P.E.R.C. NO. 91-122

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF BERLIN,

Respondent,

-and-

Docket No. CO-H-90-89

TEAMSTERS UNION LOCAL NO. 115,
a/w INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN, AND HELPERS OF
AMERICA, AFL-CIO,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint against the Borough of Berlin. The Complaint, based on an unfair practice charge filed by Teamsters Union Local No. 115, alleged that the Borough violated the New Jersey Employer-Employee Relations Act by unilaterally changing the level of health benefits for unit employees. The Commission concludes that the Teamsters failed to prove that the Borough violated the Act when co-pay levels increased.

P.E.R.C. NO. 91-122

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF BERLIN,

Respondent,

-and- Docket No. CO-H-90-89

TEAMSTERS UNION LOCAL NO. 115,
a/w INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN, AND HELPERS OF
AMERICA, AFL-CIO,

Charging Party.

Appearances:

For the Respondent, Laskin & Botcheos, attorneys
(George J. Botcheos, of counsel)

For the Charging Party, Norton H. Brainard, attorney

DECISION AND ORDER

On October 3, 1989, Teamsters Union Local No. 115, a/w International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, AFL-CIO filed an unfair practice charge against the Borough of Berlin. The Teamsters allege 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) and (5),[1/] by unilaterally changing the level of health benefits for unit employees.

1/ These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the

Footnote Continued on Next Page

On December 28, 1989, a Complaint and Notice of Hearing issued. On January 16, 1990, the Borough filed an Answer denying that it changed employees' health benefits. The Borough asserted that it honored its contractual obligation to "continue the current Pru-Care medical plan" [and bear] the entire cost of this program, including premium increases." The Borough added that, "the [insurance] Company unilaterally increased the co-pay provisions" of the health plan.

The parties stipulated a factual record. On May 23, 1991, Hearing Examiner Richard C. Gwin recommended dismissing the Complaint. H.E. No. 91-40, 17 NJPER ___ (¶_____ 1991). He found that under the unusual circumstances of this case, where co-pay levels are set by the insurance company and participating doctors, the employer did not violate the Act when co-pay levels increased.

The Hearing Examiner served his decision on the parties and informed them that exceptions were due June 6, 1991. Neither party filed exceptions or requested an extension of time.

I have reviewed the stipulated facts and incorporate them here. Acting pursuant to authority granted to me by the full Commission in the absence of exceptions, I find that, under these

---

Footnote Continued From Previous Page

> 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."

circumstances, the Teamsters failed to prove that the Borough violated the Act when co-pay levels increased. Accordingly, I dismiss the Complaint.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

DATED: June 26, 1991
Trenton, New Jersey

H.E. NO. 91-40

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

In the Matter of

BOROUGH OF BERLIN

Respondent,

-and- Docket No. CO-H-90-89

TEAMSTERS UNION LOCAL NO. 115,

Charging Party.

SYNOPSIS

The Hearing Examiner recommends dismissal of a Complaint which alleged that the Borough unilaterally changed the level of its employees' health benefits. Based on a stipulated record, the Hearing Examiner concludes that the Borough honored its contractual obligation to provide the existing health insurance plan. The Hearing Examiner concludes that the Union failed to show that the Borough was responsible for covering copay increases, which, under the plan agreed to by the parties, was determined by the insurance company and its doctors. The Borough had no control over copay increases and could not have maintained the previous copay amount by paying a higher premium.

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.

H.E. NO. 91-40

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

In the Matter of

BOROUGH OF BERLIN

Respondent,

-and- Docket No. CO-H-90-89

TEAMSTERS UNION LOCAL NO. 115,

Charging Party.

Appearances:

For the Respondent, Laskin & Botcheos, Attorneys
(George J. Botcheos, of counsel)

For the Charging Party, Norton H. Brainard, Attorney

HEARING EXAMINER'S REPORT
AND RECOMMENDED DECISION

On October 3, 1989, Teamsters Union Local No. 115, IBTCWH of America, AFL-CIO ("Union") filed an unfair practice charge alleging that the Borough of Berlin ("Borough") violated subsections 5.4(a)(1) and (5)[1/] of the New Jersey Employer-Employee Relations Act, 34:13A-1 et seq., when in July 1989, it unilaterally changed the level of health benefits received by employees represented by the Union.

