I.R. NO. 2006-18

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CAMDEN COUNTY,

Respondent,

-and- Docket No. CO-2006-214

CAMDEN COUNCIL NO. 10,

Charging Party.

SYNOPSIS

Camden Council No. 10 filed an unfair practice charge, accompanied by an application for interim relief, alleging that Camden County violated 5.4a(1) and (5) of the New Jersey Employer-Employee Relations Act when it unilaterally changed a policy which allowed employees suspended for more than 30 days the option to pay the monthly COBRA premium to maintain their health and prescription drug benefits or to have the County continue to pay the premium on their behalf during their period of suspension and repay the County after returning to active duty. Under the revised County policy, suspended employees had to pay the monthly COBRA premium to maintain coverage or coverage would lapse.

The Commission Designee found that the issue of who pays the health benefits premium is a mandatorily negotiable subject and when the County unilaterally changed the policy, it breached its obligation under the Act to engage in prior negotiations. The Designee also found that in this case the potential for loss of health benefit coverage constituted irreparable harm. Additionally, the Designee found that the relative hardships to the parties bore more heavily on Council 10 and the granting of an injunction did not harm the public interest. The County was restrained from implementing the revised policy.

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Appearances:

For the Respondent, Deborah Silverman Katz, County Counsel (Catherine Binowski, Assistant County Counsel)

For the Charging Party, Spear, Wilderman, Borish, Endy, Spear & Runckel, Attorneys (James Katz, of Counsel)

INTERLOCUTORY DECISION

On February 22, 2006, the Camden Council No. 10 ("Council 10") filed an unfair practice charge with the Public Employment Relations Commission alleging that Camden County ("County") violated 5.4a(1) and (5)[1/] of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it unilaterally

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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."

changed Policy No. 303 concerning health and prescription benefits for certain employees on suspension. More specifically, Council 10 alleges that the County unilaterally changed certain terms and conditions of employment when it eliminated the employees' option to pay the appropriate COBRA premium on a monthly basis during the term of the suspension or to forego making premium payments during the suspension period and having the County deduct the accrued premiums from the suspended employee's paycheck upon return to active duty.

The unfair practice charge was accompanied by an application for interim relief, pursuant to N.J.A.C. 19:14-9, requesting that the County be restrained from implementing the revised policy which eliminated the employees' premium payment option.

On March 1, 2006, I executed an Order to Show Cause and set a return date of April 4, 2006, for oral argument. The parties submitted briefs, affidavits and exhibits and argued orally on the scheduled return date. The following facts appear.

Camden Council No. 10 is the majority representative of approximately 1,200 non-supervisory and supervisory employees employed by Camden County in various collective negotiations units. The County and Council 10 have entered into numerous collective negotiations agreements which require the County to provide health and prescription benefits to eligible unit members.

Effective December 13, 2001, the County issued Policy No. 303 pertaining to health and prescription benefits for employees on suspension. The policy, in relevant part, states:

> It is the policy of Camden County to provide health and prescription benefits at the appropriate COBRA rate for employees on suspensions without pay of more than thirty (30) calendar days. If the suspension is for gross misconduct, the County is not obligated to provide any benefits.
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> * * *
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> Employees on suspension have the option of paying the premium monthly or waiting until they return and having the full amount deducted from their paychecks. (Employees on suspension pending termination are not eligible for the later option). They must choose this option at the time of the first bill and sign and return a form by the due date. If an employee does not pay the bill or sign the form, coverage will be dropped. Employees on suspension pending termination must pay monthly.

On November 18, 2005, the County amended Policy No. 303. The revised policy (also designated as no. 303) eliminated the option which had previously been provided to employees who were suspended for more than 30 days. The revised policy required an employee who was suspended for more than 30 days to pay the COBRA premium monthly and eliminated the option to defer such payments until such employee returned to work so as to allow deductions to be made from subsequent paychecks. Thus, under the revised policy, any unit employee suspended for more than 30 continuous calendar days is required to pay the full monthly COBRA premium

at the beginning of the suspension, or health insurance coverage, including the prescription drug benefit, would be immediately terminated until after the employee returned to active duty.

