bank Reg. Ed. Ass'n v. Red Bank Reg. H.S. Bd. of Ed., 78 N.J. 122, 139 (1978).

7/ The private sector cases cited by the Association, where employees lost all health insurance coverage, are distinguishable on the issue of irreparable harm.

8/ The charge will be transferred to the Director of Unfair Practices for further processing.