

P.E.R.C. NO. 86-95

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF CLOSTER,

Respondent,

-and-

Docket No. CO-84-257-131

PBA LOCAL 233 (CLOSTER UNIT),

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the Borough of Closter violated the New Jersey Employer-Employee Relations Act when it changed the level of insurance benefits provided to employees. A Hearing Examiner recommended this finding and the Commission, in the absence of exceptions, adopts it.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF CLOSTER,

Respondent,

-and-

Docket No. CO-84-257-131

PBA LOCAL 233 (CLOSTER UNIT),

Charging Party.

Appearances:

For the Respondent DeCotiis, Johnson & Pinto, Esqs.
(James A. Farber, Of Counsel)

For the Charging Party, Loccke & Correia, Esqs.
(Richard D. Loccke, Of Counsel)

DECISION AND ORDER

On March 12, 1984, PBA Local 233 (Closter Unit)("PBA") filed an unfair practice charge against the Borough of Closter ("Borough"). The charge alleged that the Borough violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (2) and (5),^{1/} by unilaterally

^{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; (2) Dominating or interfering with the formation, existence or administration of any employee organization; (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

changing the level of health insurance benefits when it changed insurance carriers, and by causing a lapse in coverage over a two day period.

On May 10, 1985, a Complaint and Notice of Hearing issued. The Borough then filed an Answer denying all allegations.

On June 26, 1985, Hearing Examiner Arnold H. Zudick conducted a hearing. The parties examined witnesses and introduced exhibits. They waived oral argument, but filed post hearing briefs by September 19, 1985.

On December 6, 1985, the Hearing Examiner issued his report and recommended decision, H.E. No. 86-25, 11 NJPER ____ (¶____ 1985)(copy attached). He concluded that the Borough violated subsections 5.4(a)(1) and (5) of the Act when it unilaterally changed health insurance plans which consequently changed the level of benefits that unit members receive. He recommended a remedial order requiring the Borough to: (1) reimburse unit members for any losses incurred due to the differences in the level of benefits between the two plans, (2) negotiate with the PBA over the level of benefits for a new plan, (3) arrange and pay for an independent insurance evaluation comparing the two plans, and (4) post a notice.

The Hearing Examiner served his report on the parties and notified them that exceptions, if any, were due on or before December 19, 1985. Neither party filed exceptions or requested an extension of time.

We have reviewed the record. The Hearing Examiner's findings of fact (pp. 3-8) are accurate. We adopt and incorporate them here. Under all the circumstances of this case, and in the absence of exceptions, we agree with the Hearing Examiner that the Borough of Closter violated subsections 5.4(a)(1) and (5) and that the recommended remedial action should be taken.^{2/}

ORDER

The Borough of Closter 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.

2. 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, by unilaterally changing the level of health insurance benefits.

B. Take the following affirmative action:

1. Immediately reimburse PBA unit members for any losses incurred from November 29, 1983 until such time as a new health plan benefit level is adopted due to the differences in the level of benefits provided under the Equitable plan as compared to the BCBS plan.

2. Immediately engage in good faith negotiations with the PBA over the level of benefits for a new health insurance plan.

^{2/} On January 10, 1986, the Borough filed a letter indicating their intent to comply with the Hearing Examiner's recommendations.


3. Within twenty (20) days arrange for an independent insurance evaluation comprehensively comparing the Equitable and BCBS plans, and pay all costs for that evaluation.

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 on forms to be provided by the Commission shall be posted immediately upon receipt thereof and, after being signed by the Borough's authorized representative, shall be 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 Borough has taken to comply herewith.

All other allegations of the Complaint are dismissed.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Johnson, Reid, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Hipp and Horan were not present

DATED: Trenton, New Jersey
February 19, 1986
ISSUED: February 20, 1986

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 cease and desist from interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act.

WE WILL cease and desist from 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, by unilaterally changing the level of health insurance benefits.

WE WILL immediately reimburse PBA unit members for any losses incurred from November 29, 1983 until such time as a new health plan benefit level is adopted due to the differences in the level of benefits provided under the Equitable plan as compared to the BCBS plan.

WE WILL immediately engage in good faith negotiations with the PBA over the level of benefits for a new health insurance plan.

WE WILL within twenty (20) days arrange for an independent insurance evaluation comprehensively comparing the Equitable and BCBS plans, and pay all costs for that evaluation.

BOROUGH OF CLOSTER

(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 Street, Trenton, NJ 08608, (609) 292-9830.

