

I.R. NO. 97-5

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HOUSING AUTHORITY OF THE  
CITY OF ASBURY PARK,

Respondent,

-and-

Docket No. CO-97-56

IFPTE LOCAL 196, CHAPTER 3,

Charging Party.

SYNOPSIS

A Commission Designee orders the Housing Authority of the City of Asbury Park to maintain terms and conditions of employment upon the expiration of the collective negotiations agreement. Specifically, the contract provision provides that employees shall receive a maximum reimbursement for the cost of prescription drugs and that provision survived the expiration of the contract.

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Appearances:

For the Respondent,  
Schwartz, Simon, Edelstein, Celso &  
Kessler, attorneys  
(Michael S. Rubin, of counsel)

For the Charging Party,  
Leonard C. Schiro, attorney

INTERLOCUTORY DECISION

On August 15, 1996, IFPTE Local 196, Ch. 3 filed an unfair practice charge with the New Jersey Public Employment Relations Commission alleging that the Housing Authority of the City of Asbury Park engaged in unfair practices within the meaning of N.J.S.A. 34:13A-5.4(a) (1), (5) and (7).<sup>1/</sup> It was specifically alleged that

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<sup>1/</sup> 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. (7) Violating any of the rules and regulations established by the commission."

the parties are currently engaged in negotiations for a successor collective negotiations agreement. The most recent agreement expired on March 31, 1996. On or about August 1, 1996, a member of the unit represented by Local 196 submitted paid prescription bills in accordance with Article XIV, Section F of the recently expired agreement. The employee was denied reimbursement. The Association argues that the failure of the Authority to provide reimbursement constituted a unilateral alteration of a term and condition of employment during negotiations.

The unfair practice charge was accompanied by an order to show cause. The order was executed and ultimately heard on September 6, 1996. A hearing was conducted on that date. Both parties submitted evidence by way of affidavit and argued orally.

The City does not dispute that it refused to pay the claim for prescription bills. Rather, it argues that Article XIV, Section F of the contract expired with the expiration of the contract and this benefit did not survive as a term and condition of employment.

Article XIV, Section F provides:

F. Prescription Drugs

The Authority shall reimburse employees and their spouses and dependent children for prescription drug costs. Such reimbursement shall be to a maximum of \$675 per total family unit, during the first contract year of this Agreement (April 1, 1993 to March 31, 1994) and a maximum of \$750 per total family unit during the second year of this agreement (April 1, 1994 to March 31, 1995) and a maximum of \$800 per total family unit during the third year of this Agreement (April 1, 1995 to March 31, 1996). Employees shall present paid prescription bills,

druggist verification, and a copy of the doctor's prescription form, to the Authority within thirty (30) days from date of purchase and shall receive reimbursement within two (2) weeks of submission. Id.

The Board argues that the inclusion of dates in the paragraph effectively terminated this benefit upon the expiration of the contract.

The Association argues that the dates enumerated in the contract provision simply mark when the level of benefits increases and does not extinguish this benefit.

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).

It is well settled that upon the expiration of a contract, the existing terms and conditions of employment will continue until the negotiations obligation is satisfied. See Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Assn., 78 N.J. 25 (1978). The unilateral alteration of the status quo during negotiations so adversely

affects the ability of a majority representative to represent a unit that a traditional award at the conclusion of a case will not effectively remedy a violation of the Act. Evesham Twp. Bd. of Ed., I.R. No. 95-10, 21 NJPER 3 (¶26001 1994).

However, where the contract, by its terms, terminates a benefit on a date certain, such a benefit does not survive that date certain. Bogota Board of Education, I.R. 95-9, 20 NJPER 445 (¶25229 1994)

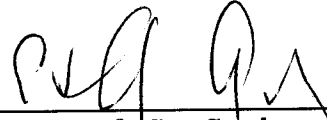
Here, unlike Bogota, the language of the contract provision does not state the benefit will end on a certain date. The contract does not contain a clear waiver of the prescription drug benefit. Rather, the dates in the provision define when the benefit increases.

Accordingly, I find that the Association has demonstrated a substantial likelihood of success in prevailing on the facts of this matter.<sup>2/</sup>

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<sup>2/</sup> C.f. State of New Jersey and State Law Enforcement Conference of the New Jersey State Policemen's Benevolent Association, I.R. No. 96-31, 22 NJPER 257 (¶27134 1996) where the contract language was similar. However, State of New Jersey involved a police unit. Accordingly, if the parties fail to reach an agreement, the dispute would ultimately be decided by an interest arbitrator. Here, however, if the parties fail to reach an agreement, negotiations will not be resolved by a neutral third party. Accordingly, State of New Jersey is not controlling for the potential harm here is very different.

Accordingly, I hereby ORDER that the Housing Authority of the City of Asbury Park pay prescription drug bills during the course of negotiations for a successor agreement.



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Edmund G. Gerber  
Commission Designee

DATED: September 11, 1996  
Trenton, New Jersey