P.E.R.C. NO. 95-28

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF BRIDGEWATER,

Respondent,

-and- Docket No. CO-H-93-309

BRIDGEWATER PBA LOCAL NO. 174,

Charging Party.

TOWNSHIP OF BRIDGEWATER,

Respondent,

-and- Docket No. CO-H-93-325

BRIDGEWATER MUNICIPAL EMPLOYEES ASSOCIATION,

Charging Party.

TOWNSHIP OF BRIDGEWATER,

Respondent,

-and- Docket No. CO-H-93-326

BRIDGEWATER PUBLIC WORKS ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the Township of Bridgewater violated the New Jersey Employer-Employee Relations Act by unilaterally deducting HMO premium payments from employees represented by Bridgewater PBA Local 174, the Bridgewater Municipal Employees Association, and the Bridgewater Public Works Association despite language in collective negotiations agreements clearly providing for HMO coverage at no charge to employees. The Commission agrees with the Hearing Examiner that neither N.J.S.A. 26:2j-29 nor N.J.A.C. 17:9-5.6 preempts an agreement that the Township pay the full cost of HMO premiums.

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Charging Party.

TOWNSHIP OF BRIDGEWATER,

Respondent,

-and- Docket No. CO-H-93-326

BRIDGEWATER PUBLIC WORKS ASSOCIATION,

Charging Party.

Appearances:

For the Respondent, William Lanigan, attorney

For the Charging Party PBA Local 174, Abramson & Liebeskind Associates (Arlyne K. Liebeskind, consultant)

For the Charging Parties MEA and BPWA, Klausner, Hunter, Cige & Seid, attorneys (Stephen E. Klausner, of counsel)

DECISION AND ORDER

On March 3, 1993, Bridgewater PBA Local No. 174 filed an unfair practice charge against the Township of Bridgewater. The PBA alleges that the Township violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1) and (5),[1/] when it announced that after March 31, 1993, it would require employees with HMO coverage to pay the difference between the HMO premium and the premium for the Township's basic health insurance plan. On March 18, the Bridgewater Municipal Employees Association ("MEA") and the Bridgewater Public Works Association ("BPWA") filed similar charges.[2/]

On September 8, 1993, a Consolidated Complaint and Notice of Hearing issued. On October 7, the Township filed its Answer. It admitted that it notified employees that they would have to pay some part of their HMO premiums. As for the PBA and the MEA, the Township asserted that the unions had previously participated in the Township program where they had agreed that employees would pay the difference in premium costs.

1/ These subsections 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."

2/ On July 15, 1993, interim relief was denied. I.R. No. 94-1, 19 NJPER 510 (¶24234 1993).

On December 10, 1993, Hearing Examiner Arnold H. Zudick conducted a hearing. The parties introduced exhibits. The Hearing Examiner then denied the BPWA's motion for summary judgment. The charging parties then presented their cases-in-chief. The Hearing Examiner denied the Township's motions to dismiss at the end of the charging parties' cases-in-chief. The Township then rested without examining any witnesses. The parties waived oral argument, but filed post-hearing briefs.

On April 21, 1994, the Hearing Examiner issued his report and recommendations. H.E. No. 94-23, 20 NJPER 219 (¶25109 1994). He concluded that the employer violated the Act when it repudiated its contractual obligation to pay the entire HMO premiums for employees working more than one year. He rejected the employer's claim that N.J.S.A. 26:2J-29 required the deductions it had made. He also found that prior practice did not overrule clear contract terms and that the charging parties did not waive their contractual right to insist on full payment or their statutory right to negotiate before any change was made.

On May 13, 1994, after an extension of time, the employer filed exceptions. It contends that the Hearing Examiner erred in finding that the collective negotiations agreements contain "clear language" prohibiting it from charging employees the difference between the Township's health plan and the cost of an HMO. It claims that the issue of excess HMO cost was never negotiated and that, in the past, the difference in premiums had been deducted.

The employer also asserts that N.J.S.A. 26:2J-29 is applicable. It claims that the Hearing Examiner erred in finding that the Township was not part of the State Health Benefits Plan ("SHBP") when it negotiated the contractual provisions at issue. It asserts that the parties negotiated against the backdrop of a SHBP regulation that limits a SHBP employer's financial contribution for an HMO to the cost of the State program.

On May 18, 1994, the PBA filed an answering brief. It asserts that in 1981, the Township was insured under the SHBP; in 1992, the Township opted to self-insure; the parties then negotiated an agreement providing for two HMOs at no cost to employees; and in 1993, the Township repudiated that agreement by announcing payroll deductions for the HMO premium differentials. The PBA urges adoption of the Hearing Examiner's recommendations and incorporates its post-hearing brief and reply brief.

On May 25, the MEA and BPWA filed an answering brief. They rely on their post-hearing brief and urge adoption of the Hearing Examiner's recommendations. They believe that the contract language is clear and that SHBP regulations do not apply because the Township has elected to withdraw and self-insure.

On July 28, 1994, the parties argued orally before us. No party raised any claim or defense not already presented.

We have reviewed the record. We incorporate the Hearing Examiner's findings of fact (H.E. at 4-11). We summarize the material facts.

Before 1992, the Township was a participant in the SHBP. Its collective negotiations agreements with the charging parties provided that new employees would pay one-third the cost for health insurance during their first year of service and that the Township would provide health insurance at the completion of an employee's first year of service, at no charge to such employee. No HMOs were specified.3/

The parties entered into successor contracts effective January 1, 1991 through December 31, 1992 for the PBA and January 1, 1992 through December 31, 1994 for the MEA and BPWA. Before they did so, the Township withdrew from the SHBP. All the new labor agreements provided for health insurance coverage after the completion of the first year of service "at no charge to such employees." All the contracts specified this coverage: Hospital Insurance and Major Medical Plan - Bridgewater Township Medical Plan; Prescription Plan - PCS, Delta Dental - Dental Plan, and two HMOs - HIP/Rutgers and Co-Med.

On January 22, 1993, the Township informed the charging parties that it would fund the HMO benefit selection only up to the level it paid for its self-insured program. None of the charging parties agreed to have unit members pay the difference between HMO coverage and the Township plan.

3/ The SHBP requires that local employers pay the cost of coverage for all full-time employees after a two-month waiting period. N.J.A.C. 17:9-4.5 et seq.

N.J.S.A. 34:13A-5.3 requires a public employer to negotiate in good faith over terms and conditions of employment. It also requires that agreements over terms and conditions of employment be reduced to writing. N.J.S.A. 34:13A-5.4(a)(5) makes it an unfair practice for an employer to refuse to negotiate in good faith. A mere breach of contract does not warrant the exercise of our unfair practice jurisdiction and will not be found to be a refusal to negotiate in good faith. We will, however, find an unfair practice in cases in which an employer has repudiated a contract clause that is so clear that an inference of bad faith arises from a refusal to honor it. State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).

