

I.R. NO. 2004-5

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWN OF SECAUCUS,

Respondent,

-and-

Docket No. CO-2003-325

SECAUCUS PBA LOCAL 84,

Charging Party.

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TOWN OF SECAUCUS,

Respondent,

-and-

Docket No. CO-2003-326

SECAUCUS PBA LOCAL 84 SUPERIOR  
OFFICERS ASSOCIATION,

Charging Party.

**SYNOPSIS**

A Commission Designee denies applications for interim relief on charges alleging that a unilateral change in health insurance carrier from Horizon Blue Cross/Blue Shield to Oxford Health Insurance reduced the levels of benefits to units of police employees. The charges also allege that the public employer refused to provide certain information about the new carrier.

The Designee finds that the Charging Parties have demonstrated neither a substantial likelihood of success on the merits nor irreparable harm of relief was not granted. The collective agreements permitted the employer "to change insurance carriers so long as substantially similar benefits are provided."

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Appearances:

For the Respondent,  
Martin R. Pachman, PC  
(Martin R. Pachman, of counsel)

For the Charging Parties,  
Mets, Schiro & Kleinle, LLP  
(James M. Mets, of counsel)

**INTERLOCUTORY DECISION**

On June 24, 2003, PBA Local 84 and PBA Local 84 Superior Officers Association filed unfair practice charges against the Town of Secaucus. Both charges allege that on May 28, 2003, the Town issued a memorandum to all employees confirming that on July 1, it was changing health insurance carriers from Horizon Blue

Cross/Blue Shield to Oxford Health Insurance. The Town had notified employees of the possibility of a change on April 22, 2003. The PBA and SOA allege that they have made "many attempts" to negotiate with the Town about the decision to change carriers and were "rebuffed each time." The Town's unilateral change in carriers has allegedly reduced the level of benefits to employees of both units, violating 5.4a(5) and (1)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. The PBA and SOA also allege that the Town has failed to provide four written comparisons of the Horizon and Oxford Plans, as was represented by the Town in a May 27, 2003 public Town Council meeting. The Town's omission also allegedly violates 5.4a(5) and (1) of the Act.<sup>2/</sup>

Applications for Interim Relief seeking restraint of the change in carrier accompanied the charges. On June 27, 2003, the parties argued orally the merits of the Temporary Restraint Order Application, in part based upon previously-filed affidavits and

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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."

2/ The Charging Parties have voluntarily withdrawn this portion of the Interim Relief Application, pursuant to the Town's agreement to provide requested documents.

briefs. I denied the Applications and signed an Order to Show Cause, setting a return date of July 11, 2003. Upon the parties' agreement, the return date was rescheduled to July 29. On July 23 and 25, the Charging Parties and Respondent, respectively, filed supplemental affidavits and briefs, pursuant to Commission rules. They argued in person on the return date. The following facts appear.

PBA Local 84 represents Town "police officers" [i.e., patrol officers] and PBA Local 84 (SOA) represents all superior officers above the rank of patrolman, excluding the chief. Each local has a collective negotiations agreement with the Town, both extending from January 1, 2000 through December 31, 2002. The parties have been engaged in collective negotiations for successor agreements since about December 2002.

Both agreements have "Health and Welfare Insurance" articles providing "UCR/Blue Cross/Blue Shield and Rider J Program" coverage for employees hired before January 1, 1996. Employees hired after January 1, 1996 receive the "Full Family P.O.S. Medical Coverage Plan." Their coverage escalates gradually over time and ". . . [b]eginning with the fourth year of employment, at the employee's option, the employee (and dependents) shall be enrolled in [UCR/Blue Cross/Blue Shield and Rider J Program]" (Article 19.09; Article 18H). The articles also contain this provision: "The Town reserves the right to change insurance

carriers so long as substantially similar benefits are provided" (Article 19.03; Article 18C).

On April 22, 2003, Town Administrator Anthony Iacono issued memorandum to all employees advising that "the Town of Secaucus is considering replacing our major medical carrier, Horizon Blue Cross/Blue Shield with Oxford Health Insurance." Iacono wrote that the health benefits program under consideration "will result in health coverage which is greater than our existing policy."

On April 30, PBA Local 84 President Francis Cotter mailed its sponsored analysis to the Horizon and Oxford Plans to Iacono. The analysis, prepared by C & B Consulting Group, concluded that the Oxford Plan ". . . may be a viable alternative to the members of the present Horizon Plan as well as a significant savings to the Town. Based upon the information we were provided with, it does appear that the Oxford Plan does resemble the Horizon Plan." The analysis also acknowledged that certain "network" information had not been provided to the Group, presenting a series of specified, unanswered questions. Finally, the analysis stated that the Oxford Plan "enhanced" aspects of the Horizon Plan. On May 2, an Oxford representative filed written replies to questions provided by the Town.