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

In the Matter of

BOROUGH OF CLOSTER,

Respondent,

-and-

Docket No. CO-84-257-131

PBA LOCAL 233 (CLOSTER UNIT),

Charging Party.

SYNOPSIS

A Hearing Examiner of the Public Employment Relations Commission recommends that the Commission find that the Borough of Closter violated §5.4(a)(1) and (5) of the New Jersey Employer-Employee Relations Act when it unilaterally changed health insurance plans which contained a different level of benefits than had existed. The Hearing Examiner recommended that the employees be reimbursed for any losses incurred as a result of the change, and that the Borough negotiate in good faith with the PBA for a new health insurance plan.

The Hearing Examiner further recommended that the §5.4(a)(2) allegation be dismissed. There was no showing that the Borough interfered with the existence or administration of the PBA.

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.

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

In the Matter of
BOROUGH OF CLOSTER,

Respondent,

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Docket No. CO-84-257-131

PBA LOCAL 233 (CLOSTER UNIT),

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Appearances:

For the Respondent
DeCotiis, Johnson & Pinto, Esqs.
(James A. Farber, of Counsel)

For the Charging Party
Loccke & Correia, Esqs.
(Richard D. Loccke, of Counsel)

HEARING EXAMINER'S
RECOMMENDED REPORT AND DECISION

On March 12, 1984 PBA Local 233 (Closter Unit) ("PBA")^{1/}
filed an Unfair Practice Charge with the Public Employment Relations

^{1/} PBA Local 233 is a multi-town PBA local, and the Closter Unit is one of seven separate units in the Local. There is only one group of officers elected for the Local from the seven participating units. However, there is a separate negotiating/leadership committee for each unit, including Closter, which handles local negotiations, grievance processing, and contract administration. (Transcript "T" pp. 87-88). ("PBA")

Commission ("Commission") alleging that the Borough of Closter ("Borough") had engaged in unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act"). The PBA alleged that the Borough violated N.J.S.A. 34:13A-5.4(a)(1), (2), and (5) by unilaterally changing the level of health insurance benefits when it changed insurance carriers, and by causing a lapse in coverage over a two-day period.^{2/}

The Director of Unfair Practices issued a Complaint and Notice of Hearing on May 10, 1985. The Borough filed an Answer denying the Charge on May 20, 1985. A hearing was held in this matter on June 26, 1985 in Newark, New Jersey at which the parties had the opportunity to examine and cross-examine witnesses, present relevant evidence and argue orally. The transcript was not received until August 8, 1985, and both parties filed post-hearing briefs the last of which was received on September 19, 1985.

An Unfair Practice Charge having been filed with the Commission, a question concerning alleged violations of the Act exists, and after hearing and consideration of the post-hearing

^{2/} 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; (2) Dominating or interfering with the formation, existence or administration of any employee organization; (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."

briefs, this matter is appropriately before the Commission by its designated Hearing Examiner for determination.

Upon the entire record I make the following:

Findings of Fact

1. The Borough of Closter is a public employer within the meaning of the Act.

2. PBA Local 233 is a public employee representative within the meaning of the Act and represents police officers employed by the Borough.

3. The Borough and the PBA were parties to a collective negotiations agreement (Exhibit J-1) effective from January 1, 1983 through December 31, 1984. Article 25 of J-1 provided for medical and dental coverage as follows:

Medical and Dental Coverage

The Employer has and will continue to provide and pay for a policy of medical insurance for Employees covered by this Agreement and their families.

All increase in premiums during the term of this Agreement shall be borne entirely by the Employer.

Effective January 1, 1982, the Employer shall provide a full family program of dental insurance for each Employee. The Employer shall pay the entire cost of said dental insurance program. The specific program which is to be implemented and maintained shall be as set forth in Appendix "D" to this Agreement.^{3/}

3/ Appendix D of J-1 provides as follows:

Dental benefits shall include Orthodontic Treatment, and Periodontal Treatment.

The medical and dental insurance plan that was in effect on January 1, 1983 when J-1 became effective was a plan provided by The Equitable Life Assurance Company as set forth in Exhibit J-2. Equitable considered J-2 as part of its "Equi-Group-PLUS Trust" insurance package. The first page of J-2 provided that the plan became effective by the end of 1981.