Council 10 contends that the monthly COBRA rate for health and prescription coverage for a family would cost approximately $1,400 per month. It further asserts that most employees facing suspension without pay would be unable to pay the cost to maintain health and prescription drug insurance coverage. Should an employee's insurance coverage lapse, upon return to work such employee would be considered "new" for insurance purposes and be unable to re-enroll in the health insurance program for at least an additional 60 days. Council 10 contends that the change in policy was unilaterally implemented without the benefit of bilateral negotiations between the parties.

The County acknowledges that prior to the November 18, 2005 modification, Policy No. 303 provided employees on suspension for more than 30 days with an option either to pay the COBRA premium monthly while serving the suspension or to pay the full COBRA premium upon their return from the suspension. However, the County asserts that the revised policy continues to allow employees on suspension for more than 30 days to maintain their health and prescription drug coverage during the suspension period in order to avoid any lapse in coverage. The revised policy does not diminish the level of benefits provided to

negotiations unit members in accordance with the terms of the collective negotiations agreement. Employees suspended for more than 30 days maintain their coverage and same level of health benefits by paying the monthly COBRA premium at the time of their suspension and each month thereafter until they return to active status. The County argues that since the level of benefits as required under the terms of the collective agreement remains undiminished and available to employees suspended for more than 30 days, its policy modification requiring monthly COBRA payments and eliminating the employee's option to pay the premium upon return to active duty, does not constitute a unilateral change in a term and condition of employment and, thus, raises no issue requiring negotiations. The County contends that it has the prerogative to eliminate the option contained in the old policy. It also asserts that it has had at least three meetings with Council 10 since September 20, 2005, for the purpose of discussing the revised policy. Finally, the County argues that its actions were based on research showing that the change incorporated into the revised policy is merely reflective of the manner in which most other counties and the State of New Jersey handle COBRA premium payments for employees suspended more than 30 days.

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).

N.J.S.A. 34:13A-5.3 entitles a majority representative to negotiate on behalf of unit employees over their terms and conditions of employment. Section 5.3 also defines an employer's duty to negotiate before changing working conditions:

> Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established.

See also Galloway Township Board of Education v. Galloway Township Education Association, 78 N.J. 25, 48 (1978). The Act requires negotiations, but not agreement. Hunterdon County Freeholder Board and CWA, 116 N.J. 322, 338 (1989).

Health insurance has been held to be a mandatorily negotiable term and condition of employment. State of New Jersey, P.E.R.C. No. 2000-12, 25 NJPER 402, 403 (¶30174 1999). See also Willingboro Board of Education and Employees Association

of Willingboro Schools, 178 N.J. Super. 477, 479 (App. Div. 1981); Borough of Woodcliff Lake, P.E.R.C. No. 2004-24, 29 NJPER 489 (¶153 2003). "It is one of the primary benefits received by employees and has one of the strongest effects on their welfare." State of New Jersey at 403.

The Commission has also held that the issue of the payment of health insurance premiums for employees on unpaid leaves of absence is mandatorily negotiable. See Hopewell Valley Regional Board of Education, P.E.R.C. No. 97-91, 23 NJPER 133 (¶28065 1997); West Orange Board of Education, P.E.R.C. No. 92-114, 18 NJPER 272 (¶23117 1992), aff'd. NJPER Supp.2nd 291 (¶232 App. Div. 1993).

In the instant matter, the County appears to have unilaterally modified a term and condition of employment when it issued the revised policy removing the option from an employee who was suspended for more than 30 days to pay the COBRA premium each month in its entirety or to repay the County for premiums expended on the employee's behalf upon the employee's return to active status. The Commission has found the following:

> (A)n employer violates its duty to negotiate when it unilaterally alters an existing practice or rule governing a term and condition of employment . . . even though that practice or rule is not specifically set forth in a contract . . . . Thus, even if the contract did not bar the instant changes, it does not provide a defense for the [employer] since it does not expressly and specifically authorize such changes.