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. (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."

On December 28, 1989 the Director of Unfair Practices issued a Complaint and Notice of Hearing.

On January 16, 1990, the Borough filed an Answer denying that it changed employees' health benefits. The Borough asserted that it honored its contractual obligation to "continue the current Pru-Care medical plan" [and bear] the entire cost of this program, including premium increases." The Borough added that, "the [insurance] Company unilaterally increased the co-pay provisions" of the health plan.

Through the spring and summer of 1990, the parties unsuccessfully tried to negotiate a settlement of the unfair practice charge. They filed a stipulated record and letter briefs by September 4, 1990. The stipulated record follows:

1. [T]he Parties herein negotiated a collective bargaining agreement effective June 1, 1989 through December 31, 1991. [The contract was submitted as part of the record. ("J-1")]

2. Article XXIII, Welfare, Pension and Legal Benefits [of J-1], states in part in paragraph 1 that "The Employer agrees to continue the current Pru-Care medical insurance plan. The entire cost of this program, including premium increases, shall be borne by the Employer."

3. That the Employer has not changed the Pru-Care medical insurance plan in effect at the time the agreement was adopted.

4. That the amount of co-pay to be paid is negotiated between Prudential and the participating doctors or medical providers.

5. That the changes in the amount of co-pay are not subject to negotiation between the Employer and Prudential.

6. That the changes in the amount of co-pay cannot be altered by a change in rates or premiums.

7. That at the time the collective bargaining agreement was negotiated, the employees had the option to remain in the Pru-Care plan provided by the Employer or to participate in the Union's health and welfare Plan.

8. That the entire cost of the Pru-Care program with the exception of the co-pay provision is paid for by the Employer.

9. Since the collective bargaining agreement was executed, the Employer has absorbed a fifty-five percent (55%) increase in its Pru-Care premiums.

10. In stipulating this record the parties recognize that the facts as stipulated constitute the complete record submitted to the Hearing Examiner. The Charging Party is placed on notice that to the extent that the stipulated facts are insufficient to sustain the Charging Party's burden of proof by a preponderance of the evidence, the Complaint may be dismissed. The Respondent is advised that it too must rely on the sufficiency of the stipulated record to sustain any affirmative defenses it has asserted or to rebut or disprove the existence of a prima facie case established by the Charging Party.

11. The Stipulated Record constitutes the entire record which the Parties herein have agreed and submit to the Public Employment Relations Commission for consideration.

ANALYSIS

N.J.S.A. 34:13A-5.3 provides that "Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established." N.J.S.A. 34:13A-5.4(a)(5) makes a refusal to enter into such negotiations an unfair practice. See Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Assn., 78 N.J. 25, 48 (1978).

The level of health benefits provided by an employer is a term and condition of employment. If an employer unilaterally changes the level of its employees' health benefits, it commits an unfair practice 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).

This case presents the unusual circumstance of an unanticipated change in benefit levels imposed by a third party: an insurance company and its doctors. No contract provision states which party must bear the cost of co-pay increases, nor is there evidence of a related past practice. Stipulation 8 explains that the Borough pays for all but the co-pay portion of the plan.

The Borough had no control over co-pay cost. It could not maintain a co-pay level by paying a higher premium. The parties agreed to a health benefit plan under which the insurance company and its participating doctors determined co-pay levels. The Borough's contractual obligation was to provide this plan and pay for any premium increases. The parties have stipulated that the Borough has fulfilled these obligations. Their contract does not state that the Borough must maintain existing co-pay levels. To the contrary, the parties stipulate that the Borough had no control over those levels.

Under the unusual circumstances of this stipulated record, I conclude that the Union has failed to prove that the Borough unilaterally changed a term and condition of employment. [See

Jersey City Medical Center, P.E.R.C. No. 81-89, 7 NJPER 97 (¶12039 1981). [Medical Center did not violate the act by imposing a $1.00 per diem parking fee on a lot where nurses formerly parked free, because Center had no legal control over parking lot owned by Economic Development Authority. See also UMDNJ, P.E.R.C. No. 88-120, 14 NJPER 367 (¶19142 1988)].

I recommend that the Complaint be dismissed.

Richard C. Gwin
Hearing Examiner

Dated: May 23, 1991
Trenton, New Jersey