Borough Administrator, Charles Windeknecht, testified that during 1983 the Borough was paying approximately \$5600 per month to cover all of its employees and retirees under the Equitable plan (Transcript "T" p. 159). On August 17, 1983 Equitable wrote to Windeknecht (Exhibit R-1) advising him that it was terminating the Equi-Group-PLUS Trust and creating new plans. Equitable indicated in R-1 that it would continue to offer J-2 to the Borough from September 30, 1983 through January 30, 1984 at increased rates. Windeknecht testified that Equitable was raising the premiums by approximately 30% (T pp. 160-161).

After receiving R-1 Windeknecht mailed letters to approximately fifteen insurance carriers soliciting quotes for medical/dental coverage for Borough employees (T p. 161). Only two carriers responded, one of which was Blue Cross/Blue Shield

3/ Footnote Continued From Previous Page

The said benefits shall be equal to all benefits discussed with insurance representatives on September 8, 1981, while negotiating a new Major Medical Insurance with the Borough's Insurance Carrier.

("BCBS"). The Borough evidently entered into an agreement with BCBS to provide its employees with medical coverage because in mid-November 1983, Windeknecht notified department heads, including the Police Chief, that a meeting was scheduled with officials of BCBS (T p. 163). Windeknecht admitted, however, that he did not notify the PBA of the meeting (T pp. 163, 177-178). The Police Chief did notify police officer and PBA member, Thomas Tully, of the meeting just fifteen minutes before it was scheduled (T p. 16). Although Tully was not an official of the PBA, he nevertheless attended the meeting (T pp. 15-16). Just prior to the start of the meeting, however, Tully overheard Windeknecht telling representatives of BCBS that they had to convince the employees at the meeting that the BCBS plan provided the same coverage as the Equitable plan (T p. 19).

4. On November 29, 1983 the Borough's medical/dental coverage with Equitable was terminated (T pp. 22, 173; Exhibit CP-5), and the Borough unilaterally obtained medical/dental coverage from BCBS effective December 1, 1983 (T p. 173). Ironically, on December 1, 1983 Equitable notified Windeknecht (Exhibit R-2) that it would extend the Borough's insurance under the Equi-Group PLUS program through March 1984 at an increased rate. But the Borough had already obtained insurance with BCBS. The Borough had the option of obtaining coverage from BCBS for the month of November for \$6071, but it chose not to exercise that option because it had only two claims (which were submitted by Tully) during the two-day period

(November 29 and 30) which the BCBS plan would cover (T pp. 173-177). Since the two claims were significantly less than the monthly premium price the Borough chose to pay those claims itself (Exhibits CP-1, CP-2, CP-5).

5. The record shows that Equitable did divest itself of the Equi-Group-PLUS Trust and that after March of 1984 it no longer offered the same insurance package as contained in J-2 (T p. 168; Exhibit R-2). Windeknecht testified that the Borough saved approximately \$30,000 by taking the BCBS plan as opposed to continuing the Equitable plan (T p. 167).^{4/}

6. Windeknecht admitted that medical/dental insurance plans were negotiable, that the Borough had negotiated such plans in the past, and that insurance carriers have been changed in the past through negotiations and/or interest arbitration (T pp. 168-171). Nevertheless, Windeknecht admitted that the Borough did not notify, communicate, or negotiate with the PBA in its decision to change the insurance carrier or the medical/dental plan (T pp. 163, 177-178). PBA representative and negotiations committee member, David Hollander, testified that in late 1983 and throughout 1984 he requested negotiations through Windeknecht over the medical/dental

^{4/} I can only assume that Windeknecht meant that the Borough projected a savings of approximately \$30,000 by taking the BCBS plan as opposed to continuing with the Equitable Equi-Group PLUS Trust plan at the rates quoted in R-1 or R-2 assuming that the Equi-Group PLUS Trust plan were to continue in operation.

insurance plan, but the Borough never negotiated (T pp. 89-90). The parties did negotiate a collective agreement for 1985-86, but no agreement was reached regarding the medical/dental plan in that new collective agreement (T pp. 90-92, 95, 180).^{5/}

7. There was no dispute that there are several differences in the level of benefits between the Equitable and BCBS health plans. Three different comparisons of the two plans show numerous differences in benefits. Exhibit C-1C which was attached to the instant Charge was a comparison obtained from Equitable and compiled by Tully; Exhibit CP-3 was a comparison prepared by BCBS; and, Exhibit CP-4 was a comparison prepared by an independent insurance consultant, Richard Lofberg. The comparisons show, for example, that there is a difference in the extent of X-ray and laboratory coverage, a difference in the coverage of dependent children, and differences in psychiatric coverage, obstetrical coverage, orthodontic coverage, skilled nursing facility coverage, and the lifetime maximum amount. Testimony from both Tully and Lofberg also demonstrated numerous other differences in the two

