

I.R. No. 2008-14

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ROCKAWAY BOROUGH BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-2008-271

ROCKAWAY BOROUGH EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

A Commission Designee denies an application for interim relief on a charge alleging that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., by changing certain health benefits. The Board disputed material facts, argued it did not violate the parties agreement, and offered defenses. A dispute over material facts existed that prevented the Association from establishing the standards for a grant of interim relief.

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Appearances:

For the Respondent, Taylor, Whalen and Hybbeneth,
Management Consultants (Garry M. Whalen, consultant)

For the Charging Party, Oxfeld Cohen, P.C., attorneys
(Randi Doner April, of counsel)

INTERLOCUTORY DECISION

On March 20, 2008, the Rockaway Borough Education Association (Association) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the Rockaway Borough Board of Education (Board) violated 5.4a(1), (3) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act).^{1/} The

^{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. (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 concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by (continued...)

Association alleged that the Board changed health benefit terms and conditions of employment by moving from the State Health Benefits Plan (SHBP) to the School Employees Health Benefit Plan (SEHBP) without negotiating over certain changes in the level of benefits.

The unfair practice charge was accompanied by an application for interim relief seeking to restrain the Board from taking any action that would change the health level of benefits. An Order to Show Cause was signed on March 25, 2008, scheduling a telephone conference call return date for March 31, 2008. Both parties submitted briefs, affidavits and exhibits in support of their respective positions and argued orally on the return date.

The Board argued that any benefit level changes that occurred here were done in a manner consistent with the parties' practice and did not violate the contract or the Act.

The following pertinent facts appear:

The Board and Association are parties to a collective negotiations agreement that expires on June 30, 2009. Article XIV, concerning "Insurance Protection" states in relevant part:

A.1. All employees shall be provided, at Board expense, Blue Cross/Blue Shield and Major Medical insurance under the Public School Employees Health Benefits Program at the benefit level in effect on January 1, 2007.

1/ (...continued)
the majority representative."

Regardless of the above language, prior to April 1, 2008, certain Board employees represented by the Association were covered by the Traditional Plan offered through the State Health Benefits Plan. However, the Traditional Plan ceased to exist by the end of March 31, 2008. The Association certified that effective April 1, 2008, employees formerly covered by the Traditional Plan became covered by the School Employees Health Benefit Plan which had some different benefit levels than the Traditional Plan.

Independent of the parties' submissions, however, it is my understanding that the SEHBP will not be available until July 1, 2008, and that the affected employees are actually in a PPO plan administered by the SHBP, more likely the plan called, Direct 10. The Traditional Plan that had been offered and administered by the State Health Benefits Commission was eliminated by operation of law or regulation. It appears that the affected employees were automatically transferred to the Direct 10 plan which is also offered and administered by the State health Benefits Commission. The Traditional Plan had a \$200 family deductible, the PPO plan in its out of network component has a \$250 family deductible. The former plan had a co-insurance requirement of 20% of the first \$2000, the PPO out of network component has a coinsurance requirement of 20% of the first \$5000. Other changes were alleged.

The Association demanded negotiations in February 2008 over the change that was to take effect on April 1, 2008. The Board declined to negotiate arguing that changes made by the SHBP were part of the parties' practice. The Board, nevertheless, investigated other carriers but stayed with the SHBP. On February 20, 2008, the Association filed a grievance over this matter. The Board will hold a hearing on that grievance on April 8, 2008. The parties' grievance procedure ends with binding arbitration.

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).

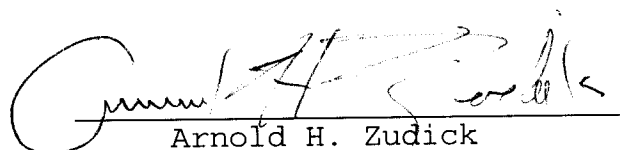
The Association argued that the health benefit change here violated Article XIV. The Board disputed the Association's interpretation of Article XIV; argued this was not a change in carriers, but changes in the plan by the State Health Benefits

Commission; and argued that the SHBP has had a long history of making unilateral changes to benefit levels which the Association and Board have accepted as the parties' practice.

The Board disputed the Association's assertion that there was no "traditional coverage" in the PPO and disagreed with its definition of "participating providers."

Having considered the parties' submissions and argument, it is apparent that disputes exist regarding material facts in this case. The language in Article XIV is subject to interpretation, and the practice cited by the Board may be a defense to the changes that occurred here. Consequently, it is not possible for me to conclude at this stage of the proceeding that the Association has a substantial likelihood of succeeding on the merits of the charge. Absent deferring this matter to the parties' arbitration procedure, a plenary hearing may be needed to resolve the disputed facts.

Accordingly, the Association's application for interim relief is denied.^{2/}



Arnold H. Zudick
Commission Designee

DATED: April 4, 2008
Trenton, New Jersey

^{2/} This case will be sent to conference for further processing.