I.R. No. 2008-13

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF ROCKAWAY,

Respondent,

-and-

Docket No. CO-2008-253

ROCKAWAY PBA LOCAL 268,

Charging Party.

SYNOPSIS

A Commission Designee denies an interim relief application seeking a restraint of a public employer from imposing unit employee contributions toward premiums for health insurance benefits. The Designee found no article in the current collective agreement setting health benefit levels or plans. The agreement has a provision referencing municipal ordinance(s) which "affect" health benefits; the ordinance appears to provide the Borough discretion in "providing and fully paying" for group insurance coverage. The Borough administers and provides (at no cost) to its employees the "NJ Direct 15" plan pursuant to the New Jersey State Health Benefits Plan.

The Designee found that the charging party had not demonstrated a substantial likelihood of success of prevailing on its factual and legal obligations. The charge was referred for processing.

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Appearances:

For the Respondent, Laufer, Knapp, Torzewski, Dalena, Sposaro, LLC, attorneys (Fredric M. Knapp, of counsel)

For the Charging Party, Zazzali, Fagella, Novak, Kleinbaum & Friedman, attorneys (Paul L. Kleinbaum, of counsel)

INTERLOCUTORY DECISION

On March 5, 2008, Rockaway PBA Local 268 filed an unfair practice charge against the Borough of Rockaway. The charge alleges that on January 30, 2008, the Borough advised all municipal employees, including police officers, of pending changes to its administered State Health Benefits Plan. The Borough would require for the first time a monthly contribution from unit police officers opting for "NJ Direct 10," AETNA HMO or CIGNA HMO health plans. The charge alleges that nothing in the SHBP requires an employee contribution, a mandatorily negotiable subject, and that the Borough has refused to negotiate, violating

5.4a(1) and (5)[1/] of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.

The charge was accompanied by an application for interim relief, together with affidavits and a brief, seeking to restrain the Borough from requiring unit employees to contribute toward premiums for health benefits.

On March 6, 2008, I issued an Order to Show Cause, setting March 27, 2008 as a return date. On March 20, 2008, the Borough filed an answering brief, together with documents and affidavits. The Borough contends that the PBA has not demonstrated its burden of proof on the application. On March 25, 2008, the Borough filed a supplemental letter and the next day, March 26, 2008, the PBA filed a reply. On the return date, the parties argued their cases. The following facts appear.

The Borough and the PBA signed a collective negotiations agreement covering patrol officers, sergeants, and detectives extending from January 1, 2005 through December 31, 2008. Section 20, "Rights and Restrictions Under Borough Code," provides in a pertinent part:

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."

> It is expressly understood and agreed that the provisions of existing ordinances, salary guides, resolutions or agreement which may affect salary, employment policies, vacations, income, health and accident benefits, and retirement benefits to the extent that the same are consistent with the benefits conferred by this agreement shall be in addition to the benefits conferred by this agreement . . .

No other provision of the agreement refers to health insurance benefits.

In or around 1991, the Borough approved an ordinance concerning "group insurance coverage." It provides:

> The Borough may, at the sole discretion of the Borough or as may otherwise be provided by law, provide and fully pay for group insurance coverage for accident and sickness, hospitalization, medical/surgical, and/or major medical on such terms and at such rates as may be determined and recommended by the Finance Committee of the Borough Council and approved by the Mayor and Council by resolution.

In December 2007, the Borough received a notice from the State Health Benefits Commission advising of changes to the State Health Benefits Plan, effective April 1, 2008.

On or about January 30, 2008, the Borough issued a letter to municipal employees advising of the announced changes in the SHBP. The letter provided in a pertinent part:

> For those employees who choose NJ Direct 15 Plan, Rockaway Borough will pay 100% of the cost. For employees who opt for one of the three other plans offered, [NJ Direct 10, CIGNA HMO, AETNA HMO], a cost-sharing plan will apply as of April 1.

Most of the 15 unit employees opted for the NJ Direct 15 Plan. One employee has certified that he chose that plan instead of the CIGNA plan ". . . because of the premiums [he] would have to pay [on the latter plan]." Another officer chose the Direct 15 plan because "there will be no cost to him or his family," despite his preference for another plan. Still another would have chosen NJ Direct 10 but opted for NJ Direct 15 because he incurred no cost for it. Two employees chose the NJ Direct 10 plan and pay a monthly premium of $57 per month for family coverage and one pays $23 per month for single coverage.

ANALYSIS

A charging party may obtain interim relief in certain cases. To obtain relief, the moving party must demonstrate both 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).

I deny the application because the PBA has not demonstrated a substantial likelihood of success on the merits of the case. The PBA contends that its right to the benefit (not incurring costs for health benefits) is established by the parties' practice. The Commission has found:

> An 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 Bd. of Ed., P.E.R.C. No. 83-105, 9 NJPER 138, 140 (¶14066 1983)]

See Middletown Tp. and Middletown PBA Local 124, P.E.R.C. No. 98-77, 24 NJPER 28 (¶29016 1998), aff'd 334 N.J. Super. 512 (App. Div. 1999), aff'd 166 N.J. 112 (2000).

The Borough contends that the collective agreement has no provision on health benefits, except its reference to "existing ordinances" in Section 20. The Borough's ordinance on health insurance benefits in turn, grants the municipality "sole discretion" to "provide and fully pay" for employee health insurance. Contending that a practice must yield to clear contract language, the Borough asserts that the parties' contract, referring to the ordinance, gives it discretion to provide a fully-paid group health insurance plan to employees. See, e.g., NJ Sports and Exposition Auth., P.E.R.C. No. 88-14, 13

NJPER 710 (¶18264 1987). The Borough asserts that it has provided a fully paid plan to its employees - NJ Direct 15.

The Borough also argues that the PBA has asserted (at most) a dispute over contract interpretation, setting a practice against the terms of an ordinance, referenced in the collective agreement. Disputes over contract interpretation are not unfair practices and should instead be processed through the parties' grievance procedure. State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).

The parties have also disputed whether the agreement "incorporates by reference" the municipal ordinance providing the health benefits. Finally, the lead case cited by the PBA, Bridgewater Tp. and Bridgewater PBA Local No. 174 and Bridgewater Municipal Employees Ass'n and Bridgewater Public Works Ass'n, P.E.R.C. No. 95-28, 20 NJPER 399 (¶25202 1994), aff'd 21 NJPER 401 (¶26245 App. Div. 1995) involved that employer's repudiation of "clear contractual provisions," a circumstance at variance with the apparent facts of this matter.

Considering the charging party's proofs, I cannot conclude that the PBA has demonstrated a substantial likelihood of success on the facts and law of this case. I find that the Commission's interim relief standards have not been met.

ORDER

The application for interim relief is denied.

BY ORDER OF THE COMMISSION

Jonathan Roth
Commission Designee

DATED: March 31, 2008
Trenton, New Jersey