^{5/} The 1985-86 agreement was not offered into evidence. Although that agreement is not relevant as to whether the Borough violated the Act in this case, it may be relevant regarding any remedy that is issued herein. There has been no showing whether the parties agreed to continue the same medical/dental language as contained in Art. 25 of J-1, whether they agreed to a reopener in 1983-86 pending the results herein, or whether they have simply reached impasse on health coverage for 1985-86. Based upon the evidence in T pp. 90-92, 95, 180, I can only assume that the parties reached impasse on that issue for 1985-86.

health plans. Tully testified that there was a difference between the plans in supplemental accident coverage, certain dental coverages, and others (T pp. 29, 46, 74, 75, 78). Lofberg's statement sending CP-4 to Windeknecht, and his testimony show that the two plans were very similar (T p. 134), but he admitted that the BCBS plan may be better for some employees but not others, and it depended upon each employee's needs (T pp. 150-151, 153). He discussed several differences between the plans (T pp. 125-132, 149-153), and admitted that at least one specific denial by BCBS in Exhibit CP-6 would have been paid by Equitable (T pp. 147-149).

Analysis

There can be no doubt in fact or in law that the Borough violated the Act in changing the level of medical/dental benefits by unilaterally selecting the BCBS health plan. It is well settled law in this State that health insurance benefits are mandatorily negotiable, In re Piscataway Twp. Bd.Ed., P.E.R.C. No. 91, 1 NJPER 49 (1975); In re County of Middlesex, P.E.R.C. No. 79-80, 5 NJPER 194 (¶10111 1979), aff'd in relevant part App. Div. Docket No. A-3564-78, 6 NJPER 338 (¶11169 1980). It is equally well settled that although the selection of an insurance carrier for police employees is only a permissive subject for negotiations, the level or type of benefit coverage is mandatorily negotiable, and any unilateral change of those benefits is a violation of the Act. In re City of New Brunswick, P.E.R.C. No. 85-61, 11 NJPER 24 (¶16012 1984); In re Borough of Metuchen, P.E.R.C. No. 84-91, 10 NJPER 127

(¶15065 1984); In re City of Newark, P.E.R.C. No. 82-5, 7 NJPER 439 (¶12195 1981).^{6/}

The Borough asserted several defenses for its actions. In its post-hearing brief, the Borough argued first, that it did not unilaterally "change" insurance carriers, rather it was Equitable who caused the change in carriers. That argument demonstrates a misunderstanding of what had to be negotiated. The violation in this case was not really the change in carriers, it was the unilateral decision to adopt the BCBS plan which had a different level of benefits than Equitable. Certainly, once it became clear that Equitable would not continue to offer the health plan in J-2, the Borough had a responsibility to obtain other insurance. However, the Borough had a responsibility to obtain the other insurance through the negotiations process with the PBA. Upon receipt of R-1 the Borough should have notified the PBA of the eventual cancellation of the Equi-Group PLUS Trust and engaged in negotiations to obtain another plan and/or carrier. The PBA may have preferred exploring the substitute plans offered by Equitable. At the very least, once the Borough had obtained an offer from BCBS, it was required to negotiate with the PBA before final acceptance by the Borough over whether the plan should be accepted by the parties as their health plan.

^{6/} The selection of an insurance carrier for non-police and fire employees is non-negotiable.

Second, the Borough argued that it acted in good faith by accepting the BCBS plan because it originally believed that the benefits under the BCBS plan would not be diminished as compared to the benefits in J-2. It also argued that the substantial increase in the Equitable premium justified its acceptance of the BCBS plan. Those arguments once again demonstrate a misunderstanding of the Borough's obligations under subsection 5.4(a)(5) of the Act. In addition, its argument that a change was justified because of the increase in premiums is a flagrant violation of Art. 25 of J-1.

It makes no difference whether the Borough "believed" that the BCBS plan would not lower the benefit levels. The fact is that the two plans were different, and some benefit levels were changed. Since the Borough acted unilaterally, it violated the Act. If BCBS did not live up to its representations to the Borough, then the Borough may have a cause of action against BCBS. But since the PBA was not a party to the selection process, the Borough must bear the responsibility to make whole any employees who lost benefits or coverage due to its unilateral actions.

The Borough's argument that increased cost justified its unilateral selection of a new health plan lacks merit. In Art. 25 of J-1 the Borough clearly agreed to bear the increase in premiums:

All increase in premiums during the term of this Agreement shall be borne entirely by the Employer.

