

I.R. NO. 90-13

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF ATLANTIC CITY,

Respondent,

-and-

Docket No. CO-90-18

PBA LOCAL #24,

Charging Party.

SYNOPSIS

A Commission Designee denies a request of PBA Local #24 to restrain the City of Atlantic City from implementing a unilaterally imposed new prescription drug plan. The Designee found that although there was a unilateral change, the harm was not irreparable and the charge which had previously been deferred to arbitration will not be processed pending the outcome of the arbitration.

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Appearances:

For the Respondent
Murray, Murray & Corrigan, Esqs.
(Karen Murray, of counsel)

For the Charging Party
Szaferman, Lakind, Blumstein, Watter & Blader
(Sidney H. Lehmann, of counsel)

INTERLOCUTORY DECISION

On October 18, 1989, the Director of Unfair Practices deferred to arbitration an Unfair Practice Charge filed by PBA Local 24 ("PBA") against the City of Atlantic City ("City"). The Charge alleged that the City unilaterally changed its prescription drug plan insurance carrier in violation of N.J.S.A. 34:13A-5(a)(1), (2) and (5).^{1/}

^{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

As stated in the Director's letter of October 18, 1989:

The Commission has adopted a policy of deferring the resolution of unfair practice charges to the parties' contractual grievance/binding arbitration mechanism where it is reasonably probable that the dispute underlying the alleged unfair practice will be resolved in the parties' contractual forum. See Brookdale Community College, P.E.R.C. 83-131, 9 NJPER 266 (¶14122 1983); N.J. Department of Human Services, P.E.R.C. 84-148, 10 NJPER 419 (¶15191 1984).

The Respondent has indicated its willingness to arbitrate the dispute notwithstanding any contractual time limitations (including the expiration of the contract) and will continue in its willingness to arbitrate for a reasonable period of time. Accordingly, it appears to me that this charge presents an appropriate case for deferral to arbitration. Therefore, it is my intention to defer further proceedings in this matter.

On October 27, 1989, the PBA filed an Application for Interim Relief and an Order to Show Cause requesting that the matter not be deferred and that the City be restrained from implementing the change in insurance providers. The Order was signed and made returnable for November 9, 1989. A hearing was conducted on that

1/ Footnote Continued From Previous Page

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."

date, at which time the parties submitted evidence and argued orally.^{2/}

In its brief, the PBA argued that the matter should not be deferred to arbitration and that interim relief should be granted.

PBA Local 24 is the exclusive majority representative of all uniform police, detectives and other special units employed by Atlantic City. Since July 1986, the contracts between the parties have provided for a prescription drug plan. The plan was administered by a company known as Paid Prescription, Inc.

According to the PBA, under the Paid Prescription, Inc. plan, employees were each issued an identification card. The plan required neither a pre-payment nor a co-pay. The card could be used outside New Jersey and by a spouse or dependent up to the age of 19, or 23 if a full-time student.

On or about June 16, 1989, the City distributed a memorandum to all department heads including Chief of Police Joseph Pasquale, advising them that effective June 30, for the PBA unit, the Paid Prescription cards would no longer be valid and that employees would receive new Legend Prescription cards. The memorandum noted that under the Legend plan, prescriptions could only be filled at participating Legend pharmacies.

^{2/} The parties filed supplemental documents which were received by November 17, 1989. After the hearing, the PBA requested that I refrain from issuing this decision. Subsequently, the PBA requested that I proceed to issue a decision.

At no time prior to the City's decision to terminate the Paid Prescription plan and enter into the Legend Prescription plan did the City seek to negotiate with the PBA about a change in carriers. On June 27, 1989, a representative of the PBA did meet with a representative of the City to have the plan explained.

The PBA submitted affidavits in support of its claim. The affidavits stated that the Legend cards could not be used out of state while the old ones could. Under the new plan, when getting a prescription out-of-state, a member must pay for the prescription and then seek reimbursement from Legend. The Legend Plan also requires presentation of a City I.D. with the Legend card when obtaining prescriptions. Therefore, family members cannot use the card. The PBA claimed that while the old card was accepted in almost all pharmacies, the new card is accepted at only a limited number of pharmacies. An affiant cited an instance of a participating Legend pharmacy not accepting the Legend card.

The City does not dispute the PBA's claim that the new plan was unilaterally implemented. It submitted a copy of the Legend Plan as evidence. The City argues that the Legend Plan covers the same drugs and insures the same dependents as the prior plan. The City asserted that both plans require pre-payment for prescription's from non-participating pharmacies whether in or out of State, and that both plans allow prescriptions to be obtained by an employee, spouse or child. Under the new Legend plan, the spouse or child only has to provide some evidence of their relationship to the

insured employee. The City disputes the PBA's claim about the number of participating pharmacies.

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.^{3/}

Although there is no question that there has been a unilateral change, there are fact disputes concerning the degree of change which can only be resolved after a full hearing. Moreover, the measure of damages is quantifiable; the cost of prescriptions which were provided free under the old plan and the interest and costs when one has to pre-pay and then seek reimbursement are, by their nature, not irreparable.

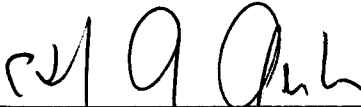
In Stafford Tp. Bd. of Ed., P.E.R.C. No. 90-17, 15 NJPER 527 (¶20217 1989), the Commission reiterated that "deferral to arbitration is the preferred mechanism when a charge essentially

^{3/} 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).

alleges a violation of subsection 5.4(a)(5) interrelated with a breach of contract". Unfair practice charges involving a claim of a change in the level of benefits are to be treated in the same manner as other cases involving a violation of subsection 5.4(a)(5).

Although the PBA attempts to distinguish this matter from Stafford, there is nothing in the record here to indicate why this matter should be handled differently from Stafford. This matter, like Stafford, involves the changing of an insurance carrier without prior negotiations.^{4/}

Accordingly, the application for interim relief is denied and the decision to defer this matter to arbitration stands.



Edmund G. Gerber
Commission Designee

Dated: January 25, 1990
Trenton, New Jersey

^{4/} It is noted that the Commission in Stafford cited Tp. of Pennsauken, P.E.R.C. No. 88-53, 14 NJPER 61 (¶19020 1987) in support of its position. Pennsauken was decided December 1987. Accordingly, any inference that the respondent here relied on some inside knowledge at the conference is without merit. I can make no finding of any meaningful impropriety in the manner this case was handled in conference.