

I.R. NO. 96-26

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWN OF KEARNY,

Respondent,

-and-

Docket No. CO-96-322

KEARNY COUNCIL #11,

Charging Party.

SYNOPSIS

A Commission Designee declines to restrain the Town of Kearny from changing the carrier of health insurance for employees represented by Kearny Council #11. It was alleged that the collective negotiations agreement between Council #11 and the Town of Kearny provides that the Town had the right to change insurance carriers, as long as the Town notified the union six months in advance of the effective date of the change of insurance carriers. It was held that the negotiability of this notice requirement depends upon facts that were not present at the hearing and could only be resolved after a full plenary hearing.

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Appearances:

For the Respondent,
Shaljian, Cammarata & O'Connor, attorneys
(Thomas J. Cammarata, of counsel)

For the Charging Party,
Zazzali, Zazzali, Fagella & Nowak, attorneys
(Paul L. Kleinbaum, of counsel)

INTERLOCUTORY DECISION

On April 24, 1996, Kearny Council #11 filed an unfair practice charge against the Town of Kearny alleging that it and the Town are parties to a collective negotiations agreement which expired on December 31, 1994. The parties are in the midst of negotiations for a successor agreement. That agreement provides for health insurance coverage and gives the Town the right to change insurance carriers "provided benefits and conditions of the insurance contract equal or exceed those in the prevailing insurance contract." The contract also requires the Town to notify the union six months in advance of the effective date of the change, to supply the union with complete information about the insurance plan five

months before the change and to meet and discuss the proposed insurance plan three months before the effective date.

It is alleged that the Town never notified Council 11 that it intended to change carriers and that Council 11 did find out about this change in carriers by accident. It also alleged that the Town did not provide Council #11 with sufficient information about the new insurance plan.

It was alleged that this conduct violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4(a)(1), (3) and (5).^{1/}

The unfair practice charge was accompanied by an order to show cause which was executed and made returnable for April 29, 1996.

The Town does not dispute it has contracts to change health carriers to New York Life Healthcare (NYL CARE). It does allege that it provided Council 11 with information concerning the level of benefits it was able to get from NYL CARE including a specimen contract and a letter from the carrier acknowledging that it was

^{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. (3) Discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage 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."

obligated to provide the same level of benefits as employees enjoyed under the New Jersey State Health Benefits Plan. It further argues that it had no obligation to comply with the notice requirement of the contract since it interfered with its managerial prerogative to select a new health insurance carrier. By way of affidavit of Robert Czech, the Town maintains that it signed the contract for health insurance on or about April 1, 1996 and notified Council 11 by April 9, 1996.

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 level of health insurance benefits is a mandatory subject of negotiations, although the identity of the health insurance carrier is not mandatorily negotiable. Accordingly, an employer is obligated to maintain the existing level of benefits if it changes carriers. An employer is also required to provide sufficient information necessary for the employee organization to

determine whether the level of benefits is maintained. Borough of Ringwood, I.R. No. 96-12, 22 NJPER 83 (¶27039 1996; City of Atlantic City, P.E.R.C. No. 89-56, 15 NJPER 11 (¶20003 1988).

Nevertheless, it is Commission policy to defer cases concerning disputes over the level of benefits to binding arbitration. Township of Pennsauken, P.E.R.C. No. 88-53, 14 NJPER 61 (¶19020 1987).

Whether or not the notice requirement of the contract unlawfully interferes with the Town's managerial prerogative to change health carriers depends upon facts not now before me and can only be resolved after a full plenary hearing.

There is a factual dispute here as to whether the employer has provided sufficient information to the Association. However, to ensure the Association received all possible information, I direct that the Town contact NYL CARE to seek the insurance plan documents for the new insurance policy and provide copies of these documents to the Association.

However, the Charging Party has failed to demonstrate that any harm it may be subject to by the change of carriers is irreparable. The Application to restrain the Town of Kearny from changing carriers is denied.

BY ORDER OF THE COMMISSION



Edmund G. Gerber
Commission Designee

DATED: May 10, 1996
Trenton, New Jersey