The Borough's argument over the premium cost is an attempt to subvert the clear meaning of J-1. The Borough agreed to bear the increased costs, it cannot now choose to overlook the agreement. In

fact, since Equitable had agreed to continue J-2 until March 1984 (as evidenced by R-2), the Borough was obligated by J-1 to pay the increased premiums to Equitable through March 1984. The parties would still have had to negotiate a new health plan, but they would not have had to implement a new plan until April 1, 1984.

The cases relied upon by the Borough are distinguished from the instant case.^{7/} Although the court in Porcelli v. Titus, supra, did excuse the Newark Board of Education from implementing certain promotional procedures it had agreed to in collective negotiations, the court did so to curtail and avoid significant civil disorders that existed in the City of Newark regarding racial discrimination. Money was not the issue, public health and safety were the issues. In the instant case there is no overriding public safety issue justifying excusing the Borough from complying with Art. 25 of J-1. The Borough simply seeks a way to avoid paying more money which it had agreed to pay. But it cannot take such unlawful unilateral action to reduce its expenses. Compare, Piscataway Twp. Bd.Ed v. Piscataway Twp. Principals Assoc., 164 N.J. Super. 98 (App. Div. 1978).

^{7/} The Borough relied upon: Porcelli v. Titus, 108 N.J. Super. 301 (App. Div. 1969); A-Lee Leasing Corp. v. Kingshead Corp., 150 N.J. Super. 384 (App. Div. 1977); and City of New Brunswick v. Borough of Milltown, 191 N.J. Super. 467 (Ch. Div. 1983), to support its argument regarding the increased cost of health insurance as justifying the instant unilateral change.

The court's decision in New Brunswick v. Milltown, supra, is also distinguishable from the instant case. There the court, in 1983, released New Brunswick from a contract it had made with Milltown in 1914. The court found that there had been numerous significant changes in 69 years to justify a release from the contract. No such significant changes exist herein. The Borough is merely trying to avoid paying additional premiums, but it cannot avoid higher premiums because it had agreed on January 1, 1983 (the effective date of J-1) to pay all premium increases. The parties obviously contemplated an increase in premiums, and the premiums were increased after September 30, 1983, only ten months after the Borough agreed to pay such increases. Under the close timing involved herein, New Brunswick v. Milltown is no defense to the Borough's actions.

Finally, the Borough's reliance on A-Lee Leasing, supra, is misplaced. That case dealt with the impossibility of performance, but that is not the issue here. The Borough, in its brief, argued that it (the Borough) did not violate the Act because BCBS could not match the Equitable plan item for item. That argument misses the point. The Borough was required to negotiate with the PBA over a new health plan before it (the Borough) contracted with any other carrier. The fact that no other carrier would identically match J-2 makes no difference here. The violation was that the Borough unilaterally contracted with BCBS without first negotiating with the PBA.

The Borough raised two other defenses. It raised as a hypothetical argument that the PBA "may argue" that the Borough provide the same level of benefits as in J-2 as a self-insurer. It also argued that it cannot find a carrier to provide a benefit for benefit similarity to J-2. Neither of those arguments are a defense herein. The PBA has not insisted that the Borough become a self insurer, it only wants to negotiate over benefit levels. Finally, the Borough's inability to find a carrier to match J-2 is not the issue. The Borough was obligated to negotiate over any new plan and it failed to do so.

The relevant cases here are In re New Brunswick, supra, and In re Metuchen, supra. In both those cases the employer unilaterally adopted new health plans which changed the level of benefits. The employers were required to make employees whole for any losses they sustained as a result of the change, and they were required to negotiate over any changes in the level of benefits. The result must be the same in this case.

Accordingly, based upon the entire record and the above analysis I find that the Borough violated §5.4(a)(1) and (5) of the Act. There was no showing, however, that the Borough interfered with the existence or administration of the PBA, thus the 5.4(a)(2) allegation should be dismissed. The Borough did interfere with the administration of the health plan, but that is not the same as interfering with the administration of the PBA.

Remedy

In its post-hearing brief the PBA suggested a five-part remedy. It recommended that:

1. The Borough reimburse all members adversely affected by the change in the level of benefits.
2. The Borough pay for an independent insurance evaluation and comparison between the two insurance plans.
3. The Borough be ordered to negotiate over changes in the level of benefits.
4. During the parties' negotiations (or possible interest arbitration) over changes in the level of benefits, the level of benefits set forth in the Equitable plan shall remain in effect, and the Borough be ordered to continue reimbursing employees for any losses incurred as a result of the unilateral change in the level of benefits.
5. The Borough be ordered to post a notice setting forth its obligations.