Here, the employer denies that it has repudiated a clear contract provision. It argues that the contract language stating that health insurance, including HMO coverage, will be provided at no charge to employees cannot be read to "clearly" require the employer to pay the full cost of HMO coverage if it exceeds the cost of a traditional plan. To the contrary, the disputed contract language must be read that way. The language unequivocally specifies two HMOs "at no charge to such employees."

The employer next argues that it has been implicit that the election of an HMO carries with it some possible element of cost so the contracts need not expressly say so in order for that to be the case. It further asserts that when it was in the SHBP, the difference in cost was minimal and three earnings records in evidence show voluntary deductions of $1.59 next to a code marked "H."

We repeat that the contract language is clear. The employer's explanation is not supported by the record. Nor did the Township prove that it had previously deducted the difference between the cost of HMO coverage and the cost of traditional coverage. The Township introduced the three earnings records into evidence before the charging parties began their cases-in-chief, but never introduced any testimony describing the entries on these records.[4/] The Hearing Examiner correctly concluded that without

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4/ When the records were introduced, the Hearing Examiner explained:

> The parties have agreed to pre-mark the respondent's exhibits and I'll read those into the record but I want to indicate both with respect to the attachments to the charges and with respect to the respondent's exhibits, they'll come into evidence but obviously I have no idea what they mean unless the parties explain that for me in the proper method.

The charging parties offered no testimony in their cases-in-chief about the records. The employer then rested without offering any testimony. The MEA and BPWA sought rebuttal to introduce evidence that the Township refunded moneys deducted in error from employees' checks. The Township opposed rebuttal, noting that it had "offered no proof other than the evidence which is there" (T47). The Hearing Examiner denied the unions' request:

> I made a statement early in this hearing that both charging party exhibits and respondent's exhibits were coming in and that they're coming in, that doesn't necessarily mean that I know what they are. The parties take their chance on whether or not they have explained them or haven't explained them, that works both ways, but the fact is that the township didn't put on any evidence of any explanation, they are there. I may know what they mean, I may not know what they mean, but as I see it, you had an opportunity to present any evidence that you wanted to and you didn't do that, I am not going to allow you to do it as rebuttal, as I see it there is no rebuttal. [T49]

any explanation of the numbers and codes on the earnings records, there is no basis to know what was represented by the voluntary contributions listed on those records. Thus, the earnings records, standing alone, do not prove that employees previously contributed toward the cost of HMO coverage. In any event, even if payments had been deducted from some paychecks, the clear contractual language would overrule any inconsistent practice.

The charging parties have shown that the employer repudiated the clear contractual provisions. The employer thus violated its obligation to negotiate in good faith unless it has proved a valid defense to its action.

One such defense would be if the subject matter of the contractual provision is outside the scope of negotiations. Any agreement over a subject that is not mandatorily negotiable or permissively negotiable (for police and firefighters) is outside the scope of negotiations and not enforceable. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978); N.J.S.A. 34:13A-16(f)(4).

Local 195, IFPTE v. State, 88 N.J. 393 (1982), sets the standards for determining whether a subject is mandatorily negotiable:

> [A] subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the

> determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions. [Id. at 404-405]

It is undisputed that who pays for HMO premiums intimately and directly affects the employees' work and welfare. And the employer does not contend that an agreement to pay HMO premiums would significantly interfere with the determination of governmental policy. We therefore ask whether negotiations over HMO premiums is preempted.

Specific statutes and regulations that expressly set particular terms and conditions of employment preempt negotiations over those terms and conditions of employment. Such a statutory or regulatory command may not be contravened by negotiated agreement. State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80 (1978). To be preemptive, a statute or regulation must speak in the imperative and leave nothing to the discretion of the public employer. Ibid.

We agree with the Hearing Examiner that neither N.J.S.A. 26:2J-29 nor N.J.A.C. 17:9-5.6 preempts an agreement that the Township pay the full cost of HMO premiums. N.J.S.A. 26:2J-29 provides:

> Any employee of the State or any subdivision of the State or any institution supported in whole or in part by the State may elect to enroll in a health maintenance organization and have all deductions from his salary or wages and all contributions being paid by his employer to any health insurer paid instead to a health maintenance organization; provided, however, in no event, shall an employer under this section make a contribution to any alternative health benefits program greater than the contribution being made to any health plan pursuant to a contract in existence on the effective date of this act. Any such employee shall at least annually be allowed to choose an alternative health benefits program made available through his employer. [Emphasis supplied]

The Township does not contradict the Hearing Examiner's well-reasoned conclusion that the underlined language protected employers, at the time of the statute's passage in 1973, from being obligated to pay more for an HMO than they had already contracted to pay for other health insurance. This section was part of a larger statutory scheme authorizing HMOs. N.J.S.A. 26:2J-1 et seq. At the time it required employers to make HMOs available to employees, the Legislature guaranteed that employers would not be forced to pay more for health insurance than they had already contracted for. The Legislature did not, however, expressly, specifically, or comprehensively prohibit employers from agreeing to pay the full cost of HMOs. Bethlehem Tp. Ed. Ass'n v. Bethlehem Tp. Bd. of Ed., 91 N.J. 38 (1982). Contrast Senate Bill No. 1350, introduced September 19, 1994, which provides that "under no circumstances shall an employer under this section be required to make a contribution to any health maintenance organization greater than the contribution being made to any health insurer under a health insurance plan."

The employer asserts that if we adopt the Hearing Examiner's recommendation, employers that do not negotiate specific language requiring employee co-payment will be required to pay the full cost of HMO coverage. That is not so. The only reason an employer would be obligated to pay more than the amount it pays for traditional coverage would be because it agreed to do so. Absent such agreement, federal and state statutes require only that an employer make available for HMO coverage the same contributions it makes for traditional coverage. N.J.S.A. 26:2J-29; 42 U.S.C. §300e-9(c).

Rather than rely on N.J.S.A. 26:2J-29 alone, the employer appears to argue that when it negotiated the most recent contracts, it was in the SHBP and subject to N.J.A.C. 17:9-5.6. That SHBP regulation prohibits a SHBP participant from paying more for an HMO than it does for the State program. The Hearing Examiner properly found that the employer left the SHBP before it entered into collective negotiations agreements providing for its self-insured program and HMO coverage "at no charge to such employees," and the record provides no basis for rejecting that finding. If it had been the parties' intent that the spirit of that SHBP regulation should still apply, even though the Township was no longer covered by the SHBP regulation, the parties' contractual language did not evidence that intent.[5/]

5/ We note that even if the SHBP regulation did apply, the employer's premium obligation under that regulation would appear to be limited to the cost of the SHBP, not the cost of a self-insured plan.

