

I.R. NO. 93-4

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HAMILTON TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-93-56

HAMILTON TOWNSHIP ADMINISTRATORS'
AND SUPERVISORS' ASSOCIATION,

Charging Party.

SYNOPSIS

A Commission Designee denies an interim relief request to restrain the Board from terminating prescription drug and dental insurance coverages to retirees. The Commission Designee found that the Board is a member of the State Health Benefits Plan and, accordingly, its health insurance plan is governed by the State Health Benefits Act and the regulations and guidelines promulgated thereunder. Because State Health Benefits Commission regulations and guidelines prohibit providing paid prescription drug and dental insurance benefits to retirees, the Commission Designee concluded that negotiations on this issue appear to be preempted. Accordingly, the Commission Designee declined to restrain the Board from terminating the disputed insurance coverages for retirees.

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Appearances:

For the Respondent
Sills, Cummis, Zuckerman, Radin, Tischman,
Epstein & Gross, attorneys
(Mark J. Blunda, of counsel)

For the Charging Party
Lake & Schwartz, attorneys
(Robert M. Schwartz, of counsel)

INTERLOCUTORY DECISION

On August 10, 1992, the Hamilton Township Administrators' and Supervisors' Association filed an unfair practice charge with the Public Employment Relations Commission alleging that the Hamilton Township Board of Education was violating the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. More specifically, the Charging Party alleges that the Respondent violated subsections 5.4(a)(1), (3) and (5) of the Act^{1/} when it

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with,

informed the Charging Party that it would terminate certain health insurance coverages for retired employees as of September 1, 1992. On August 11, 1992, the Charging Party Association filed an application for interim relief with the Commission, asking that the Respondent Board show cause why an order should not be issued restraining the Board from cancelling the specified health insurance coverages on September 1, 1992.

On August 13, 1992, I executed an Order to Show Cause with a return date of August 25, 1992. On that date, I conducted a hearing on the Order to Show Cause, having been delegated such authority to act upon requests for interim relief on behalf of the full Commission. N.J.A.C. 19:14-9.2. Both parties submitted affidavits, documents and briefs and argued orally at the hearing.

The Association asserts that it and the Board are parties to a collective negotiations agreement covering administrators and supervisors employed by the Board. The Association notes that contract Article IV provides that retired administrators and supervisors receive paid coverage in the Board's prescription drug

1/ Footnote Continued From Previous Page

restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage 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."

insurance and dental insurance plans. The Association states that on July 28, 1992, the Superintendent informed the Association that the Board would terminate prescription drug insurance coverage and dental insurance coverage for retired employees, effective September 1, 1992. The Superintendent's letter indicated that the Board's action was based upon a determination by the State Health Benefits Commission.

The Association argues that prescription drug insurance and dental insurance are mandatorily negotiable terms and conditions of employment and that the termination of these coverages would constitute a repudiation of the contract and a unilateral change in mandatorily negotiable terms and conditions of employment and therefore, an unfair labor practice. N.J.S.A. 13A-5.4(a)(1) and (5). Thus, the Association argues that it has a substantial likelihood of success on the merits of its plenary case before the Commission. Further, the Association contends that inasmuch as the Board has provided the prescription and dental insurance benefits to retired administrators for several years, instead of unilaterally cancelling the coverage, it should have first filed a petition for scope of negotiations determination concerning the prescription insurance and dental insurance coverages.

The Association argues that it and its members are being irreparably harmed by the Board's action. The Association notes that when it negotiated the contractual health insurance benefits in Article IV, it gave up other benefits in exchange for the Article IV

benefit. Further, the Association asserts that its members made their retirement decisions -- those who retired as early as 1986 and as late as 1992 -- partly in reliance on having the prescription drug insurance and dental insurance benefits continued during retirement. Finally, the Association asserts that some retired administrators may not be able to secure alternate prescription and dental insurance coverages after the Board terminates their Article IV coverage.

The Board asserts that it participates in the New Jersey State Health Benefits Plan and, therefore, is subject to and bound by the New Jersey State Health Benefits Act, N.J.S.A. 52:14-17.25 et seq. and the regulations and guidelines promulgated thereunder. On May 21, 1992, the New Jersey State Health Benefits Commission informed the Board that certain State Health Benefits Commission guidelines prohibit the district from providing paid-for dental and prescription drug insurance benefits to retirees. The Board states that it then contacted each of the negotiations units having contracts containing retiree prescription and dental insurance benefits and informed the units' representatives that such benefits would be terminated as of September 1, 1992.

Respondent argues that the Charging Party has failed to establish a likelihood of success on the merits. Respondent contends that the New Jersey State Health Benefits Act, regulations and guidelines prohibit dental insurance and prescription drug insurance coverages from extending into retirement. The Board

asserts that the guidelines involved in this case speak in the imperative and consequently preempt negotiations concerning retiree dental and prescription drug insurance coverages. The Board notes that the administrative regulations adopted pursuant to the State Health Benefits Act provide that when member governments of the State Health Benefits Plan purchase prescription drug and dental insurance benefits, such coverages must adhere to the guidelines approved by the State Health Benefits Commission.

In support of its argument against interim relief, the Board cites Town of Kearny, P.E.R.C. No. 83-12, 8 NJPER 441 (¶13208 1982), where the Town unilaterally terminated health insurance benefits to certain retired employees. There, the Commission dismissed the unfair practice charge because the State Health Benefits Commission had interpreted the applicable statutes as prohibiting the Town from paying for health insurance benefits for retirees with less than 25 years of service.

The record here reveals the following facts.

