

I.R. NO. 2004-15

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF PRINCETON,

Respondent,

-and-

Docket No. CO-2004-360

PRINCETON PBA LOCAL 130,

Charging Party.

SYNOPSIS

A Commission Designee denies a request to restrain the Borough of Princeton from implementing a change in health carriers, but issues an Order requiring the Borough to maintain a fund to reimburse employees for any additional costs arising as a result of the change in carriers until a new collective agreement is in place. The Designee also orders the parties to engage in mediation in an effort to reach a new collective agreement.

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Appearances:

For the Respondent,  
Herbert, VanNess, Cayci & Goodell, attorneys  
(Michael J. Herbert, of counsel)

For the Charging Party,  
Kusnirik and Fornaro, attorneys  
(Richard D. Fornaro, of counsel)

INTERLOCUTORY DECISION

On May 14, 2004, Princeton PBA Local 130 filed an unfair practice charge with the Public Employment Relations Commission alleging that the Borough of Princeton violated 5.4a(1), (2), (3) and (5)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act,

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<sup>1/</sup> 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. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (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

(continued...)

N.J.S.A. 34:13A-1 et seq. The PBA alleged that the Borough unilaterally changed the health benefits program, and that it communicated directly with the individual members which had a chilling effect on collective negotiations.

The unfair practice charge was accompanied by an application for interim relief. An Order to Show Cause was executed on May 17, 2004, scheduling a return date for May 25, 2004, which was rescheduled for June 1, 2004. The parties submitted briefs, affidavits and exhibits in support of their respective positions in accordance with Commission rules and argued orally on the return date.

The PBA argued that the Borough's unilateral decision to change health benefit carriers should be restrained because it will change the qualitative nature of the health benefits provided during the parties negotiations for a new collective agreement. The Borough opposed the restraint, arguing that the plans provided by the new carrier would offer the same or better benefits, but that to the extent the new plan would cause some additional co-payments, it volunteered to create a fund to make employees whole for any additional costs.

The following facts appear:

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1/ (...continued)  
concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

The parties last collective agreement expired on December 31, 2003, and they engaged in at least seven negotiation sessions for a new collective agreement. On May 6, 2004, the PBA filed a petition for compulsory interest arbitration.

The expired collective agreement provided three different health insurance plans for the employees choice. A self insured plan administered by IDA, and plans by Aetna and Horizon. Most PBA unit member used the IDA plan, but some used the other plans.

During negotiations with the PBA in the fall of 2003, the Borough informed the PBA of its intent to change carriers to the New Jersey State Health Benefits Program which offered the traditional plan, the NJ Plus Plan, and plans by Aetna, Horizon, Cigna and others at a savings to the Borough approximated at \$500,000. The SOA and CWA, two labor organizations representing other Borough employees, agreed to the State Health Benefits Program. Neither the PBA, nor the Teamsters, a labor organization representing a unit of civilian dispatchers, agreed to the State Program. In March 2004, the Borough announced it would switch to the State Program effective July 1, 2004.

The PBA in its submissions claimed that several employees currently covered by the IDA plan would be required to identify new physicians; necessary specialists were not covered; treatment plans would need to be modified; wellness checkups were not included; and out of network coverage was reduced. Those claims

did not identify which of the State Program plans were being compared to the IDA plan, nor demonstrate that they would not be reimbursed by the traditional or plus plans after seeing the specialists of their choice.

#### ANALYSIS

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).

Based upon the limited information presented to me in this proceeding the PBA has not demonstrated a substantial likelihood of success on the merits of the case. I cannot conclude on this record that employees will not have access to necessary specialists under one or more of the plans provided by the State Program.

Generally, public employers have the prerogative to change health insurance carriers as long as they provide the same or

better benefits. In Union Twp., P.E.R.C. No. 2002-55, 28 NJPER 198 (¶33070 2002), the Commission again explained that for police and firefighters, the identity of the carrier is a permissive, not mandatory subject of negotiations, and where a change in carriers affects terms and conditions of employment, such as the level of insurance benefits, an alternative carrier becomes mandatorily negotiable. Id. at 199. See also City of Newark, P.E.R.C. No. 82-5, 7 NJPER 439 (¶12195 1981).

In Union Twp. I.R. No 2002-7, 28 NJPER 86 (¶33031 2001), the Commission Designee found that medical providers in the prior plan might not be included in the new health plan and as a remedy ordered the employer to establish a fund to reimburse employees for any additional cost in using providers not included in the new plan. The Commission in its Union Twp. decision, 28 NJPER 198, did not disturb the Designee's remedy.

While the PBA's proofs did not establish a substantial likelihood of success on the merits, the Borough, nevertheless, recognized that employees may suffer some additional costs as a result of the change in carriers, and it voluntarily created a fund consistent with Union Twp. to reimburse employees for any additional expenses. In recognition of the Borough's action, and in fairness to the PBA, I will insure the creation of the fund by the Order below.

Finally, I note that on the record in this proceeding the parties agreed to engage in the Commission's mediation process in an effort to resolve this matter and to reach a new collective agreement. Since the change in health carriers is not effective until July 1, 2004, a good faith effort in mediation may resolve this issue prior to the change in carriers. Consequently, I will include mediation in the Order.


In accordance with the above analysis, I issue the following:

ORDER

The Borough shall establish and maintain a fund to reimburse employees for additional medical/health related costs they may incur as a result of the Borough's change in health carriers from IDA to the plans in the State Health Benefits Program until a new collective negotiations agreement is reached or one is awarded through interest arbitration. The Borough is directed to negotiate on demand by the PBA regarding procedures for the implementation and operation of the fund.

The parties are directed to file a Notice of Impasse with the Commission and engage in the Commission provided mediation process as quickly as possible, and to engage in a good faith effort to resolve this issue and all remaining issues leading to a new collective agreement.

The PBA's request to restrain the Borough from implementing the change in carriers is denied.



Arnold H. Zedick  
Commission Designee

Dated: June 8, 2004  
Trenton, NJ