We conclude that the Township repudiated clear contractual provisions over a subject matter within the scope of negotiations. We order the Township to reimburse employees for HMO premium deductions.

ORDER

The Township of Bridgewater is ordered to:

A. Cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, particularly by unilaterally deducting HMO premium payments from employees represented by Bridgewater PBA Local No. 174, the Bridgewater Municipal Employees Association, and the Bridgewater Public Works Association despite language in collective negotiations agreements clearly providing for HMO coverage at no charge to employees.

2. Refusing to negotiate in good faith with the PBA, MEA and BPWA concerning terms and conditions of employment of employees in their respective units, particularly by unilaterally deducting HMO premium payments from those employees despite language in collective negotiations agreements clearly providing for HMO coverage at no charge to employees.

B. That this action:

1. Immediately cease deducting HMO premium payments from PBA, MEA and BPWA unit members who have been employed for more than one year.

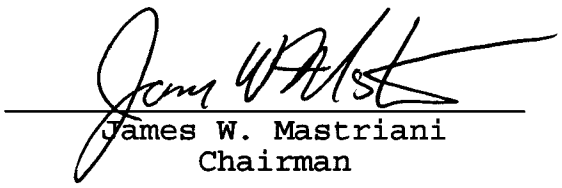
2. Reimburse PBA, MEA and BPWA unit members who had been employed for more than one year as of April 1, 1993 for any HMO premium deductions made after that date.

3. Negotiate in good faith with the PBA, MEA and BPWA before charging their unit members for HMO premiums.

4. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice shall, after being signed by the Respondent's authorized representative, be posted immediately and maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

5. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply with this order.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Klagholz, Ricci, Smith and Wenzler voted in favor of this decision. Commissioner Goetting voted against this decision.

DATED: September 29, 1994
Trenton, New Jersey
ISSUED: September 30, 1994

NOTICE TO EMPLOYEES

PURSUANT TO
AN ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION
AND IN ORDER TO EFFECTUATE THE POLICIES OF THE
NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,
AS AMENDED,

We hereby notify our employees that:

WE WILL cease and desist from interfering with, restraining or coercing our employees in the exercise of the rights guaranteed to them by the Act, particularly by unilaterally deducting HMO premium payments from employees represented by Bridgewater PBA Local No. 174, the Bridgewater Municipal Employees Association, and the Bridgewater Public Works Association despite language in collective negotiations agreements clearly providing for HMO coverage at no charge to employees.

WE WILL cease and desist from refusing to negotiate in good faith with the PBA, MEA and BPWA concerning terms and conditions of employment of employees in their respective units, particularly by unilaterally deducting HMO premium payments from those employees despite language in collective negotiations agreements clearly providing for HMO coverage at no charge to employees.

WE WILL immediately cease deducting HMO premium payments from PBA, MEA and BPWA unit members who have been employed for more than one year.

WE WILL immediately reimburse PBA, MEA and BPWA unit members who had been employed for more than one year as of April 1, 1993 for any HMO premium deductions made after that date.

WE WILL negotiate in good faith with the PBA, MEA and BPWA before charging their unit members for HMO premiums.

Docket Nos. CO-H-93-309; CO-H-93-325 and CO-H-93-326

TOWNSHIP OF BRIDGEWATER
(Public Employer)

Date: _____ By: _____

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State Street, CN 429, Trenton, NJ 08625-0429 (609) 984-7372

APPENDIX "A"

d:\percdocs\notice 10/93

H.E. NO. 94-23

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF BRIDGEWATER,

Respondent,

-and- Docket No. CO-H-93-309

BRIDGEWATER PBA LOCAL NO. 174

Charging Party.

TOWNSHIP OF BRIDGEWATER,

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-and- Docket No. CO-H-93-325

BRIDGEWATER MUNICIPAL EMPLOYEES ASSOCIATION,

Charging Party.

TOWNSHIP OF BRIDGEWATER,

Respondent,

-and- Docket No. CO-H-93-326

BRIDGEWATER PUBLIC WORKS ASSOCIATION,

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission recommends the Commission find that the Township of Bridgewater violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it unilaterally deducted HMO premium payments from employees represented by the Charging Parties in contravention of the language in their respective collective agreements. The Township argued that N.J.S.A. 26:2J-29 preempted

negotiations over HMO premiums, but the Hearing Examiner found that that statute did not expressly and specifically require the payments in question. The Hearing Examiner also found that prior practice did not overrule the clear contract terms, and that the Charging Parties did not waive the right to negotiate over the issue.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law.

H.E. NO. 94-23

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF BRIDGEWATER,

Respondent,

-and- Docket No. CO-H-93-309

BRIDGEWATER PBA LOCAL NO. 174

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TOWNSHIP OF BRIDGEWATER,

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BRIDGEWATER MUNICIPAL EMPLOYEES ASSOCIATION,

Charging Party.

TOWNSHIP OF BRIDGEWATER,

Respondent,

-and- Docket No. CO-H-93-326

BRIDGEWATER PUBLIC WORKS ASSOCIATION,

Charging Party.

Appearances:

For the Respondent
William Lanigan, attorney

For the Charging Party PBA Local 174
Abramson & Liebeskind Associates
(Arlyne K. Liebeskind, consultant)

For the Charging Parties MEA and BPWA
Klausner, Hunter, Cige & Seid, attorneys
(Stephen E. Klausner, of counsel)

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

On March 3 and March 18, 1993, three different labor organizations filed unfair practice charges with the Public Employment Relations Commission alleging that the Township of Bridgewater violated subsections 5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.[1/] Bridgewater PBA, Local No. 174 (PBA), filed Docket No. CO-93-309 on March 3, 1993, and Bridgewater Municipal Employees Association (MEA) and Bridgewater Public Works Association (BPWA) filed Docket Nos. CO-93-325 and CO-93-326, respectively, on March 18, 1993. The Charging Parties made the same general allegation. They alleged that by notices of January 22 and February 25, 1993, the Township, without negotiations, changed the practice of paying the full HMO premium, and required employees enrolled in HMOs to pay a portion of their premium beginning April 1, 1993.

The Charging Parties seek the same remedy. That includes preventing the Township from continuing to implement the change in the payment of HMO premiums; directing the Township to reimburse employees who have been paying a portion of the HMO premium;

1/ These subsections 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."

directing the Township to allow employees who opted out of the HMO because of the premium cost to reenter that health plan; and directing the Township to allow employees who did not choose the HMO because of the premium cost the opportunity to join that health plan.

The PBA's charge was accompanied by a request for Interim Relief. By letter of March 15, 1993, Commission Designee Edmund G. Gerber scheduled March 19, 1993 as the return date for the Order to Show Cause. Due to the filing of the MEA's and BPWA's charges on March 18, 1993, however, which also were accompanied by requests for Interim Relief, the Show Cause hearing scheduled for March 19 was postponed. The parties subsequently engaged in discussions seeking to resolve these matters. When a settlement was not reached, the Charging Parties requested the Show Cause hearing be rescheduled. The Commission Designee consolidated the Interim Relief requests and scheduled the Show Cause hearing for June 29, 1993.