Sayreville Board of Education, P.E.R.C. No. 83-105, 9 NJPER 138, 140 (¶14066 1983). See also Township of Middletown, P.E.R.C. No. 98-77, 24 NJPER 28 (¶29016 1997). Changes in employment conditions must be addressed through the collective negotiations process. N.J.S.A. 34:13A-5.3. Unilateral action is destabilizing and contrary to the express requirements of the Act. It appears here that the County unilaterally changed a term and condition of employment and, consequently, may have violated the Act. Even assuming the County and Council 10 conducted discussions regarding the revised policy before it was implemented, it does not appear that the parties engaged in formal negotiations concerning that issue. Accordingly, I find that Council 10 has established that it has a substantial likelihood of prevailing in a final Commission decision on its legal and factual allegations.

In Borough of Closter, I.R. No. 2001-11, 27 NJPER 225 (¶32077 2001), the Borough changed the terms of the health plan such that employees would no longer have a prescription drug card which could be presented at a local pharmacy for direct billing. Instead, employees had to pay for their prescriptions, up front, and await reimbursement from the insurance carrier. In finding irreparable harm, the Commission, on a motion for reconsideration, stated:

> Employees will likely be harmed if the prescription program is not restored during

> this litigation. Prescription drugs are often very costly and having to pay these costs up front may well induce employees to forego or delay purchasing medically necessary drugs. The substantial costs associated with prescription drugs has changed the type of harm an employee may suffer from mere monetary damages to losing access to necessary medications. This is so where a prescription plan is terminated, . . . and also, we believe, in a case like this where employees are required to pay 100%, rather than 20%, of the cost of a prescription up front.

Borough of Closter, P.E.R.C. No. 2001-75, 27 NJPER 289, 290 (¶32105 2001). The rationale expressed by the Commission in Closter, is applicable here to find irreparable harm. Employees suspended without pay and required to pay the significant up front cost of the COBRA premium to maintain health insurance and prescription drug benefits may cause employees to forego continuation of their health benefit coverage. Losing access to health and prescription drug benefits constitutes the type of irreparable harm required by the standard to obtain interim relief. See Closter; Township of Hillside, I.R. No. 99-22, 25 NJPER 315 (¶30135 1999).

Finally, in deciding whether to grant interim relief, the relative hardship to the parties must be considered, and a determination made that the public interest will not be injured by an interim relief order. Crowe. I find that the relative hardship to the parties weighs in favor of Council 10. The County has made no showing that it would suffer an unreasonable

financial burden by adhering to the terms of the policy in effect prior to November 18, 2005, and incurring the additional costs of the COBRA premiums until the suspended employee returns to active duty. There was no showing that the County did not recoup the premiums advanced on behalf of the suspended employee. However, the significant costs incurred to maintain health and prescription drug benefits by an employee suspended without pay serves as a powerful disincentive to retain coverage.

In considering the public interest, I find that it is furthered by adhering to the tenets expressed in the Act which require the parties to engage in collective negotiations prior to changing terms and conditions of employment. Adhering to the collective negotiations process results in labor stability and promotes the public interest. Consequently, I find no harm to the public interest in granting injunctive relief in this case.

ORDER

Interim relief is granted. The County is enjoined from implementing the revised Policy No. 303, effective November 18, 2005, and is ordered to maintain the status quo ante as was in effect prior to November 18, 2005, with regard to the treatment of health and prescription drug benefits for employees on suspension for more than thirty (30) continuous calendar days. This interim order will remain in effect pending a final

Commission order in this matter. This case will proceed through the normal unfair practice processing mechanism.

Stuart Reichman
Commission Designee

DATED: April 6, 2006
Trenton, New Jersey