The Hamilton Township Administrators' and Supervisors' Association is the statutory majority representative of a unit of principals, vice principals and supervisors employed by the Board. The Board and the Association are parties to a collective negotiations agreement covering the period from July 1991 through June 1993. The parties' agreement contains a provision which states:

Effective July 1, 1988, upon retirement, the Administrators/Supervisors of record and those

employed thereafter will receive a lifetime...paid coverage in the Board's Prescription and Dental Plans in accordance with the qualifications as follows:

The Administrator/Supervisor must have served 25 years of creditable service in TPAF or PERS with at least 10 years in Hamilton Township.

The parties' 1988-1991 agreement contained the same provision. The Board participates in the New Jersey State Health Benefits Plan.

On or before May 21, 1992, the State Health Benefits Commission notified the Hamilton Township Board of Education that State Health Benefits Commission Guidelines prohibited the continuance of paid-for prescription drug insurance and dental insurance after employees' retirement. (Donovan affidavit; attachment 4 to Donovan affidavit.) On approximately July 28, 1992, Hamilton Superintendent Donovan notified Administrators' Association President Bender by letter that pursuant to State Health Benefits Commission guidelines, the Board would terminate the prescription drug insurance and dental insurance coverages for retirees as of September 1, 1992, (Attachment 5 to Donovan affidavit). The Superintendent's letter also advised the Association of the availability of COBRA continuation of insurance at group rates and further notified the Association that if it desired to discuss the impact of these changes, it should contact the Superintendent. The Association did not contact the Superintendent to discuss the changes; instead, it filed the instant unfair practice charge.

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/}

N.J.A.C. 17:9-1.7 states:

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 New Jersey 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....

^{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).

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.

(Donovan affidavit; Donovan affidavit attachments 3 and 4.)

The State Health Benefits Commission issued a similar guideline for Dental Expense Contracts. (Article XIII, Termination; Donovan affidavit, attachment 2).

In State v. State Supervisory Employees' Ass'n., 78 N.J. 54 (1978), the Court stated that "the adoption of any specific statute or regulation setting or controlling a particular term and condition of employment will preempt" negotiations on that subject. However, to be preemptive, the statute must speak in the imperative and leave nothing to the employer's discretion. 78 N.J. at 80-82. Further, in Council of New Jersey State College Locals v. State Board of Higher Education, 91 N.J. 18 (1982), the Court stated that to preempt negotiations, a regulation "must fix a term and condition of employment...expressly specifically and comprehensively." 91 N.J. at 30.

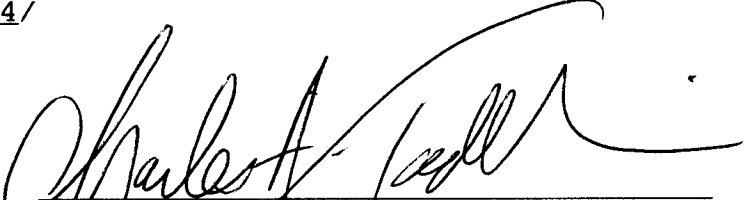
The Board argues that the above referred statutes and the State Health Benefits Commission regulations and guidelines preempt negotiations on this issue, inasmuch as they prohibit employers from providing paid-for prescription drug and dental benefits to retirees.

In Town of Kearny, supra, the parties negotiated a contractual provision which provided health insurance benefits to retirees. The Town was a participant in the State Health Benefits Program. After the Town was informed by the State Health Benefits Commission that the State Health Benefits Act prohibited paid-for health insurance to retirees with less than 25 years of credited service in the retirement system, the Town terminated health insurance benefits for such retirees. Based upon the State Health Benefits Commission's interpretation of the State Health Benefits Act prohibiting health insurance coverage to certain retirees, this Commission concluded that the applicable language of the State Health Benefits Act (N.J.S.A. 52:14-17.38) preempted negotiations on this issue and dismissed the charge. Accord, Morris County Prosecutor, P.E.R.C. No. 91-120, 17 NJPER 346 (¶22155 1991); Little Egg Harbor Tp., P.E.R.C. No. 90-123, 16 NJPER 398 (¶21165 1990); Cf., City of Camden, P.E.R.C. No. 83-128, 9 NJPER 220 (¶14104 1983). Based upon the foregoing, I am unable to conclude that the Charging Party has a substantial likelihood of success on the merits of its case in a decision by the full Commission.

Further, given the potential availability of COBRA to continue insurance coverage to affected employees at group rates, it

is not certain that the individuals affected by the Board's termination of these coverages would be irreparably harmed.^{3/}

Accordingly, Charging Party's request for an interim order restraining the Respondent from terminating certain insurance coverages to retirees is denied.^{4/}



Charles A. Tadduni
Commission Designee

DATED: September 1, 1992
Trenton, New Jersey

^{3/} Finally, even if Charging Party were able to satisfy the substantial likelihood of success and irreparable harm prongs of the test for interim relief, the relative hardship to the parties in granting or denying the relief must be considered. If granting the Association's requested relief could result in the Board being required to leave the State Health Benefits Plan, it raises the question of whether preserving these contractual health benefits for a small group of individuals would impose a greater hardship by requiring the Board to secure a complete alternative health insurance package for all of its employees. Compare, Town of Kearny, P.E.R.C. No. 83-12, 8 NJPER 441 (¶13208 1982), footnote 4.

^{4/} The record in this matter indicates that the State Health Benefits Commission is considering revised guidelines for certain health insurance coverages. However, it was not clear from the record what the revised guidelines addressed or when they might issue. Also, State Health Benefits Commission regulations indicate the possibility of "exceptions" from the guidelines, as may be approved by the Commission. N.J.A.C. 17:9-1.7. However, the record does not indicate the nature of such exceptions, the circumstances under which they can be sought or whether they were sought or discussed herein. These areas should be addressed during the pre-complaint investigation of this matter.