On July 15, 1993, the Designee issued his decision, Township of Bridgewater, I.R. No. 94-1, 19 NJPER 510 (¶24234 1993), denying the applications for Interim Relief.

A Consolidated Complaint and Notice of Hearing was issued in these matters on September 8, 1993. The Township filed an Answer on October 7, 1993. It admitted that on January 22 and February 25, 1993, it gave employees notice that anyone enrolled in the HMO after March 31, 1993, would have some HMO premium deducted from their pay, but it denied the allegations that it did not negotiate over changes

in the HMO premiums. The Township also asserted, as an affirmative defense, particularly with respect to the PBA and MEA, that employees who had previously elected to be covered by an HMO agreed to pay the difference between the Township's cost of the traditional health plan and the HMO cost.

A consolidated hearing was held in these matters on December 10, 1993. The parties presented numerous documents, but very little testimony. The parties filed briefs and reply briefs, the last of which was received on February 15, 1994.

Based upon the entire record, I make the following:

FINDINGS OF FACT

1. The PBA and Township were parties to a collective agreement effective from January 1, 1989 through December 31, 1990 (C-1B). That contract provided for health insurance in Article XI as follows:

> Health Insurance
>
> New Employees will pay one-third of the cost for Health Insurance during their first year of service. The Township agrees to furnish to all police officers and their families covered under this Agreement at the completion of the employees first year of service at no charge to such employees, health insurance coverage as provided by:
>
> Hospital Insurance Plan of New Jersey (New Jersey Blue Cross Plan, including Rider J 14/20 series),
>
> Medical-Surgical Plan of New Jersey (New Jersey Blue Shield Plan),
>
> The Prudential Insurance Company of America (Major Medical Insurance),
>
> Blue Cross Prescription Drug Plan ($3.00 - Co-payment).

> The complete details of this coverage are provided in the booklet New Jersey State Health Benefits Program, HB-80-22-782 (7-82).

At that time, the Township was included in the New Jersey State Health Benefits Program, but no specific HMO plan was offered in that agreement.

The parties were unable to reach agreement for a successor contract and proceeded to interest arbitration in May and August 1991. The arbitrator issued his decision in November 1991 (C-1C), but did not disturb the prior wording for health insurance.

Just prior to the parties entering into a new agreement, however, the Township apparently decided to drop out of the health plan offered by the New Jersey State Health Benefits Program and become a self-insurer beginning in 1992. Thereafter, in late 1991 or early 1992, the parties signed a new collective agreement (C-1A) effective January 1, 1991 through December 31, 1992. That agreement included in Article XI the following health insurance language which contained two HMO plans:

> HEALTH INSURANCE;
>
> New employees will pay one-third (1/3) of the cost for Health Insurance during their first (1st) year of service. The Township agrees to furnish to all Police Officers and their families covered under this Agreement at the completion of the employees first (1st) year of service at no charge to such employees, health insurance coverage as provided by:
>
> Hospital Insurance and Major Medical Plan - Bridgewater Township Medical Plan.
> Prescription Plan - PCS ($3.00 co-payment)
> Delta Dental - Dental Plan
> (2) HMO's offered - HIP/Rutgers and Co-Med

*All benefits that were previously covered under N.J. State Health Benefit Plan will be equal if not enhanced under the new program. There will be no reductions in any benefits or coverage presently in effect.

2. The Township entered into collective negotiations agreements effective from January 1, 1992 through December 31, 1994, with both the MEA (C-2A) and the BPWA (C-3A). Article XIII of both agreements lists the same health insurance language including HMO plans as follows:

> Health Insurance - All Permanent Full-Time and Permanent Part-Time Employees:
>
> New employees will pay one-third (1/3) of the cost of Health Insurance during their first (1st) year of service. The Township agrees to furnish to all those employees and their families covered under this agreement at the completion of the employee's first (1st) year of service, at no charge to such employees. Health Insurance is provided by:
>
> Hospital Insurance and Major Medical Plan - Bridgewater Township Medical Plan.
>
> Prescription Plan - PCS ($3.00 co-payment)
>
> Delta Dental - Dental Plan
>
> (2) HMO's offered - HIP/Rutgers and Co-Med.

3. On January 22, 1993, the Township sent the presidents of the PBA, MEA and BPWA a memorandum (C-1D) explaining that it would only fund the HMO benefit selection up to the level it pays for the Self Insured Program. The Township explained that employees could still select the HMO option, but they would have to pay the difference in cost between the two plans. C-1D said in pertinent part:

> There are a relatively few employees who elected an H.M.O. (either Co-Med or R.C.H.P.) and who are enjoying a disproportionate level of coverage, without any increased contribution. This is an inequality between most of our employees and a few who have selected other coverage. The Township cannot treat employees differently in terms of health care. Therefore, those employees who choose an H.M.O. may continue to do so but the Township will only fund that choice or selection, up to the identical amount by which it is funding its other employees in the Self Insured Benefits Program. Any other approach will add a projected $176,000 to the Township's costs.

The Township in C-1D also established an open enrollment to allow employees to change coverage before those employees selecting HMO coverage would be charged for their contributory share. The Township concluded C-1D with the following invitation to a meeting on January 27, 1993:

> Your attention to and consideration of this situation and our resolution of it, is the main reason for inviting you to a 10:00 AM meeting on January 27, 1993 in the Municipal Building conference room to discuss the matter further and get your input before proceeding further.2/

4. A meeting was held on January 27, 1993, but there are no facts showing what happened or what was said at that meeting. On

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2/ Attached to C-1D was a rate schedule showing the cost of the employee contribution for the HMO as follows:

MONTHLY RATES

	RCHP	+	RX & DENTAL	=	TOTAL	SELF-INSURED	DIFFERENCE
S	$167.18	+	$ 50.20	=	$217.38	$158.18	$ 59.20
P&C	279.17	+	112.73	=	391.90	357.72	34.18
FAM	488.14	+	112.73	=	600.87	357.72	243.15
CPL	379.51	+	112.73	=	492.24	357.72	134.52
	CO-MED	+	RX & DENTAL	=	TOTAL		
S	$194.91	+	$ 50.20	=	$245.11	$158.18	$ 86.93
FAM	502.87	+	112.73	=	615.60	357.72	257.88

February 3, 1993, the Township's Human Resources Manager, John Rice, sent a memorandum (R-5) to the Presidents of the PBA, MEA and BPWA informing them of, and inviting them to, a meeting scheduled for February 18, 1993, to hear from representatives of the Self Insured Program and the two HMOs. That meeting was held, but there are no facts showing what was said. Rice thanked the speakers by letter(s) (R-6) of the same day.

