

I.R. No. 2006-17

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF MILLVILLE,

Respondent,

-and-

Docket No. CO-2006-209

NJCSA CUMBERLAND COUNTY COUNCIL #18,

Charging Party.

SYNOPSIS

A Commission Designee denied an application for interim relief filed by Council 18 against the City of Millville. The charging party alleged and argued that the City withheld information in negotiations, thereby negotiating in bad faith by not advising the Council that the City had sought health benefit proposals by another carrier. The charging party sought to restrain the City from implementing the health benefit changes the parties had negotiated and ratified. The Commission Designee found that the evidence provided, to date, did not support the allegation. Rather, the evidence demonstrated the City had no knowledge of such proposals until after ratification, though its insurance consultant had such information after the agreement was reached but before ratification. The Commission Designee found there was insufficient basis on this record to impute the consultants knowledge on the City.

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Appearances:

For the Respondent, Gruccio, Pepper, DeSanto & Ruth,
P.A. (Lawrence A. Pepper, Jr., of counsel)

For the Charging Party, O'Brien, Belland & Bushinsky,
LLC (Nancy S. Sokol, of counsel)

INTERLOCUTORY DECISION

On February 21, 2006, NJCSA Cumberland County Council #18 (Council 18) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the City of Millville (City) violated 5.4a(1) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.^{1/} Council 18 alleges that the City violated the Act by

^{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 conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

failing to provide it with information during negotiations and by failing to bargain in good faith. It argues that on or about November 1, 2005 and/or January 5, 2006, the City saved money by replacing the medical plan it had with Aetna and/or IDA, with one administered by Horizon, and did so without the input, discussion or negotiations with Council 18 and allegedly contrary to what it had represented in negotiations. Council 18 claims that by failing to provide it with information about a different medical insurance carrier during negotiations the employees suffered immediate and irreparable harm because they were "forced" to accept benefit reductions in their health insurance coverage.

The charge was accompanied by an application for interim relief seeking to restrain the City from changing insurance carriers and modifying the medical insurance plan for employees represented by Council 18. An Order to Show Cause was executed on February 22, 2006 scheduling a return date for March 15, 2006. The parties submitted briefs, affidavits and other documents in support of their respective positions and argued orally on the return date.

The following pertinent facts appear:

The City and Council 18 were engaged in negotiations for a new collective agreement holding many negotiation sessions between October 2004 and September 2005, and reached an agreement

by September 29, 2005. Both parties ratified the agreement by November 10, 2005.

The cost of health benefits and the City's demand that the employees assume a greater cost-sharing role in the plan was a major issue during negotiations. On at least March 3, April 21 and June 3, 2005, Council 18 made numerous requests of the City for any and all information concerning alternate insurance proposals either requested or received by the City. The City did not advise Council 18 that it had requested or received any such proposals during negotiations.

On March 24, 2005, the City Administrator received a letter from its benefits plan consultant, Allen Associates, indicating that it was virtually impossible to obtain an exact plan match from an alternative medical carrier. On or about July 8, 2005, Council 18 received comparative rate information on insurance plans from a benefits consultant it retained.

On or about September 8, 2005, representatives of Allen Associates met with Horizon Blue Cross/Blue Shield to discuss Horizon's upcoming pricing and benefit changes. On September 20, 2005, the City's administrator/negotiator, Lewis Thompson, wrote to Council 18's attorney/negotiator, Mark Belland, providing certain health benefit information and inviting him to contact their insurance consultant, Rich Allen, for further clarification. On September 29, 2005, the parties reached a

tentative agreement which included higher medical insurance costs for City employees represented by Council 18.

On October 6, 2005, Allen Associates requested Horizon to prepare a proposal quoting alternatives to the City's current health plan. On November 1, 2005, Horizon notified Allen Associates it would provide benefit levels equal to or better than the City's current plan. No costs were provided in that notification.

On November 7, 2005, Allen Associates received a formal response/proposal from Horizon. On November 10, 2005, Council 18 formally ratified the parties new collective agreement. After receiving Horizon's proposal on November 7, Allen Associates prepared a comparison for the City and presented it to them on November 21, 2005.

The City was not aware of Horizon's proposal until November 21, and had no knowledge of the contacts Allen Associates had with Horizon prior thereto.

On January 5, 2006, the City informed Council 18 that it was contracting with Horizon to replace Aetna and IDA as its medical insurance carrier. There were no discussions or negotiations with Council 18 over the carrier change.

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).

Council 18 argues that during negotiations the City deliberately concealed having requested insurance proposals from alternate companies thereby acting in bad faith. The facts as presented, to date, however, do not support that allegation. The City had not requested, was not aware of - or in possession of - any health benefit proposals from alternate companies prior to the parties contract ratification which occurred on November 10, 2005. There is no evidence that it concealed information from Council 18 deliberately, or even accidentally. It even invited Council 18 to contact its insurance consultant. Allen Associates had notified the City in March 2005 that it had no alternate proposal to the IDA plan, and it did not notify the City it had any alternate plan until November 21, 2005.

On the return date, Council 18 argued that since Allen Associates acted as an agent of the City, the City was liable for

its actions, and, presumably, obligated to advise Council 18 of Allen Associates actions. There is no discussion of agency or legal support for that argument in the Council's brief.

Council 18's brief does refer to both the parties September 1, 2005 negotiations session attended by an Allen Associate representative to discuss medical plan changes, and to the City's letter of September 20th. The evidence does not show that any alternate insurance proposal existed on September 1, or that Allen Associates had requested such proposals at that time, thus it's representative would not have had any information to advise Council 18 of on September 1.

The September 20th letter from the City's Administrator to Council 18's attorney/negotiator, however, invited the Council's attorney to contact Allen Associates for further clarification. There is no evidence whether that occurred.

Based upon the above facts and analysis, Council 18 has not demonstrated a substantial likelihood of success on the merits of this case at this stage of the proceedings.

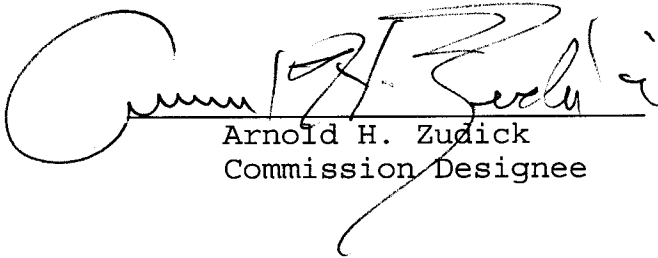
Additionally, Council 18 has not demonstrated irreparable harm. Even assuming the likelihood of its success, the harm to the employees seems to be financial, presumably, increased co-pays and deductibles. The record does not demonstrate that employee care will be irreparably affected. Assuming, therefore, some financial detriment to the employees, a successful

prosecution of the charge could result in an order reimbursing employees for any additional costs they assumed as a result of the plan changes.

Having considered the parties pleadings, written and oral argument, and based upon the above findings and analysis, I issue the following:

ORDER

Council 18's application for interim relief is denied.^{2/}



Arnold H. Zudick
Commission Designee

Dated: March 17, 2006
Trenton, New Jersey

^{2/} This case will be returned to the Director of Unfair Practices for further processing.