

D.U.P. NO. 2021-5

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

NEWTON BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-2021-085

NEWTON EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by the Newton Education Association against the Newton Board of Education, alleging that the Board violated sections 5.4a(1) and (5) of the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq., by announcing in September 2020 that it would unilaterally change unit employees' health insurance carrier from Horizon to Aetna. The charge fails to allege the change in identity of insurance carriers resulted in a change in health benefits. The Director therefore determined that the Board exercised its managerial prerogative to change insurance carriers and was under no obligation to negotiate that change with the Association.

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Appearances:

For the Respondent,
Weiner Law Group, LLP, attorneys
(Stephen J. Edelstein, of counsel)

For the Charging Party,
Oxfeld Cohen, P.C., attorneys
(Rachel Leigh Adelman, of counsel)

REFUSAL TO ISSUE COMPLAINT

On October 29, 2020, the Newton Education Association (Association) filed an unfair practice charge, accompanied by an application for interim relief, against the Newton Board of Education (Board). The charge alleges the Board violated section 5.4a(1) and (5)^{1/} of the New Jersey Employer-Employee Relations

^{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. (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 (continued...)"

Act (Act), N.J.S.A. 34:13A-1 et seq., by announcing in September, 2020 that it would unilaterally change unit employees' health insurance carrier from Horizon to Aetna.^{2/} The charge does not allege that the change in identity of insurance carriers resulted in a change in the level of health benefits, but that a change in carrier imposes an "arduous and time consuming" and costly task on the Association to investigate whether a change in benefits implicated the "equal to or better than" standard required under the expired collective negotiations agreement. For these reasons, the Association asserts, ". . . the identity of insurance providers must be a negotiable term and condition of employment."

On November 30, 2020, a Commission Designee denied the Association's application for interim relief. On January 14, 2021, the Board filed and served on the Association a position statement in opposition to the charge.^{3/} The Board contends that the Association's charge should be dismissed because the Board's change in health insurance carriers, under well-settled Commission precedent, is a managerial prerogative so long as the

1/ (...continued)
representative."

2/ The change in carriers went into effect in January, 2021.

3/ The Board also attached certifications submitted in opposition to the Association's interim relief application to its position statement.

change does not result in a change in health benefits or a change to the administration of the employees' health insurance plan. The Board contends that the Association has not alleged a change in benefits or in the administration of health insurance plans. It avers that it provided documents to the Association from insurance consultants confirming no change in benefits or plan administration. According to the Board, the Association seeks to change the law on the negotiability of the identity of insurance carriers, whereas the Board's unilateral change in carriers complies with existing law.

On January 14 and February 8, 2021, the Association filed a position statement and amended certification from John Ropars, an NJEA Uniserv Representative, in support of its charge.^{4/} The Association maintains that the identity of insurance carriers itself should be a mandatorily negotiable subject and that the Association must undertake a heavy burden in investigating whether a change in carriers results in a change in benefits that could negatively impact unit employees.

The Commission has authority to issue a complaint where it appears that a charging party's allegations, if true, may constitute an unfair practice within the meaning of the Act.

^{4/} The Association submitted a certification from Ropars with its January 14 position statement, but then elected to submit an amended certification on February 8 in lieu of the January 14 certification.

N.J.S.A. 34:13A-5.4c; N.J.A.C. 19:14-2.1. The Commission has delegated that authority to me. Where the complaint issuance standard has not been met, I may decline to issue a complaint. N.J.A.C. 19:14-2.3; CWA Local 1040, D.U.P. No. 2011-9, 38 NJPER 93 (¶20 2011), aff'd, P.E.R.C. No. 2012-55, 38 NJPER 356 (¶120 2012).

I find the following facts.

The Association is the exclusive majority representative of a unit of teaching staff, aides and custodians employed by the Board. The Association and Board are parties to a collective negotiations agreement (Agreement) that expired on June 30, 2020. The parties commenced negotiations for a successor collective agreement sometime near the end of 2019.

