I.R. NO. 2002-5

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CHATHAM BOARD OF EDUCATION,

Public Employer,

-and- Docket No. CO-2002-61

ASSOCIATION OF CHATHAM TEACHERS,

Charging Party.

SYNOPSIS

Since November 1998, teachers were provided with a prescription durg card which allowed them to pay only the applicable copay for prescription medications. The drug card benefit was provided to the Board at no increase in premium. Chatham Board of Education changed the insurance carrier which provided unit employees with their prescription drug benefit. The new insurance carrier would only provide a prescription card at a substantial additional premium. Consequently, the new prescription drug program required teachers to pay the full cost of the prescription at the time of purchase, rather than only the copay. The Commission Designee found that the elimination of the drug card appeared to be a unilateral change in health benefits. Following Borough of Closter, P.E.R.C. No. 2001-75, 27 NJPER 289 (¶32104 2001), the Designee granted interim relief.

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Appearances:

For the Respondent
Algeier, Tosti & Woodruff, attorneys
(Robert M. Tosti, of counsel)

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

INTERLOCUTORY DECISION

On August 31, 2001, the Association of Chatham Teachers (Association) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the Chatham Board of Education (Board) committed unfair practices within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act), by violating N.J.S.A. 34:13A-5.4a(1) and (5).[1/] The Association alleges that

1/ These provisions 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

Footnote Continued on Next Page

effective July 1, 2001, the Board unilaterally decreased the level of health benefits provided to unit employees. Prior to the asserted change, employees presented a prescription card at designated pharmacies allowing them to pay only a copay for the prescription. The Association contends that the new prescription drug reimbursement program requires the employee to pay 100% of the cost of the prescription and then apply to the health insurance carrier for reimbursement of the cost of the prescription, minus any copay.

On October 12, 2001, the Association filed an application for interim relief. On October 15, 2001, an order to show cause was executed and a return date was initially set for October 31, and, subsequently, rescheduled to November 7, 2001. The parties submitted briefs, affidavits and exhibits in accordance with Commission rules and argued orally on the return date. The following facts appear.

The Board and the Association are parties to a collective negotiations agreement covering the period 2000-2003. Article E of the agreement contains the health insurance provision. The agreement specifies that medical coverage will be provided by the

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1/ Footnote Continued From Previous Page

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."

Morris, Passaic, Bergen Health Insurance Fund (HIF) and further provides that "Benefits [are] to be equivalent to those specified within these plans should the Board seek coverage with another provider." Effective July 1, 2001, the Board changed insurance carriers from HIF to Horizon Blue Cross Blue Shield of New Jersey (Horizon).

The unit is comprised of professional employees. The average teacher salary is approximately $61,000. The top of the guide in each salary category ranges from $65,935 to $88,499. Approximately 32% of unit employees are receiving salaries at the top of the respective salary guide categories.

In November 1998, a health benefits service provider, GS-POPS, made a proposal to HIF to administer the prescription drug plan for the Board and four other school districts which had not at that time provided prescription drug cards to covered employees. With the prescription card, employees were only required to pay the copay when purchasing a prescription from a GS-POPS network pharmacy. This program went into effect on January 1, 1999. There was no additional cost to the Board for providing the prescription drug card. The Board and the Association did not negotiate concerning the prescription card benefit. Prior to January 1, 1999, unit employees paid for prescriptions in full and, thereafter, submitted the bill to the insurance carrier for reimbursement, minus the copay amount.

The current Horizon prescription drug program duplicates the HIF program prior to the GS-POPS program. Accordingly, under the Horizon program, unit employees must pay the full cost of prescription medications and seek reimbursement, minus the copay, thereafter from Horizon. The Horizon program does not provide employees with a prescription drug card as did the GS-POPS program. Horizon advised the Board that in order to provide a prescription drug program which included a prescription card which would allow employees to pay only the copay, rather than the full cost of the prescription, the Board would be required to pay an additional fee of $320,000 per year.

In an effort to minimize the impact on unit employees, the Board, through Horizon, has arranged for a mail service prescription drug program which enables employees to receive up to a 90-day supply of the medication. Under this program, an employee is not required to pay for any portion of the prescription medication purchased through the mail, but is billed for the copayment upon the employee's receipt of the medication. Additionally, the Board has offered to establish a hardship fund if the cost of a prescription would create a true financial hardship for any employee.

The Association contends that the prescription drug card benefit became part of the prescription drug program in January 1999, and was in effect during the time that the parties negotiated their successor collective agreement covering the period July 1, 2000 through June 30, 2003. The Association claims that the elimination of the prescription drug card which allowed employees to pay only the copay for the cost of prescriptions is a significant unilateral reduction of the level of health benefits for unit employees.

The Board contends that the prescription drug card benefit was never a program effectuated through bilateral negotiations between the parties. The Board asserts that the level of the prescription drug benefit remains unchanged and only the degree of convenience provided to the employee differs. The Board argues that the prescription card benefit offered through GS-POPS was provided to unit employees as a gratuity, not a negotiated benefit to become an established term and condition of employment. It argues that the drug program now in effect through Horizon is reflective of the pre GS-POPS level of benefits originally negotiated by the parties.

