

I.R. No. 2005-10

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF ORANGE,

Respondent,

-and-

Docket No. CO-2005-245

ORANGE MUNICIPAL EMPLOYEES BENEVOLENT
ASSOCIATION, ORANGE POLICE SUPERIOR
OFFICERS ASSOCIATION, ORANGE FIRE
OFFICERS ASSOCIATION LOCAL 210, ORANGE
FIREMEN'S MUTUAL BENEVOLENT ASSOCIATION
LOCAL 10 AND ORANGE POLICE BENEVOLENT
ASSOCIATION LOCAL 89,

Charging Parties.

SYNOPSIS

A Commission Designee denies a request to restrain the City of Orange from implementing a change in health carriers, but issues an Order requiring the City to meet with the Charging Parties to exchange information over plan changes, and negotiate over negotiable subjects. The Designee also ordered the creation of a panel to consider employee requests for reimbursement for out-of-pocket expenses arising from the carrier change.

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Appearances:

For the Respondent, Lum, Danzig, Drasco & Positan, LLC
(Ramon E. Rivera, of counsel)

For the Charging Parties, Fox and Fox, LLP (David I.
Fox, of counsel, Benjamin Benson, on the brief)

INTERLOCUTORY DECISION

On March 16, 2005, the five above listed labor organizations
(Charging Parties) filed an unfair practice charge with the
Public Employment Relations Commission (Commission) alleging that
the City of Orange (City) violated 5.4a(1) and (5)^{1/} of the New

^{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
negotiate in good faith with a majority representative of
employees in an appropriate unit concerning terms and
(continued...)

Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act). The Charging Parties alleged in pertinent part that the City violated the Act by refusing to negotiate after it notified them of its unilateral intent to withdraw from the New Jersey State Health Benefits Plan (SHBP) on April 1, 2005, and replace health, dental and prescription drug coverage for City employees with coverage from Horizon Blue Cross Blue Shield of New Jersey.

The unfair practice charge was accompanied by an application for interim relief. An Order to Show Cause was executed on March 17, 2005, scheduling a return date for March 31, 2005. 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 Charging Parties seek to restrain the City's unilateral decision to change health benefit carriers arguing that a change in carriers will result in a change in the level of benefits and creates undue harm to the employees during a time when at least one of the uniformed units is in interest arbitration. The City opposed the request for restraint. It argued that the new plans provided benefits that were consistent with the requirements of the parties collective agreements since they were substantially

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

equivalent to or equal to or better than the benefits provided by SHBP.

The following facts appear:

At a meeting on January 6, 2005, the City notified officials of the five labor organizations constituting the Charging Parties of its intent to withdraw from the SHBP and join plans provided by Horizon. The Unions were provided with certain information regarding the new coverage and sought comparisons of the old and new plans from independent insurance consultants.

The collective agreements between the City and the five labor organizations contain similar requirements if the City changes carriers. They each provide that the City may change carriers as long as the benefits of the new plan are substantially equivalent to, or substantially equal to or better than the benefits of the prior plan.

The Charging Parties alleged there were significant differences between the plans that did not comply with the substantially equal to requirement. They included:

SHBP Uniformity Provision: An allegation that the Horizon plan did not include the SHBP's uniformity of coverage/non-discrimination provisions regarding uniformity for employee contributions for dependent coverage.

Dental Plan Coverage; Widow/Survivor Benefits; Disability Retirement Benefits; Prescription Drug Benefits for current

employees and retirees, and Mental Health Benefits: Allegations that the City has not provided sufficient information to determine whether the new plan(s) will be substantially equivalent to the old plan.

The independent insurance agents reported that the Horizon plan met the substantially equivalent to or equal to or better standard(s) required by the various contracts, but that questions existed regarding the dental plan; widow's/survivor benefits; disability retirement benefits; and prescription drug benefits.

In letters of December 9, 2004, and February 1, 2005, Horizon agreed that its plans would provide the City with benefit levels equal to or better than its then current plan. The City Council on February 15, 2005 agreed that the new plans would continue to cover retirees; cover surviving spouses at the City group rate; and match the dental coverage. The City also separately indicated that it would match the SHBP dental plan for retirees; provide paid health insurance for former police officers on a disability pension pursuant to applicable collective agreements; and provide other retiree benefits and prescription drug benefits in conformance with applicable collective agreements.

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).

The identity of an insurance carrier is generally only permissively negotiable for police and fire employees, and not mandatorily negotiable for civilian employees. That generalization, however, does not apply if a change in the carrier changes the level of insurance benefits. When a change in carriers changes the level of benefits, the change is mandatorily negotiable. Borough of Metuchen, P.E.R.C. No. 84-91, 10 NJPER 127 (¶15065 1984); City of Newark, P.E.R.C. No. 82-5, 7 NJPER 439 (¶12195 1981). Differences in benefit levels as a result of a change in carriers may be remedied by the creation of a fund from which to reimburse employees for additional out-of-pocket expenses. Union Township, I.R. No. 2002-7, 28 NJPER 86 (¶33031 2001), aff'd P.E.R.C. No. 2002-55, 28 NJPER 198 (¶33070 2002).