In September, 2020, the Board advised the Association that it intended to change unit employees' health insurance carrier from Horizon (in which unit employees were covered by a private insurance plan) to AETNA (in which employees would also be covered by a private insurance plan). The Association objected to the change in carriers and, in response to the announced change, Association President Stephen Mull demanded to negotiate with the Board over the identity of unit employees' health insurance carrier. In October, 2020, Stephen J. Edelstein, Esq., an attorney representing the Board in collective negotiations, rejected Mull's demand to negotiate and asserted the change in

carrier was not negotiable. The change to AETNA went into effect in January, 2021.

Under the parties' Agreement, the Board may change insurance carriers for teaching staff so long as the health benefits provided by the new carrier are "substantially similar" to the benefits received by teaching staff before the change in carrier. For custodians, the Agreement permits the Board to change insurance carriers so long as health benefits levels after the change are "equal to or better than" than previous benefits. The Association does not allege that the change in carriers resulted in a change in the level of benefits or plan administration for either group of employees.

ANALYSIS

The Association, though acknowledging Commission precedent on the limited negotiability of the identity of health insurance carriers, argues, for a host of policy reasons, that the precedent should be reconsidered. Specifically, it contends that a public employer must negotiate over a change in insurance carriers, regardless of whether that change results in a change in the level of health benefits or plan administration. I decline to deviate from long-standing Commission precedent and dismiss the charge.

In City of Newark, P.E.R.C. No. 82-5, 7 NJPER 439 (¶12195 1981), the Commission addressed for the first time the question

of whether the identity of health insurance carriers was mandatorily negotiable. After canvassing National Labor Relations Board and judicial precedent, as well as decisions from state labor relations agencies in Iowa and Wisconsin, the Commission concluded that a public employer is not obligated to negotiate over a change in insurance carriers unless the carrier change results in a diminution of health benefits or a change in the administration of an insurance plan. Id. It wrote:

The Commission, in the instant matter, having analyzed the public and private sector approach to this issue, finds that the Wisconsin and Iowa approach to this matter is the most reasonable and equitable approach to follow.^{5/} Therefore, with respect to police and fire employees in New Jersey, the identity of an insurance carrier is a permissive subject for negotiations and is only negotiable and arbitrable upon mutual agreement.^{6/} However, where changing the identity of the carrier affects terms and conditions of employment, i.e., the level of insurance benefits, and the administration of the plan, it is a mandatory subject for negotiations. [Id., 7 NJPER at 440]

5/ The Commission explained that the Iowa and Wisconsin approach was to limit the obligation of an employer to negotiate over a change in carriers to instances where the change in carriers affected the level of health benefits or the manner in which an insurance plan was administered.

6/ There is no permissive subject of negotiations for school district employees. Paterson P.A. Local 1 v. City of Paterson, 87 N.J. 78 (1981). Moreover, the refusal to negotiate a permissible subject of negotiations is not an unfair practice. Id.; Fairfield Tp., D.U.P. No. 2011-6, 37 NJPER 129 (¶38 2011).

Since City of Newark, the Commission has for decades consistently held that the identity of an insurance carrier is not mandatorily negotiable if the carrier change does not result in a change in benefits or plan administration. Rahway Bd. of Ed., P.E.R.C. No. 84-6, 9 NJPER 531 (¶14217 1983); Borough of Paramus; P.E.R.C. No. 86-17, 11 NJPER 502 (¶16178 1985); Hamilton Tp. Bd. of Ed., P.E.R.C. No. 97-104, 23 NJPER 178 (¶28089 1997); Mountain Lakes Bd. of Ed., D.U.P. No. 98-9, 23 NJPER 482 (¶28229 1997); Town of Kearny, P.E.R.C. No. 2002-77, 28 NJPER 264 (¶33101 2002); Rockaway Borough Bd. of Ed., P.E.R.C. No. 2010-9, 35 NJPER 293 (¶102 2009).

Here, the Association does not allege that the change in insurance carriers has resulted in a change in benefits or plan administration for unit employees. The Board exercised its managerial prerogative to change insurance carriers and was under no obligation to negotiate that change with the Association. Accordingly, the Board's unilateral decision to change insurance carriers from Horizon to AETNA did not violate the Act.

ORDER

The unfair practice charge is dismissed.

/s/Jonathan Roth
Director of Unfair Practices

DATED: March 17, 2021
Trenton, New Jersey

**This decision may be appealed to the Commission pursuant to
N.J.A.C. 19:14-2.3.**

Any appeal is due by March 29, 2021.