To obtain interim relief, the moving party must demonstrate both that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations and that irreparable harm will occur if the requested relief is not granted. Further, the public interest must not be injured by an interim relief order and the relative hardship to the parties in granting or denying relief must be considered. Crowe v. De Gioia, 90 N.J. 126, 132-134 (1982); Whitmyer Bros., Inc. v. Doyle, 58 N.J. 25, 35 (1971); State of New Jersey

(Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Little Egg Harbor Tp., P.E.R.C. No. 94, 1 NJPER 37 (1975).

Unilateral changes in health benefits violate the obligation to negotiate in good faith. City of S. Amboy, P.E.R.C. No. 85-16, 10 NJPER 511 (¶15234 1984); Bor. of Metuchen, P.E.R.C. No. 84-91, 10 NJPER 127 (¶15065 1984). It appears that the Board may have unilaterally changed the level of health benefits when it discontinued the use of the prescription drug card. For several years, employees were able to use their prescription drug cards when purchasing prescribed medications and pay only the copay. This program was in effect at the time the parties engaged in negotiations for and executed a successor collective agreement. The agreement provides for the maintenance of an equivalent benefit level if the Board changes the insurance carrier. Thus, it appears that the Board unilaterally changed prescription drug coverage by requiring employees to now pay for prescriptions up-front and subsequently seek reimbursement from the insurance carrier. Accordingly, I find that the Association has demonstrated that it has a substantial likelihood of success on the merits.

Recently, in Borough of Closter, P.E.R.C. No. 2001-75, 27 NJPER 289 (¶32104 2001), the Commission addressed a claim involving facts similar to those present in this matter. In Closter, the Commission addressed the issue of irreparable harm by stating the following:

> Employees will likely be harmed if the prescription program is not restored during this litigation. Prescription drugs are often very costly and having to pay these costs up front may well induce employees to forego or delay purchasing medically necessary drugs. The substantial costs associated with prescription drugs has changed the type of harm an employee may suffer from mere monetary damages to losing access to necessary medications. This is so where a prescription plan is terminated, see Hillside Tp., I.R. No. 99-22, 25 NJPER 315 (¶30135 1999), and also, we believe, in a case like this where employees are required to pay 100 percent, rather than 20 percent, of the cost of a prescription up front. [27 NJPER at 290.]

The Commission, in Closter, went on to address the "relative hardship" standard requisite for a grant of interim relief. The Commission stated:

> ...in deciding whether to grant interim relief, the relative hardship to the parties must be considered, and a determination made that the public interest will not be injured by an interim relief order. Crowe. The employer has not identified any specific harm to it from restoring the status quo. The hardship that employees may suffer far out weighs any hardship on the employer resulting from an order requiring it to ensure that employees are not bearing the full cost of prescriptions, even for a limited time. Nor would granting interim relief harm the public interest. [Closter at 290.]

Thus, after reading Closter, it is evident that the Commission is concerned with ensuring that employees retain the means to readily avail themselves of prescribed medications in the manner established by the status quo.

Likewise, in this matter, I find that the change in the prescription drug program which would now require employees to pay 100% of the up-front cost of prescriptions, might serve as an inducement to employees to forego or delay purchasing medically necessary medications. Such circumstance irreparably harms employees. Closter.

I find that the relative hardship to the parties favors the Association. In Closter, the Borough had not identified any specific harm to it from restoring the status quo. The Commission ordered Closter to create an interim program that guarantees that funds would be made available to pay the employees' up-front costs of prescription drugs. However, here the Board argues that the additional cost of paying for employee prescriptions would be financially burdensome. However, the Board has indicated during oral argument, that it is willing to pay the up-front cost of prescriptions for very expensive medications or employees showing hardship. Thus, I conclude that the Board has some ability and willingness to pay up-front for employee prescription costs. Accordingly, mindful of the Board's concern with the financial burden and its impact on taxpayers as the result of having to fund unit employees' prescriptions, it is appropriate to institute an order designed to mitigate the financial burden on the Board and still avoid a significant disincentive to employees to obtain needed prescription medications. Both parties recognize that prescription drugs can be expensive and funding the cost can be somewhat burdensome.

In considering the public interest, I find that it is furthered by adhering to the tenants expressed in the Act which require the parties to engage in collective negotiations prior to changing terms and conditions of employment. Adhering to the collective negotiations process, results in labor stability and promotes the public interest. Consequently, the order set forth below furthers the public interest.

ORDER

Interim relief is granted. The Board will create a fund available to immediately pay the up-front costs of prescription medications, minus the applicable copayment, to unit employees who chose not to use the prescription by mail program and instead submit written certification to the Board indicating that they are unable to charge a credit card for the up-front cost of the prescription, or if they charged the cost of the prescription, that they have not yet received reimbursement from the insurance carrier by the time the payment for the charged prescription is due, provided the employee has made timely application to the insurance carrier for reimbursement. Employees receiving money from the Board to cover the up-front cost of prescriptions will immediately reimburse the Board in full upon receipt of payment or claim rejection from the insurance carrier. This interim order will remain in effect pending a final Commission order in this matter.

Stuart Reichman
Commission Designee

DATED: November 20, 2001
Trenton, New Jersey