5. On February 24 or 25, 1993, the Township posted a notice (C-1E) for employees enrolled in an HMO program. The notice advised employees there would be an open enrollment during the month of March 1993 to enable HMO-enrolled employees to enroll into the Self Insured Program. The notice also announced that unless an employee opted out of the HMO(s) by March 31, 1993, there would be a monthly payroll deduction made from their paychecks as follows:

CO-MED HMO	Sgle. Ee.	Ee./Spse.	Ee./Child	Family
Monthly Payroll Ded.	$86.93	$257.88	$257.88	$257.88
RUTGERS/H.I.P. HMO				
Monthly Payroll Ded.	$59.20	$134.52	$34.18	$243.15

According to the Township's records (R-4), "HMO Meetings" were held with HMO covered employees and/or PBA, MEA or BPWA representatives on February 24 and 25, and March 3 and 4, 1993. The record does not show what was said at those meetings.

On March 17, 1993, Rice issued another memorandum (R-7) to employees reminding them they could have the Township's Self-Insured Plan at no cost to themselves, or elect an HMO plan and contribute to its cost. The memorandum explained how the premiums for the HMO plans were determined as follows:

The first chart below shows what the monthly premiums are that the Township pays for its sponsored plan as well as the monthly premiums charged for the two HMO plans. Any amount that is charged for the HMO plans which is greater than the premium paid for the sponsored plan is the amount that an HMO election will cost the employee who elects such coverage. That is shown in the second chart.

Contract	RCHP	TOWNSHIP SPONSORED PLAN	DIFFERENCE TO BE DEDUCTED
Single	$167.18	$107.98	$ 59.20
H/W	379.51	244.99	134.52
P/C	279.17	244.99	34.18
Family	488.14	244.99	243.15

Contract	CO-MED	TOWNSHIP SPONSORED PLAN	DIFFERENCE TO BE DEDUCTED
Single	$164.35	$107.98	$ 56.37
H/W	330.32	244.99	85.33
P/C	320.46	244.99	75.47
Family	519.32	244.99	274.33

CO-MED HMO	Sgle. Ee.	H/W	P/C	Family
Monthly Payroll Ded.	$56.37	$85.33	$75.47	$274.33

RUTGERS/H.I.P. HMO				
Monthly Payroll Ded.	$59.20	$134.52	$34.18	$243.15

The memorandum again reminded employees that they had to transfer out of the HMO plan into the Self-Insured Plan no later than March 31 in order to avoid payroll deductions for the HMO.

On March 17, the Township also prepared a document (R-6) showing the monthly allowable deductions for HMOs.

6. The presidents of the PBA, MEA and BPWA testified that the Township did not get them to agree, nor did it seek to negotiate with them over, the changes to the health plan that resulted in employees paying HMO premiums (T35, T43, T44). The Township did not

offer any contradictory evidence, thus I credit the three presidents' testimony.

There was no evidence showing how many, if any, employees switched out of the HMOs in March 1993 in anticipation of the Township's implementation of a premium fee for HMO coverage. Similarly, there was no evidence showing whether any employees would have elected HMO coverage but for the implementation of a premium fee.

7. The Township introduced into evidence the Employee Earnings Records of employees Frances Collins (R-1), Marian Cornwell (R-2), and Jill Opalack (R-3), for the quarter ending March 31, 1991.[3/] The Township did not offer any testimony to explain the documents. In the "voluntary deductions" section of the documents, there is a deduction of $1.59 next to a code marked "H".

In its post-hearing brief, the Township argued that these documents were proof that "the Township had previously deducted the difference between the cost of the HMO coverage and the cost of traditional coverage." I make no such finding. Without any explanation of the numbers and codes on R-1, R-2 and R-3, there is no basis upon which to find what the voluntary deductions represented. The $1.59 "H" deduction may have been a deduction for health benefits, but there is nothing on those documents to show

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3/ In its post-hearing brief, the Township also included the Employee Earnings Record of employee Candace Conover. Since that document was not admitted into evidence at hearing, it will not be considered as record evidence.

that it represented the difference between the cost of HMO coverage and the cost of traditional coverage.

Also in its post-hearing brief, the Township admitted that it did not make deductions from employee salaries for HMO coverage for the year commencing March 1, 1992. It argued, however, that it could not make deductions in 1992 because it needed a year's experience under the self-insurance plan to know the difference.

ANALYSIS

The question here is did the Township violate the Act by requiring employees represented by the Charging Parties to pay a portion of their HMO premiums? The Charging Parties met their burden of proving that the Township was required to provide HMO coverage at no cost to employees employed more than one year. All three collective agreements contain clear language providing for such coverage, and the Township did not negotiate a change in that language. Without an appropriate defense for its action, the Township violated the Act.

Between its Answer and post-hearing brief, the Township raised several primary defenses. First, it made a waiver argument regarding the PBA and MEA, alleging that in the past, when employees elected HMO coverage, they voluntarily agreed to pay the difference between the Township cost of its own health plan and the cost of the HMO. Second, it argued that as a result of the several meetings between the parties regarding the HMO issue in early 1993, the Charging Parties agreed to the employees paying a portion of the HMO

premiums. Third, it argued that N.J.S.A. 26:2J-29, together with N.J.S.A. 40A:9-173 and 40A:10-21 authorized or required employee payment of the excess HMO cost, thereby raising an issue of whether one or all of these statutes preempt negotiations.

The Township also raised secondary defenses to the claims of the Charging Parties. It argued that the Charging Parties did not prove that the Township restrained or coerced employees or that it refused to negotiate in good faith concerning terms and conditions of employment. It further argued that the Charging Parties did not prove that existing health benefits were either taken away or modified except for enhancement. The Township further argued that the MEA's and BPWA's evidence that no agreement was reached over whether employees had to pay some HMO premium was not proof that the Township failed to negotiate in good faith. Similarly, the Township argued that Article 13 was not changed.

The Secondary Defenses

In discussing the secondary defenses, there must be a clear focus on what these cases are about. They simply allege that the Township violated the Act by unilaterally changing clear contract provisions requiring the Township to pay the full cost of HMO coverage for employees employed beyond one year. Such a unilateral change would be a repudiation of the collective agreements and constitute an unfair practice. These cases do not allege that the Township changed or lowered the level of health benefits. Thus, the Township's argument that the Charging Parties did not prove that

health benefits were taken away or adversely modified, is misplaced. The issue is whether the Township was obligated to pay the full HMO premium, not whether the benefit levels were changed.