The Commission in In re New Brunswick, supra, completed that case with the same remedies as set forth by the PBA here in items 1, 3 and 5 of its recommended remedy. Although the Commission in New Brunswick did not specifically order the equivalent of item 4 of the PBA's recommended remedy, that was, in fact, part of the remedy in that case and must be part of the remedy here. There would be no meaning to the order to negotiate unless the parties returned to the status quo, which in this case was the level of benefits as provided by Equitable, while negotiating over a new

level of benefits. Obviously the Equitable plan has expired, but the Borough must continue to reimburse employees for any losses they incur as a result of the unilateral change in the level of benefits.^{8/}

Finally, I find the PBA's recommendation to require the Borough to pay for an independent comparison of the Equitable versus BCBS plan to be a reasonable way to determine whether employees have suffered any losses as a result of the unilateral change in benefits. This issue was not raised in New Brunswick, but it is a viable issue here. I note that the three existing comparisons are neither consistent nor comprehensive enough to adequately accomplish the goal of determining all of the areas where employees may have suffered losses. A comprehensive comparison is needed to enable employees to determine whether, and in which areas, they are entitled to reimbursement(s).

Based upon the entire record I make the following:

^{8/} I recognize that there may be fact patterns where the cancellation of insurance by the carrier may be a defense to certain employer actions or inactions. In the instant case, however, Equitable's cancellation of insurance is not a defense to the remedy to reimburse employees as if the Equitable level of benefits were still in effect pending final negotiations (or interest arbitration) by the parties. Had the Borough negotiated over changes in the level of benefits when it should have, it could have avoided this remedy. Now the employees must be made whole for any losses they have incurred pending final negotiations on a new plan.

Conclusions of Law

1. The Borough violated N.J.S.A. 34:13A-5.4(a)(1) and (5) by unilaterally changing the level of benefits in the employees' health plan.

2. The Borough did not violate N.J.S.A. 34:13A-5.4(a)(2).

Recommendations

I recommend that the Commission ORDER:

A. That the Borough cease and desist from:

Interfering with, restraining or coercing its employees in the exercise of the rights guaranteed to them by the Act, and from failing to negotiate in good faith with the PBA before changing the health insurance level of benefits.

B. That the Borough take the following affirmative action:

1. Immediately reimburse PBA unit members for any losses incurred from November 29, 1983 to the present due to the differences in the level of benefits provided under the Equitable plan as compared to the BCBS plan.^{9/}

2. Immediately engage in good faith negotiations with the PBA over the level of benefits for a new health insurance plan.

3. Within twenty (20) days of any final decision herein arrange for an independent insurance evaluation

^{9/} This recommendation encompasses the PBA's recommended remedy number 4. The Borough must continue to insure employees as if the level of benefits in J-2 were still in effect. Therefore, the Borough must continue to reimburse employees for any losses incurred as a result of a change in benefit levels pending the reaching of a new health plan.

comprehensively comparing the Equitable and BCBS plans, and pay all costs for that evaluation.

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 on forms to be provided by the Commission shall be posted immediately upon receipt thereof and, after being signed by the Borough's authorized representative, shall be 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 Borough has taken to comply herewith.

C. That the 5.4(a)(2) allegation be dismissed.


Arnold H. Zudick
Hearing Examiner

Dated: December 6, 1985
Trenton, New Jersey

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 employees in the exercise of the rights guaranteed to them by the Act, and specifically will not fail to negotiate in good faith with the PBA before changing the health insurance level of benefits.

WE WILL immediately reimburse PBA unit members retro-active to November 29, 1983 for any losses incurred due to the change in the level of health insurance benefits provided under the former health insurance program with Equitable as compared with the present health insurance program with Blue Cross/Blue Shield. WE WILL continue reimbursing employees for any such losses until a new health plan becomes effective.

WE WILL arrange and pay for an independent insurance evaluation comparing the Equitable plan with the Blue Cross/Blue Shield plan in order to enable the employees to determine whether they are entitled to any reimbursements.

WE WILL forthwith engage in good faith negotiations with the PBA over the benefit levels for a new health insurance plan.

BOROUGH OF CLOSTER
(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 James Mastriani, Chairman, Public Employment Relations Commission, 495 W. State Street, Trenton, New Jersey 08618 Telephone: (609) 292-9830