

I.R. NO. 96-30

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF CHERRY HILL,

Respondent,

-and-

Docket No. CO-96-385

FOP LODGE NO. 28,

Charging Party.

SYNOPSIS

A Commission Designee restrains the Township of Cherry Hill from requiring employees represented by FOP Lodge 28 from paying a contribution to their health insurance plan. The City did not change the insurance carrier but rather, after the most recent agreement between the parties expired, announced it would no longer pay the full insurance premium and required employees to pay a monthly contribution of \$219. The Township also announced that it was going to change the day that pay checks would be issued from Thursday to Friday. It was found that the City's imposition of a monthly \$219 contribution to employees existing health insurance plan was a unilateral change in the terms and conditions of employment. Similarly, it was found that the change in the day in which pay checks are distributed is a unilateral change in terms and conditions of employment. These actions were temporarily restrained pending a Commission decision.

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Appearances:

For the Respondent
Susan Jacobucci, attorney

For the Charging Party
Markowitz & Richman, attorneys
(Stephen C. Richman, of Counsel)

INTERLOCUTORY DECISION

On June 5, 1996, the Fraternal Order of Police, Cherry Hill Lodge 28 filed an unfair practice charge with the Public Employment Relations Commission alleging that the Township of Cherry Hill committed an unfair practice within the meaning of N.J.S.A. 34:13A-5.4(a) (1) and (5)^{1/} when on or about May 28, 1996, the

^{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."

Township issued a notice to all employees that effective July 1, 1996, it was terminating coverage for employees with Medallion and Blue Select (PPO) health insurance or alternatively it may provide such coverage in the future but at an additional cost. The Township subsequently advised employees that it will cost approximately \$190 per month to retain the Medallion coverage after July 1, 1996.

It was also alleged that on or about May 23, 1996, the Township advised that beginning May 31, 1996, the Township would distribute paychecks on Friday afternoon at 3:00 p.m. Prior to this announcement, it was the practice to distribute paychecks on Thursday afternoon at 3:00 p.m.

The unfair practice charge was accompanied by an order to show cause which was executed and made returnable for June 19, 1996. A hearing was conducted on that date. The parties introduced evidence, submitted affidavits and briefs.

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. 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).

The most recent collective negotiations agreement between the parties expired on December 31, 1994. The parties have been involved in collective negotiations for a successor agreement and interest arbitration proceedings are scheduled for July 15 & 16, 1996.

Article 21 of the expired agreement provides:

A. All hospital and medical benefits or equivalent currently provided to employees and their families by the Township shall be retained and continued in full force and effect during the term of this Agreement, except that the Township shall have the right during the term of this Agreement to change the medical, prescription, or dental insurance plans so long as it is equivalent in benefits to the existing plan.

The Township does not dispute the factual allegations of Lodge 28. The Township argues employees were free to select several HMO and PPO plans at no cost to employees, and were not compelled to remain in the Medallion Plan. It does not dispute, however, that the Medallion Plan was the only indemnity plan offered and up until this time, the plan was provided to employees at no cost.

The City argues that this matter is one which should best be resolved through the City's negotiated grievance procedure, citing Stafford Tp. Bd. of Ed., P.E.R.C. No. 90-17, 15 NJPER 527 (¶20217 1989). In Stafford, the employer changed health insurance carriers and the employee representative alleged that the new policy

did not maintain the same level of benefits. The Commission held that disputes arising out of the interpretation of collective negotiation agreements are best resolved through the contract's arbitration procedure.

The FOP argues that the dispute here is not over the level of benefits granted by the contract. Rather, the Medallion plan is still available and is the only indemnity plan offered, but the town is forcing employees who wish to stay in the plan to pay a monthly contribution of \$219. Therefore, employer's conduct constitutes a contract repudiation.

The FOP cites Op. of Bridgewater, P.E.R.C. No. 95-28, 20 NJPER 399 (¶25202 1994), aff'd App. Div. Dkt. No. A-1132-95T (11/3/95), in support of its position. In Bridgewater, the employer required employees to begin paying contributions towards their health benefits plan without negotiating this change in the terms and conditions of employment. The Commission found the employer repudiated the collective negotiations agreement in violation of subsection 5.4(a)(5) of the Act.

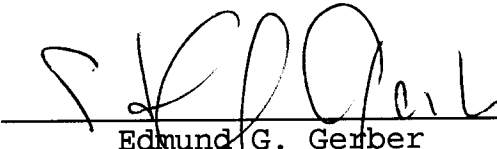
This matter is not a dispute over the level of benefits provided in a new insurance plan. Rather, the employer has repudiated Article 21 of the agreement by demanding that employees contribute to the payment of insurance without negotiating this change with Lodge 28. Such a unilateral change during the course of collective negotiations and prior to interest arbitration places an impermissible chill on negotiations and constitutes irreparable

harm. Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n, 78 N.J. 25, 48 (1978); City of Vineland, I.R. No. 81-1, 7 NJPER 234 (¶12142 1981), interim order enforced and leave to appeal denied App. Div. Dkt. No. A-1037-80T3 (7/15/81).

The Board also does not dispute it changed the day on which salary checks are distributed from Thursday afternoon to Friday. In City of Burlington and CWA, P.E.R.C. No. 89-132, 15 NJPER 415 (¶20170 1989), aff'd NJPER Supp.2d 244 (¶203 App. Div. 1990), the Commission found changing the day for the issuing of paychecks from Thursday to Friday constituted an unlawful unilateral alteration of a term and condition of employment. Here this change was made during the course of negotiations for a successor agreement. It places an impermissible chill on the negotiations process and constitutes irreparable harm.

ORDER

Accordingly, it is hereby Ordered that the Township of Cherry Hill restore the distribution of salary checks to unit members to Thursday afternoon. It is further ordered that the Township be restrained from requiring unit members enrolled in the Medallion Insurance Plan to pay a monthly contribution. The Township is further ordered to continue to provide such insurance plan at no cost to enrolled unit members. These restraints shall apply pending the implementation of a successor labor relations agreement and/or a final decision of the full Commission.


Edmund G. Gerber
Commission Designee

DATED: June 21, 1996
Trenton, New Jersey