The payment of health insurance premiums, whether for an HMO or traditional plan, is a negotiable term and condition of employment. See Borough of Clayton, P.E.R.C. No. 88-99, 14 NJPER 325 (¶19119 1988), adopting H.E. No. 88-42, 14 NJPER 206 (¶19075 1988). See also, Piscataway Tp. Bd. of Ed., P.E.R.C. No. 91, 1 NJPER 49 (1975); County of Middlesex, P.E.R.C. No. 79-80, 5 NJPER 194 (¶10111 1979), aff'd in rel. pt. App. Div. Dkt. No. A-3564-78, 6 NJPER 338 (¶11169 1980); City of Newark, P.E.R.C. No. 82-5, 7 NJPER 439 (¶12195 1981). The parties negotiated over that term and agreed that the Township would pay the premium cost. Having reached those agreements, the Township could only legally avoid its contractual obligation by reaching a contrary agreement with the Charging Parties over the payment of the HMO premium, see Hunterdon County, P.E.R.C. No. 87-35, 12 NJPER 768 (¶17293 1986); P.E.R.C. No. 87-150, 13 NJPER 506 (¶18188 1987), aff'd App. Div. Dkt. No. A-5558-86T8 (3/21/88), aff'd 116 N.J. 322 (1989), or where negotiations over HMO premium payment was expressly and specifically preempted. Bethlehem Tp. Ed. Ass'n v. Bethlehem Tp. Bd. of Ed., 91 N.J. 38, 44 (1982).

To meet their burden of proof, the Charging Parties needed only to introduce their collective agreements containing the language obligating the Township to pay the HMO premium, and evidence that the Township implemented, without negotiations, a

change from what the contracts required. The Charging Parties met that burden. The health insurance clauses in C-1A, C-2A and C-3A all required the Township to pay the full HMO premium cost for employees employed more than one year. C-1D, C-1E, R-7 and R-8, clearly show that the Township intended to, and did, in fact, implement an HMO premium change on April 1, 1993; the three union presidents testified, without contradiction, that no agreements were reached to change the contract language. Thus, the Charging Parties established on their cases that the Township violated the Act.

The Township's argument that it did not restrain or coerce employees or refuse to negotiate in good faith, is inaccurate. Aside from the Township's statutory defense which will be discussed later, its unilateral implementation of an HMO payment schedule which is inconsistent with the clear contract terms, is a repudiation of the parties' collective agreements. Such action constitutes both a failure to negotiate in good faith and an attempt to restrain and coerce the employees in the exercise of their rights. See Elmwood Park Bd. of Ed., P.E.R.C. No. 85-115, 11 NJPER 366 (¶16129 1985); N.J. Dept. of Military and Veterans Affairs, P.E.R.C. No. 91-10, 16 NJPER 583 (¶21257 1990).

The Township's argument that there was no violation because there was no change in the level of health benefits is merely an attempt to shift the focus away from the issue in the case. The Charging Parties did not allege a change in the level of health benefits, they did allege a change in a benefit, however. Payment

for the cost of HMO coverage is, as I have already determined, a term and condition of employment. The Township's agreement to pay the full cost of HMO premiums constituted a benefit to the employees, but its unilateral requirement that employees pay a portion of the HMO premium changed that benefit. It is that benefit - the payment of the full HMO premium - that the Township unlawfully changed and which is the violation here.

The Township's argument that just because no agreement was reached over whether employees had to pay some HMO premium was not proof it failed to negotiate in good faith, misses the issue in the case. Technically, the Township's argument is accurate. The mere failure to reach an agreement is not, in and of itself, proof that an employer failed to negotiate in good faith. But where, as here, an employer unilaterally changes an existing contractual benefit, it is that unilateral change, not just the failure to reach agreement, which constitutes the failure to negotiate in good faith. Compare, Deptford Bd. of Ed., P.E.R.C. No. 81-78, 7 NJPER 35 (¶12015 1980).

The Township's final secondary defense was that Article 13 was not changed. That statement is misleading. Article 13 was the MEA's and BPWA's negotiated language regarding the Township's agreement to pay the full HMO premium. By unilaterally imposing a fee for HMO coverage, the Township intentionally deviated from the clear contract terms. That deviation constituted an unlawful change.

The Primary Defenses

The Township's argument that the Charging Parties waived the right to fully paid HMO premiums because some employees previously paid the difference between health plan costs, lacks merit. The Township did not prove that there was a consistent practice of employees paying the difference between health plan costs. Exhibits R-1 - R-3 merely show a deduction of $1.59 with a designation of "H." There is no evidence explaining the meaning of that deduction, how long it lasted, how many employees were affected, or whether the Charging Parties knew of it and agreed to it.

But even assuming the deduction was for the difference between the HMO and regular plans, R-1 - R-3 are insufficient to establish that the Charging Parties waived the right to rely on the language in their respective contracts regarding the payment of HMO premiums. A waiver of a negotiable right will not be found unless a contract clearly and unequivocally authorizes the employer to make a unilateral change. Elmwood Park Bd. of Ed.; Sayreville Bd. of Ed., P.E.R.C. No. 83-105, 9 NJPER 138 (¶14066 1983); State of New Jersey; P.E.R.C. No. 77-40, 3 NJPER 78 (1977). The instant contracts lacked such authorization. In fact, they clearly provided that the Township would pay the full cost of HMO coverage.

Additionally, if the Township believes that it could rely on what it claims was the prior practice to justify its actions, it is mistaken. First, there is no evidence that the Charging Parties were even aware of a deduction for HMO coverage, and second, where,

as here, contract clauses are clear on their face, an inconsistent prior practice may not be relied upon, nor is it authorized, to change the meaning of the agreement. New Brunswick Bd. of Ed., P.E.R.C. No. 78-47, 4 NJPER 84 (¶4040 1978), recon. den. P.E.R.C. No. 78-56, 4 NJPER 156 (¶4073 1978), aff'd App. Div. Dkt. No. A-2450-77 (4/2/79); N.J. Sports and Exposition Authority, P.E.R.C. No. 88-14, 13 NJPER 710 (¶18264 1987); Boro of Bergenfield, P.E.R.C. No. 82-1, 7 NJPER 431 (¶12191 1981); Delaware Valley Reg. Bd. of Ed., P.E.R.C. No. 81-77, 7 NJPER 34 (¶2014 1980).

The Commission in N.J. Sports and Expo. Auth., held that despite a ten-year practice that was inconsistent with the contract terms, the employer had the right to unilaterally abandon the practice and apply the stated contract terms. Labor organizations, the other party(s) to the contract, must have that same right. Consequently, even if the Charging Parties acquiesced to an HMO payment at some time in the past, they always had (have) the right to insist that the contract terms be applied as stated. Thus, to the extent there was a practice inconsistent with the parties' contract, that prior practice would not operate as a waiver of the Charging Parties' expressed contractual rights.

