

I.R. NO. 93-12

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

READINGTON TOWNSHIP BOARD OF
EDUCATION,

Charging Party,

-and-

Docket No. CE-93-6

READINGTON TOWNSHIP EDUCATION
ASSOCIATION,

Respondent.

Appearances:

For the Charging Party
Martin R. Pachman, of counsel

For the Respondent
John A. Thornton, Jr., NJEA Field Representative

SYNOPSIS

A Commission Designee restrains the Readington Township Education Association from demanding to negotiate to the point of impasse, dental and prescription drug insurance coverage for retirees and surviving spouses. The employees represented by the Association are in the State Health Benefits Program. The State Health Benefits Commission guidelines for dental and prescription drug coverage provide that there is no conversion of this type of medical insurance upon retirement. Accordingly, such insurance coverage has been preempted by regulation and to the extent that the Association makes this demand to the point of impasse, it irreparably harms the negotiations process.

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INTERLOCUTORY DECISION

On January 7, 1993, the Readington Township Board of Education filed an unfair practice charge with the Public Employment Relations Commission alleging that the Readington Education Association committed an unfair practice by insisting to negotiate an illegal subject of negotiations to the point of impasse and by bringing that illegal demand to a factfinder of the Public Employment Relations Commission.

Specifically, the expired contract between the parties provided for dental and prescription drug insurance coverage for retirees and surviving spouse's. The State Health Benefits Commission guidelines for dental and prescription drug coverage

provides that there is no conversion of this type of medical insurance for employees at the termination of employment; there is no continuance of coverage into retirement.

Accordingly, it is alleged that the Association's demand that this insurance coverage be maintained violates the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.; specifically subsection (b)(3).^{1/} The unfair practice charge was accompanied by an Application for Interim Relief which seeks to restrain the Association from bringing its demand to continue dental and prescription drug insurance benefits for retirees to factfinding. The Order to Show Cause was executed and made returnable for January 12, 1993.

The Association opposes the application. It argues that the regulations promulgated by the State Health Benefits Commission are not preemptive and that the harm alleged by the Board is not irreparable.

The facts as alleged by the Board are not disputed. Rather, the Association claims that the State Health Benefits Commission regulations do not effectively pre-empt negotiations. However, in Town of Kearny, P.E.R.C. No. 83-12, 8 NJPER 441 (¶13208 1982), the Commission held that the State Health Benefits Commission

^{1/} This subsection prohibits employee organizations, their representatives or agents from: "(3) Refusing to negotiate in good faith with a public employer, if they are the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit.

presumptively has the authority to interpret its own Statute and the State Health Benefits Commission has interpreted its Statute to say that governmental entities may not provide dental and prescription drug plans for retirees and their surviving spouses.

Pursuant to the provisions of N.J.S.A. 52:14-17.25 et seq., it is the policy of the State Health Benefits Commission that when local governments purchase insurance contracts of health benefits, such as prescription drug, dental expense and vision care coverages, such...coverage...must adhere to the guidelines approved by the State Health Benefits Commission.... Local governments cannot deviate from such guidelines in purchasing such...coverages without the approval of the State Health Benefits Commission.

The State Health Benefits Commission has issued, "Guidelines for Prescription Drug Contracts issued pursuant to Chapter 12, P.L. 1975." Those guidelines state, in pertinent part:

VII Termination

The coverage of an employee...shall cease immediately upon the termination of his employment or by reason of his ceasing to be a participant in the classes eligible for coverage....

There is no conversion at the termination of employment; there is no continuance of coverage into retirement.

....The coverage of an employee, whose eligibility has ceased because of his resignation, temporary layoff, separation through a reduction in force or for any other reason...shall be terminated.


Those guidelines have pre-empted this issue from negotiations. See Hamilton Twp. Bd. of Ed., I.R. No. 93-4, 18 NJPER 461 (¶23208 1992).

The Association also points to the provision of N.J.S.A. 52:14-17.25 which states that a local government may request permission from the State Health Benefits Commission to deviate from its guidelines. It argues that this provision creates the right to seek approval for the coverage. Therefore, the Statute is not pre-emptive. I believe that the Association's argument is misplaced. It may be a mandatory subject of negotiations to demand that the Board seek such approval. Here, however, the benefit was already in existence without that approval and that benefit, without such approval, is violative of the State Health Benefits Commission guidelines.

The standards that have been developed by the Commission for evaluating interim relief requests are similar to those applied by the Courts when addressing similar applications. The moving party must demonstrate that it has a substantial likelihood of success on the legal and factual allegations in a final Commission decision and that irreparable harm will occur if the requested relief is not granted. Further, in evaluating such requests for relief, the relative hardship to the parties in granting or denying the relief must be considered.^{2/}

^{2/} Crowe v. DeGioia, 90 N.J. 126 (1982); Tp. of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Tp. of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975).

As previously held in Berkeley Heights Board of Education, P.E.R.C. No. 89-61, 15 NJPER 23 (¶20008 1988), the Commission recognizes the irreparable nature of harms ommitted during the negotiations process. Demands to negotiate an illegal subject of negotiations to the point of impasse, put pressures on the negotiations process which are impermissible. Accordingly, the Application for Interim Relief is granted. The Readington Education Association is restrained from bringing demands for dental and prescription drug health benefits for retirees and for spouses of deceased retirees before the factfinder.



Edmund G. Gerber
Commission Designee

DATED: January 13, 1993
Trenton, New Jersey