The Charging Parties argued it met the interim relief standard and seeks to restrain the implementation of the Horizon plan, or in the alternative, it requests the creation of a fund to cover any expenses employees may need to cover as a result of the carrier change.

Based upon the information provided to date, however, I cannot conclude that the Charging Parties have demonstrated a substantial likelihood of success with respect to the request for a restraint. The current evidence does not show that the Horizon plan(s) failed to meet the substantially equivalent or substantially equal to or better standard required by the collective agreements. Nevertheless, the facts show that the Charging Parties are entitled to more information to better assess whether the Horizon plan is substantially equivalent in other areas.

The uniformity provision raised by the Charging Parties presents a novel issue of law that is more appropriate for a plenary hearing and Commission review than to be initially decided in interim relief. With respect to the dental, widow/survivor disability retirement, prescription drug and mental health benefits, the City represents it will comply with contractual requirements for those benefits. While such representations are appropriate, the Charging Parties are entitled to more information regarding those benefits in order to

identify any differences that might exist between the plans that could result in new costs to the employees.

The request for a dedicated fund to pay employees any out-of-pocket expenses, however, is not appropriate at this time. The fund created in Union Township and other similar cases was predicated upon a substantial likelihood of success finding. Union Twp., 28 NJPER at 199. Since I have not made such a finding here, a fund may be unnecessary. However, since the City/Horizon needs to provide more information to the Charging Parties that may result in the need for reimbursement to employees, a panel consisting of at least one City official and one Horizon official must be created to consider employee requests for reimbursements, and payments must be made in those situations where plan changes have resulted in greater employee out-of-pocket expenses. The grievance procedures may be used to resolve any denial of out-of-pocket expenses, or with regard to whether elements of the Horizon plan meet the substantially equivalent or equal to or better standard in the parties' collective agreements. I recommend the parties agree on the same contractual standard for all issues arising as a result of the change in carriers, and that the parties abbreviate their grievance procedure by moving to arbitration expeditiously to resolve these matters.

While I am denying the request to restrain the implementation of the Horizon plan(s), having considered the public interest and the relative hardship to the parties, I find that the public interest is best served here by following the Acts preference to bring about labor peace through the collective negotiations process. As the Supreme Court explained in Hunterdon County, 116 N.J. 322, 337-339 (1989), labor peace is best achieved by greater communication between the affected parties. That is true whether the changes already comply with the contracts or not. Hence, any hardship experienced by the City for participation in face-to-face meetings with Union representatives on this issue is easily outweighed by the benefit to the public to resolve this issue as quickly and fairly as possible thereby bringing more stability to the employee working environment. In this case that process includes giving the Charging Parties the opportunity to meet with the City and Horizon regarding the benefits provided by the new plans, exchanging questions, answers and information regarding those benefits, identifying issues that need to be resolved through the parties grievance/arbitration process, agreeing on areas where payments need to be made for new employee out-of-pocket expenses, and negotiating over any procedures needed to resolve this matter.

Accordingly, based upon the above findings and analysis I am issuing the below order. I will retain jurisdiction for sixty (60) days to ensure compliance. This case will then proceed through the normal unfair practice processing.

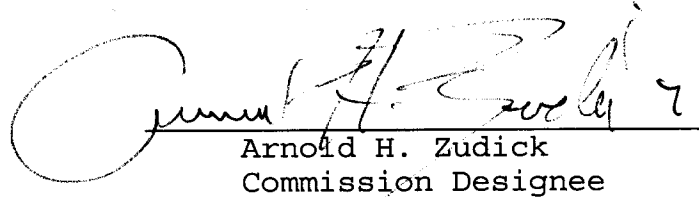
ORDER

1. The Charging Parties' request to restrain the implementation of the Horizon plan is denied.

2. Within one week the City shall create a panel consisting of at least one City and one Horizon official to consider employee requests for reimbursement arising from differences between the SHBP and Horizon plans. The parties shall immediately engage in negotiations to establish procedures on presenting issues to and receiving responses from the panel. Payments must be made in those requests approved by the panel. Appeals from panel decisions may be presented through the parties' grievance procedure or any other agreed upon and/or expedited procedure.

3. Within one week the parties shall meet, and continue to meet at reasonable times and locations, to exchange questions, answers and information regarding the Horizon plan(s) and benefits therein provided, to identify issues for grievance/arbitration, to agree upon areas where employees need to be reimbursed for new expenses resulting from the carrier change, and to negotiate over procedures and any new negotiable

terms and conditions of employment. Disputes over whether the new plans are substantially equivalent or substantially equal to or better than the prior plan may be grieved pursuant to the parties collective agreements or any other agreed upon or expedited procedure.



Arnold H. Zudick
Commission Designee

DATED: April 7, 2005
Trenton, New Jersey