D.U.P. NO. 95-2

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

In the Matter of

HAZLET TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-94-311

HAZLET TEACHERS' ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses a charge alleging that a public employer unilaterally altered health insurance coverage, violating subsection 5.4(a)(5) and (1) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

The Director determined that the alleged change, an addition of a preferred provider program, was imposed by the insurer, a third party, and not the pulic employer.

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Appearances:

For the Respondent,
Kenney, Gross, McDonough & Stevens, attorneys
(Michael J. Gross, of counsel)

For the Charging Party,
Zazzali, Zazzali, Fagella & Nowak, attorneys
(Richard A. Friedman, of counsel)

REFUSAL TO ISSUE COMPLAINT

On April 19, 1994, Hazlet Teachers' Association filed an unfair practice charge against the Hazlet Township Board of Education. The charge alleges that on or about February 1, 1994, the Board "unilaterally altered the health insurance coverage, by offering different benefits and changing the manner of administration...", specifically, by adding a preferred provider program, without first negotiating with the Association. The action

allegedly violated 5.4(a)(5) and (1)[1/] of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

On May 24, 1994, the Board filed a response, denying it engaged in any unfair practice. It asserts that on or about January 5, 1994, CIGNA HealthCare, the Board's insurer, advised that it was implementing a Preferred Provider Program on February 1, 1994. The letter stated that the program would give employees access to a "network of carefully selected physicians, hospitals and other medical professionals and services." The letter also stated that, "there will be no changes made to the current benefit plans... However, if a participating provider or facility is accessed, the discounts which CIGNA has negotiated will be passed on to you" [i.e., the Board]. Accordingly, the Board asserts that CIGNA, not it, was responsible for "the change."

The Board also advises that the Association was provided with notice of the change before February 1, 1994 and that on January 31, 1994 the parties met to discuss a letter which was to advise employees of the change. The Board also enclosed various documents pertaining to the program, including the January 5, 1994 letter from CIGNA to the Board, a February 1, 1994 letter from the

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1/ These subsections prohibit public employers, their representatives or agents from: "(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, and (1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act."

Board to "all staff members", which in part advised of potentially reduced copayments if a "network" provider is selected, and a copy of the 1991-1994 collective agreement.

Article 19A, "Health - Care Insurance Protection", of the 1991-1994 collective agreement, states that the Board shall "pay the full premium for each employee" and that the program "shall be detailed in master policies and contracts agreed upon by the Board and Association.... The carrier shall be Connecticut General...."

The level of health benefits provided by an employer is a term and condition of employment. If an employer unilaterally changes the level of benefits to employees in a negotiations unit, it will have violated the Act unless the collective agreement permits the change. City of Newark, P.E.R.C. No. 82-5, 7 NJPER 439 (¶12195 1981); Tp. of Pennsauken, P.E.R.C. No. 88-53; 14 NJPER 61 (¶19020 1987). Furthermore, an employer's unilateral change of its insurance plan, which results even in some favorable changes to employees, is a likely violation of the Act. See Hunterdon Cty. Bd. of Chosen Freeholders, P.E.R.C. No. 87-35, 12 NJPER 768 (¶17293 1986), P.E.R.C. No. 87-150, 12 NJPER 506 (¶18188 1987), aff'd App. Div. Dkt. No. A-5558-86T8 (3/21/88), aff'd 116 N.J. 322 (1989); also see NLRB v. Keystone Consol. Ind., 653 F2d 304, 107 LRRM 3143 (7th Cir. 1981).

In Borough of Berlin, P.E.R.C. No. 91-122, 17 NJPER 359 (¶22167 1991), the Commission dismissed a complaint, based on an unfair practice charge, alleging that the employer violated

5.4(a)(5) and (1) of the Act when it unilaterally changed the level of health benefits. In Berlin, the insurance company increased co-pay levels and the parties stipulated that the insurer and physicians set the amount of co-pay. The Commission agreed that the public employer did not unilaterally change a term and condition of employment. (See also Jersey City Med. Ctr., P.E.R.C. No. 81-89, 7 NJPER 97 (¶12039 1981), where the employer did not violate the Act by imposing a parking fee to employees who previously parked free, when the parking lot was owned by another entity, the Economic Development Authority).

The unusual circumstance of this case is that the provider, a third party, and not the employer, imposed the arguably increased level of benefits. (The Association does not dispute that unit employees suffered no dimunition in the level of benefits -- it is the "potential" of a reduced co-payment if a PPO provider is selected which suggests a benefit.) Notwithstanding that the Association has asserted no facts indicating that an employee has benefited by a reduction in co-payment, I believe that no facts show that the Board was in a position to control, administer, or more specifically, reject the unsolicited preferred provider program. Cf. Borough of Clayton, P.E.R.C. No. 88-99, 14 NJPER 325 (¶19119 1988).

Accordingly, I dismiss the charge.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES

Edmund G. Gerber, Director

DATED: August 23, 1994
Trenton, New Jersey