The Township's argument that as a result of the HMO meetings in early 1993 the Charging Parties agreed to have employees pay the difference for HMO coverage was not supported by the evidence. There was no evidence that these meetings were negotiations sessions, no evidence the parties actually negotiated,

no allegation was made or evidence produced that any union official agreed to such a plan, and there was no evidence of a written agreement authorizing such a plan. The mere fact that meetings were held regarding the HMO plan is not evidence that agreements were reached.

The Township's final argument, that there was statutory authorization for requiring employee payment of excess HMO cost, is really the heart of this case. The Township relied upon the language in several statutes, particularly N.J.S.A. 26:2J-29, in arguing that negotiations over the HMO premium difference was preempted. These statutes provide:

> N.J.S.A. 26:2J-29. Enrollment of state employees
>
> Any employee of the State or any subdivision of the State or any institution supported in whole or in part by the State may elect to enroll in a health maintenance organization and have all deductions from his salary or wages and all contributions being paid by his employer to any health insurer paid instead to a health maintenance organization; provided, however, in no event, shall an employer under this section make a contribution to any alternative health benefits program greater than the contribution being made to any health plan pursuant to a contract in existence on the effective date of this act. Any such employee shall at least annually be allowed to choose an alternative health benefits program made available through his employer.
> L.1973, c. 337, § 29, eff. Dec. 27, 1973.
>
> N.J.S.A. 40A:9-173. Hospital service or medical service group insurance; authorization for deductions from salaries
>
> Municipal officers and employees participating in hospital or medical service group insurance may authorize the governing body of the municipality to deduct from their salaries premiums for such insurance, and pay the amount thereof to the service corporations. The governing body, by resolution, may authorize such deductions and provide for the said payments subject to such rules and regulations as the governing body may prescribe in the resolution.

> No such resolution shall be deemed to impose any prospective liability upon the municipality as to future deductions or payments.
> L.1971, c. 200, § 1, eff. July 1, 1971.
>
> N.J.S.A. 40A:10-21. Payment for premiums; deduction of employee contributions
>
> Any employer entering into a contract pursuant to this subarticle is hereby authorized to pay part or all of the premiums or charges for the contracts and may appropriate out of its general funds any money necessary to pay premiums or charges or portions thereof. The contribution required of any employee toward the cost of coverage may be deducted from the pay, salary or other compensation of the employee upon an authorization in writing made to the appropriate disbursing officer.
>
> The employer may reimburse an active employee for his premium charges under Part B of the Federal Medicare Program covering the employee alone.
>
> Nothing herein shall be construed as compelling an employer to pay any portion of the premiums or charges attributable to the contracts.
> L.1979, c. 230, § 1, eff. October 15, 1979.

In order to preempt negotiations over a mandatorily negotiable subject, a statute must expressly, specifically and comprehensively regulate that term and condition of employment, leaving no room for an employer to exercise discretion. See Bethlehem, supra; State v. State Supervisory Employees Ass'n, 78 N.J. 54, 80 (1978); City of Newark, P.E.R.C. No. 93-57, 19 NJPER 65 (¶24030 1992). The statutes relied upon by the Township do not meet that test.

Neither N.J.S.A. 40A:9-173 nor 40A:10-21 contain language requiring the employee to pay a portion of HMO coverage. The language in 40A:9-173 merely gives employees the right to authorize their employers to deduct health insurance premiums from their pay,

and 40A:10-21 authorizes the employers to pay for such premiums from its general fund and to deduct any employee contribution from employee pay when authorized. But 40A:10-21 does not require that employees contribute a portion of their salaries to HMO premiums. That statute, in fact, does not even mention HMOs, and actually authorized employers to pay "part or all of the premiums" out of its general funds. Although 40A:10-21 ends by indicating that nothing therein can be construed as compelling the employer to pay any portion of the premiums, that statute does not restrict an employer's ability to enter into collective agreements where, as here, it might assume the responsibility to pay all health premiums.

The last sentence of 40A:10-21 must be read as a whole with the first paragraph of the statute, it cannot be viewed in isolation. Loboda v. Clark Tp., 40 N.J. 424, 435 (1963); Giles v. Gassert, 23 N.J. 22, 34 (1956). Since the first paragraph authorized employers to pay "part or all" of the premiums, the last sentence cannot be read to limit such payments. Rather, I find that the language in the last sentence meant that none of the language in the first paragraph of the statute itself could force an employer to pay - or agree to pay - any portion of the health premiums. The statute is simply not self enforcing, but it does not restrict an

employer's ability to assume, through collective negotiations, the obligation to pay the HMO premium.4/

The language in N.J.S.A. 26:2J-29 is the language most on point. The Township apparently reads that statute to mean that it cannot contribute more to an HMO than it contributes to a traditional plan. But that is not what that statute says. It is a commonly accepted rule of statutory construction that each word, and certainly each phrase, of a statute has meaning and must be given full effect. Gabin v. Skyline Cabana Club, 54 N.J. 550, 555 (1969); Williams V. Deptford Tp. Bd. of Ed., 192 N.J. Super. 31, 40 (App. Div. 1983); Cobb v. Waddington, 154 N.J. Super. 11, 17 (App. Div. 1977). This statute said that an employer shall not make a contribution to an HMO greater than the contribution it makes pursuant to a "contract in existence on the effective date of this Act." What does that quoted language mean? The Township did not hazard a guess. It never directly addressed the issue.

The State Supreme Court has held that statutory language must be given its ordinary and well understood meaning absent specific intent to the contrary. In re Barnet Memorial Hospital Rates, 92 N.J. 31, 41 (1983); Renz v. Penn Central Corp., 87 N.J. 437, 440 (1981). A construction calling for an unreasonable result must be avoided where a reasonable result, consistent with the indicated purpose of the act, is possible. Clifton v. Passaic Co. Bd. of Taxation, 28 N.J. 411, 421 (1958).

4/ The language in N.J.S.A. 18A:16-17 is similar to 40A:10-21. I would analyze the wording therein the same way.

N.J.S.A. 26:2J-29 was part of a package of statutes comprising Chapter 2J of Title 26 covering health maintenance organizations which were passed effective December 27, 1973. The first part of the statute authorized an employer to make contributions on behalf of employees to an HMO rather than some other health insurer, but the second part of the statute limited that contribution by stating:

> ...in no event shall an employer...make a contribution for any alternative health benefits program greater than the contribution being made to any health plan pursuant to a contract in existence on the effective date of this act.

The ordinary meaning of that language was to limit the amount of an employer's contribution to an HMO to the same amount the employer was already obligated to pay for a regular health plan based upon a contract, i.e., collective agreement, that was in effect on December 27, 1973. The intent of that language was to protect an employer from being obligated to pay more for an HMO when that bill was passed than it had already contracted to pay for other health insurance at the time the act became effective.

