

I.R. NO. 2012-6

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF NORTH ARLINGTON,

Respondent,

-and-

Docket No. CO-2012-016

NORTH ARLINGTON PBA LOCAL NO. 95,

Charging Party.

SYNOPSIS

A Commission Designee denies an application for interim relief based upon an unfair practice charge alleging that the public employer sought to unilaterally change its health insurance carrier during the pendency of interest arbitration proceedings. The employer's conduct allegedly violates 5.4a(1), (2), (3), (5) and (7) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq (Act).

The Designee determined that the application was premature because an interest arbitration award (the second, following a Commission decision vacating the first and remanding for a new award) disposing of the disputed matter will issue about one month before any change would be implemented.

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Appearances:

For the Respondent
Pearce Law, LLC, attorneys
(Randy T. Pearce, of counsel)

For the Charging Party
Loccke, Correia, Limsy & Bukosky, attorneys
(Marcia J. Tapia, of counsel)

INTERLOCUTORY DECISION

On July 26, 2011, North Arlington PBA Local No. 95 (PBA) filed an unfair practice charge against the Borough of North Arlington (Borough), together with an application for interim relief seeking a temporary restraint, a proposed Order to Show Cause, a certification and brief. The charge alleges that beginning on July 7, 2011, following the Borough's appeal of the interest arbitration award issued concerning the parties and continuing after a Commission decision issued vacating that award, the Borough Administrator sought to enroll unit employees in the State Health Benefits Plan (SHBP), a new health care

provider. The Borough's actions allegedly violate 5.4a(1), (2), (3), (5) and (7)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act).

The application seeks an order requiring the Borough to maintain the status quo during the pendency of the interest arbitration proceeding and to negotiate with the majority representative over terms and conditions of employment.

On July 27, 2011, I issued an Order to Show Cause without a temporary restraint specifying August 8, 2011 as the return date for argument on the application in a telephone conference call. I also directed the Borough to file a response by August 5, together with proof of service upon the PBA. On the return date, the parties argued their cases. The following facts appear.

Article XVI (Insurance) of the parties' predecessor collective negotiations agreement provided that unit employees are given full family medical program coverage under the "Aetna

^{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. (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. (7) Violating any of the rules and regulations established by the commission."

Patriot X" plan. The provision also specifies: "All medical plan program coverage provided to unit employees shall not be less than the coverages under the Aetna Patriot X plan."

On April 25, 2011, the PBA filed a Petition to Initiate Compulsory Interest Arbitration with the Commission. It reports that the parties negotiated on March 28 and April 20, 2011 (IA-2011-050). On May 31, 2011, the assigned interest arbitrator conducted a formal hearing. On June 13, 2011, the arbitrator issued an interest arbitration award on the negotiations impasse between the parties. The arbitrator awarded the Borough's proposal to change the health benefits carrier. He wrote:

I have examined the demand that there be a movement to the State Health Benefits Program which is said to be very comparable with regard to benefits of the plan now provided but with significantly reduced costs. In my review of the suggested Horizon Direct 10 plan proposed I find that it fairly meets the coverages enjoyed under the Aetna Patriot X plan now in effect. It has some advantages and some disadvantages but certainly provides a comprehensive plan particularly within network. It is somewhat less so for out of network. But as all of these employees are residents of New Jersey the incidence of out of network coverage is nominally of less importance. The savings for the Borough however are very substantial and if granted provide a reasonable basis, combined with some considerations outlined above, for me to conclude that the compromise of a reasonable wage increase with the savings of the Direct 10 plan may be more appropriate than granting one without the other.

The arbitrator also wrote that the change in carrier would save the Borough more than \$200,000 per year, in part justifying specified salary increases over the awarded three-year term of the successor "agreement."

On June 20, the Borough appealed the award to the Commission, contesting the accuracy or validity of a document submitted to the arbitrator and which figured in the award. On June 27, the PBA filed a response opposing the appeal. Neither party contested the awarded change of the health benefits carrier.

On July 19, 2011, the Commission issued North Arlington Bor., P.E.R.C. No. 2012-1, 37 NJPER ____ (¶____ 2011), vacating the June 13 interest arbitration award and remanding the case to the arbitrator to issue a new award within 45 days.

On or about July 7, 2011, and after, the Borough Administrator distributed SHBP applications to unit employees, encouraging them to enroll in the SHBP, and warning that unless completed applications were filed, health insurance coverage would lapse.

Under the SHBP, the deductible fee shall be reduced from \$200 (under the Aetna plan) to \$100; the generic prescription co-pay is reduced from \$10 to \$3; name-brand prescriptions reduced from \$20 to \$10; the new plan eliminates the need for specialist

referrals and reduces specialist co-pays from \$25 to \$10; and increases chiropractic visits from 20 annually to 30.

A comparison chart of the two plans provided by the Borough shows that certain deductible costs are higher under the SHBP than under the Aetna plan; that the Aetna plan offered "preventive" adult care to a maximum of \$150 in a calendar year, which is not available under the SHBP; that "in-patient" hospital coverages are similar, though in some instances the SHBP provides 80% coverage, compared to 100% under Aetna; emergency room costs were higher under the Aetna plan; out-patient mental health and substance abuse costs were generally higher under the Aetna plan; therapy costs to patients were generally higher under the SHBP plan, as were skilled nursing facility costs.

In 2011, the Aetna plan is estimated to cost the Borough about \$810,000. The Borough will save about \$10,000 annually for each unit employee who enrolls in the family SHBP, compared to the Aetna plan. The Aetna plan shall be terminated for all Borough employees on October 1, 2011. Unless all Borough employees enroll in the SHBP, they shall not have medical coverage on and after October 1, 2011.

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).

The level of health benefits is mandatorily negotiable and may not be changed by an employer unilaterally. Camden Cty. College, P.E.R.C. No. 2008-67, 34 NJPER 104 (¶45 2008); Union Tp., P.E.R.C. No. 2002-55, 28 NJPER 198 (¶33070 2002). The PBA asserts that “. . . [the Borough], by unilaterally changing terms and conditions of employment, and intimidating PBA members into enrolling in the SHBP, is violating the Act” (brief at 10).


N.J.S.A. 34:13A-21 prohibits changes in “wages, hours and other conditions of employment” during “the pendency of proceedings before the arbitrator.” In light of the Commission’s remand of the case to the arbitrator, “to issue a new award within 45 days of [its] decision” I find that section 21 applies to this application.

In a typical interim relief case contesting unilateral changes in health insurance benefits during negotiations for a

successor agreement, the public employer's announcement of the change or an imminent implementation of the change warrants the Commission's exercise of authority. This case is atypical because the interest arbitrator shall issue an award by early September, 2011, disposing of the disputed matter about one month before any change shall be implemented. Also, the PBA has not alleged that it shall suffer a diminution of benefits as a substantially likely consequence of the change in carrier. Finally, the Borough has acted to implement a portion of the interest arbitration award vacated for reasons not directly related to health insurance benefits. The PBA has not contested the arbitrator's award of ". . . movement to the SHBP." Under all these circumstances, I find that the PBA's application is premature.

ORDER

The application for interim relief is denied. The case shall proceed in the normal course.


Jonathan Roth
Commission Designee

DATED: August 9, 2011
Trenton, New Jersey