On May 28, 2003, Town Administrator Iacono issued a memorandum to all employees, confirming that the Town had selected "Oxford Health Plan as our insurance provider effective

July 1, 2003." The memorandum also advised of upcoming scheduled enrollment times. On June 9, 2003, both locals filed a grievance contesting the level of benefits provided by the Oxford Health Plan. The Oxford Plan was implemented on July 1, 2003.

The Charging Parties claim that the Horizon Plan has 22,000 statewide in-network providers, compared to Oxford's 15,000. They also claim that Horizon has about 6,000 nationwide in-network hospitals, compared to Oxford's 3,100.

The Town, by affidavit, certifies that in conjunction with affiliate carrier Multi-Plan, Oxford has more than 26,000 provider locations in New Jersey. Oxford also certifies that out-of-network reimbursement is equal to or better than the Horizon Blue Cross/Blue Shield Plan. Like Horizon, Oxford reimburses employees at a "90% reimbursement level."

In the PBA's most recent filings, President Cotter has certified that particular prescriptions and vitamins which were "covered" by the Horizon Plan are not covered by Oxford, and that co-pay amounts for certain prescriptions cost more under the Oxford Plan than under the Horizon Plan. The University of Pennsylvania Hospital accepted the Horizon Plan but does not accept the Oxford Plan. A named provider (i.e., surgeon) "accepted" Horizon but did not accept Oxford. An unrelated medical test which would have been performed the same day it was prescribed under the Horizon Plan required a day or two days'

waiting period under the Oxford Plan. The certification lists about 28 doctors (almost all in New Jersey) engaged by about 12 unit employees who were providers in the Horizon network and not in the Oxford network.

Michael Munoz, Regional Vice-President of Oxford Health Plans, filed a certification on behalf of the Town. "Oxford provides benefit levels in all regards at least equal to that provided by Horizon, so long as the particular benefit claim can be verified as having been provided by Horizon as part of its traditional program." The certification was reiterated for each claimed inequity of prescription coverage under the Oxford Plan, compared to the Horizon Plan. Oxford is currently negotiating with the University of Pennsylvania Hospital, and is expected to become a participating hospital by "year-end [2003]." Under the Oxford Plan, employees may use any provider hospital. Oxford attempts to negotiate direct billing with a non-participating provider pursuant to a member's request. Munoz has certified that Oxford is "committed . . . to recruit any provider that does not participate in our networks of that provider meets credential standards." The named provider (surgeon) who "accepted" Horizon and not Oxford has agreed to bill Oxford directly to avoid up-front payments by the named officer. Oxford "will attempt to recruit those providers to join [its] network." Under the Oxford Plan, no pre-certification, pre-approval waiting period or

referral is necessary to obtain a prescribed medical test, a fact memorialized on the reverse side of identification cards issued to plan members. The cards also have a toll-free phone number that members may call for assistance.

The parties concurred that the Town has recently provided an employee in a negotiations unit not represented by the PBA about \$7500 as "up-front" payment for a medical procedure by a non-participating provider. The Town Administrator certified that "it was anticipated" that employees facing "up-front" payments of at least \$500 to providers will be eligible for such an advance against eventual reimbursement.

#### **ANALYSIS**

Interim relief may be ordered in appropriate cases pending completion of the arbitration process. To obtain interim relief, a charging party must demonstrate 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. The charging party must also demonstrate that the public interest will not be injured by an interim relief order. Finally, the relative hardship to the parties in granting or denying relief must be considered. Crowe v. DeGioia, 90 N.J.126, 132-134 (1982).

The Charging Parties have not demonstrated a substantial likelihood of success on the merits of the case. The PBA and SOA

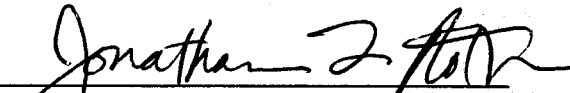


allege that the Town unilaterally changed levels of benefits when it switched to Oxford as its health insurance carrier. The Town asserts that under the collective agreements, it has "the right to change insurance carriers so long as substantially similar benefits are provided." (Article 19.03; Article 18C). The Town has a colorable claim that maintaining "substantially similar" benefits does not require maintaining specific providers. The facts regarding the number of in-state and in-network providers are disputed. The PBA and SOA have not identified what benefits have been lost as a consequence of a reduction in the number of nationwide in-network hospitals.

I also find that the Charging Parties have not demonstrated irreparable harm. They have not identified an instance of a unit member foregoing treatment as a consequence of the change in carrier. Nor does a reduction in the number of nationwide in-network hospitals prove irreparable harm. The Town has represented that it has created a fund which unit employees may tap for mandated "up-front" payments of \$500 or more to out-of-network providers. Such a fund, identified in Union Tp., P.E.R.C. No. 2002-55, 28 NJPER 198 (A33070 2002), eliminates harm to employees who might otherwise forego treatment.

**ORDER**

The application for interim relief is denied.

  
Jonathan L. Roth  
Commission Designee

DATED: August 4, 2003  
Trenton, New Jersey