The Legislature had to mean something when it limited the HMO contribution to the contribution already being made "pursuant to a contract in existence on the effective date of this act." Either it meant that HMO contributions - even in 1994 - were limited to the amount the employer paid for health insurance in 1973, or it meant that the Legislature did not want to disturb contracts in existence in 1973 to force employers to pay more for health care than what they had already negotiated.

The Legislature could not have intended the first possibility since that presents an unreasonable result. Rather, I find that the Legislature intended only to limit the amount an employer was obligated to pay for HMO coverage to the amount it had already negotiated for health coverage during the life of a contract in existence on December 27, 1973. The Legislature did not say that an employer's HMO contribution was always limited to the amount it was otherwise obligated to pay for other health coverage.

If the Legislature intended to always restrict employers from making greater contributions to HMOs than they made to traditional health coverage plans, then it would not have limited the contracts to "contracts in existence on the effective date of this act." See Gabin v. Skyline Cabana Club, supra. For example, compare the language in N.J.A.C. 17:9-5.6, one of the rules affecting the State Health Benefits Program, with the wording of N.J.S.A. 26:2J-29. N.J.A.C. 17:9-5.6 provides:

> For purposes of State and local coverage, the employer who pays any portion of the cost for the employee and for dependent coverage cannot pay any more for the same type of coverage if the employee enrolls himself or herself and his or her dependents in a health maintenance organization as an alternative program. If the cost of the coverage in the alternative plan exceeds the cost of the State program, the additional charge would be collected by payroll deductions from the employee.

The language in the rule clearly restricts the employer's cost for an alternative health plan to the level it pays for the traditional

plan.[5/] But the language in the statute only restricts employer contributions for a limited time, during the life of contracts in effect on December 27, 1993. Thus, once the contracts in existence on December 27, 1973 expired, employers were free to negotiate over the cost of HMO coverage, and were obligated to pay whatever they had agreed or negotiated to pay for that coverage unless they were included in the State Health Benefits Program. Here, the Township was not part of the State Health Benefits Program when it knowingly negotiated and agreed to pay the full health premium for the listed health plans which included two HMO plans. There was no indication in the contract clauses that the coverage would be different for the HMO plans, thus, the Township is obligated to pay the full HMO premiums.

The Commission in Borough of Clayton, supra, did not directly discuss N.J.S.A. 26:2J-29, but it did find that the amount of employer contributions to HMOs was negotiable when it held that the Borough violated the Act when it failed to negotiate before establishing or discontinuing employer-paid HMO coverage for unit members. 14 NJPER at 326. The result here is the same. The Township violated the Act by ignoring the collective agreements and unilaterally requiring employees to pay a portion of the HMO premium.

5/ This rule does not apply here, however, because the Township is not part of the State Health Benefits Program.

In its reply brief, the Township sought to rely on the language in Section 9.1A(d) of the State Health Benefits Program. That language provides:

> d. Contributions -- In addition to the copayment the employee or dependent may have to pay when receiving services from the HMO or HMO provider, a premium may be necessary where the cost of a particular type of coverage for a specific HMO plan is more than the cost that the employer or the employee pays for coverage in the Traditional Plan. Under no circumstances will the employer pay for the differential.

While that rule, like N.J.A.C. 17:9-5.6, seems to limit the contributions an employer pays to an HMO to the level of contributions it makes for a traditional plan, the Township is no longer a member of the State Health Benefits Program. Thus, that rules does not apply in this case.

REMEDY

The Charging Parties are entitled to an order requiring the Township to cease deducting HMO premium payments from employees employed beyond one year, and an order reimbursing those employees employed beyond one year for any HMO premium payments deducted from their pay since April 1, 1993. The Charging Parties' request for an order requiring the Township to schedule an open period to allow employees to either rejoin or first join an HMO, is denied. The Charging Parties did not establish that any employee(s) opted out of an HMO or did not choose to join an HMO because of the premium cost. Employees will have the right to join an HMO during the normally scheduled open enrollment period.

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

CONCLUSIONS OF LAW

1. The Township violated subsection 5.4(a)(5) and, derivatively, (a)(1) of the Act by unilaterally deciding to deduct a portion of the HMO premium cost from employees in contravention of the language in the parties' collective agreements.

RECOMMENDED ORDER

I recommend the Commission ORDER:

A. That the Township cease and desist from:

1. Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, particularly, by unilaterally deducting HMO premium payments from employees represented by the PBA, MEA and BPWA, respectively, in contravention of the language in the parties' respective collective agreements.

2. Refusing to negotiate in good faith with the PBA, MEA and BPWA, respectively, concerning terms and conditions of employment of employees in their respective units, particularly, by unilaterally deducting HMO premium payments from those employees in contravention of the language in the parties' respective collective agreements.

B. That the Township take the following action:

1. Immediately cease deducting HMO premium payments from PBA, MEA and BPWA unit members employed beyond one year.

2. Reimburse PBA, MEA and BPWA unit members who were employed beyond one year for any HMO premium deductions made from

April 1, 1993 through the effective dates of the existing collective agreements.

3. Negotiate in good faith with the PBA, MEA and BPWA, respectively, over any attempt to change the parties' collective agreements, or to charge their unit members for HMO premiums.

4. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice shall, after being signed by the Respondent's authorized representative, be posted immediately and maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

5. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply with this order.

Arnold H. Zudick
Hearing Examiner

DATED: April 21, 1994
Trenton, New Jersey

Recommended Posting
Appendix "A"

NOTICE TO ALL EMPLOYEES

PURSUANT TO

AN ORDER OF THE

PUBLIC EMPLOYMENT RELATIONS COMMISSION

and in order to effectuate the policies of the

NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,

AS AMENDED

We hereby notify our employees that:

WE WILL NOT interfere with, restrain or coerce our employees in the exercise of the rights guaranteed to them by the Act, particularly by unilaterally deducting HMO premium payments from employees represented by the PBA, MEA and BPWA, respectively, in contravention of the language in the parties' respective collective agreements.

WE WILL NOT refuse to negotiate in good faith with the PBA, MEA and BPWA, respectively, concerning terms and conditions of employment of employees in their respective units, particularly, by unilaterally deducting HMO premium payments from those employees in contravention of the language in the parties' respective collective agreements.

WE WILL immediately cease deducting HMO premium payments from PBA, MEA and BPWA unit members employed beyond one year.

WE WILL reimburse PBA, MEA and BPWA unit members who were employed beyond one year for any HMO premium deductions made from April 1, 1993 through the effective dates of the existing collective agreements.

WE WILL negotiate in good faith with the PBA, MEA and BPWA, respectively, over any attempt to change the parties' collective agreements, or to charge their unit members for HMO premiums.

CO-H-93-309
CO-H-93-325
Docket No. CO-H-93-326

Township of Bridgewater
(Public Employer)

Dated _____ **By** _____
(Title)

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State St., CN 429, Trenton, NJ 08625 (609) 984-7372.