

I.R. No. 2009-7

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CAMDEN COUNTY AND
CAMDEN COUNTY PROSECUTOR,

Respondents,

-and-

Docket No. CO-2009-76

CAMDEN COUNTY ASSISTANT
PROSECUTORS ASSOCIATION,

Charging Party.

SYNOPSIS

A Commission designee denies an application for interim relief based on an unfair practice charge filed by the Camden County Assistant Prosecutors Association against the Camden County Prosecutor and Camden County. The charge alleges that the County and the Prosecutor unilaterally changed terms and conditions of employment in violation of the New Jersey Employer-Employee Relations Act by: (1) charging, effective August 1, 2008, employees represented by the Association for dental plans that had previously been provided to the employees free of charge; and (2) failing to implement an agreement to offer employees, at a cost of \$10.00 per paycheck, an improved dental plan that was available to other employees of the Prosecutor.

The designee finds that the Association has not shown that is substantially likely to prevail on the merits of its unfair practice charge. In addition, the designee concludes that even if the Association had shown that it was substantially likely to prevail on the merits, irreparable harm did not exist because: (1) any premiums improperly collected could be recouped, with interest, at the end of an unfair practice proceeding; and (2) failing to honor an agreement to improve existing dental benefits, where current benefit levels have been maintained, is different from cases where an employer has unilaterally reduced health benefits and has thereby denied or limited employee access to treatments or medications that were previously available.

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Appearances:

For the Respondents, Brown & Connery, attorneys
(William M. Tambussi of counsel)

For the Charging Party, Loccke, Correia, Schragar,
Limsky & Bukosky, attorneys (Michael A. Bukosky, of
counsel and on the brief, Lauren P. Sandy, on the
brief)

INTERLOCUTORY DECISION

On September 8, 2008, the Camden County Assistant Prosecutors Association (Association) filed an unfair practice charge with the Public Employment Relations Commission alleging that Camden County (County) and the Camden County Prosecutor (Prosecutor) violated N.J.S.A. 34:13A-5.4a(1) through (7), part of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act).^{1/} The Association alleges that the County and the

^{1/} These provisions prohibit public employers, their representatives or agents from: (1) Interfering with, restraining or coercing employees in the exercise of the
(continued...)

Prosecutor unilaterally changed terms and conditions of employment by: (1) charging, effective August 1, 2008, employees represented by the Association for dental plans that had previously been provided to the employees free of charge; and (2) failing to implement an agreement to offer employees, at a cost of \$10.00 per paycheck, an improved dental plan that was available to other employees of the Prosecutor.

The unfair practice charge was accompanied by an application for interim relief. An Order to Show Cause was executed on September 15, 2008, scheduling a return date for October 1. The parties submitted briefs, certifications and exhibits in support of their positions and argued orally on the return date.

The Association represents Assistant Prosecutors. The Association and the Prosecutor are parties to a collective

1/ (...continued)
rights guaranteed to them by this act. (2) Dominating or interfering with the formation, existence or administration of any employee organization. (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. (4) Discharging or otherwise discriminating against any employee because he has signed or filed an affidavit, petition or complaint or given any information or testimony under 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. (6) Refusing to reduce a negotiated agreement to writing and to sign such agreement. (7) Violating any of the rules and regulations established by the commission.

negotiations agreement, executed on January 30, 2008, covering the period from January 1, 2006 to December 31, 2009. Article V, "Insurance," Section M provides:

Any dental plan administered by the County and available to other employees of the Prosecutors Office shall be available to members of the Association, the cost of which shall be payable by the member.

According to certifications submitted by the Association, prior to implementation of the new agreement, Assistant Prosecutors could elect dental coverage under one of two plans and were not obligated to pay the premiums. The Association asserts that it became aware that other employees could enroll in a dental plan with superior benefits, but had to pay \$10.00 per paycheck to be covered by that particular plan. The charge and the certifications allege that the Prosecutor agreed to make that plan available to Assistant Prosecutors, who would also be charged \$10.00 per paycheck, but that anyone choosing to continue coverage in one of the two current plans, would receive those benefits without any cost to the employee.

The Respondents assert that the contract language concerning dental insurance is plain and provides that employees shall pay the cost of "any dental plan" administered by the County.

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 argues that a unilateral change in the level of health benefits is mandatorily negotiable and warrants the issuance of injunctive relief to prevent irreparable harm. It cites Franklin Tp., P.E.R.C. No. 2006-103, 32 NJPER 246 (¶102 2006) and Bor. of Closter, P.E.R.C. No. 2001-75, 27 NJPER 289 (¶32104 2001).

The County argues that the agreement is clear and the Association's certifications amount to parol evidence that is inconsistent with the terms of a written agreement. It argues that no irreparable harm exists because any alleged unfair practice can be remedied by a monetary award. It cites University of Medicine & Dentistry, I.R. No. 2007-13, 33 NJPER 175 (¶61 2007) ("UMDNJ").

The Respondents do not dispute the Association's representations that, prior to August 1, 2008, Assistant

Prosecutors were not charged for dental coverage. Accordingly, the commencement of payroll deductions linked to dental coverage changed a mandatorily negotiable term and condition of employment.^{2/} However, I find Article V, Section M, as it relates to this dispute, to be ambiguous. It could support the Association's position that it refers only to the cost of the improved dental plan enjoyed by other Prosecutor's employees, or could be interpreted as urged by Respondents, i.e. that Assistant Prosecutors must pay premiums for "[a]ny dental plan administered by the County . . ."

Because the Association bears the burden of establishing that it is substantially likely to succeed on the merits of its charge, this ambiguity weighs against it. However, even if I assume, for purposes of this interlocutory proceeding, that Assistant Prosecutors should not have been assessed any costs associated with the continuation of their pre-existing dental coverage, I find that any premiums collected through payroll deductions could be refunded, with interest, to affected employees as a remedy at the end of unfair practice proceedings. When monetary relief will remedy an unfair practice, irreparable harm does not exist. See UMDNJ.

The Association has shown, that it is more likely than not, that the Prosecutor agreed to make available an improved dental

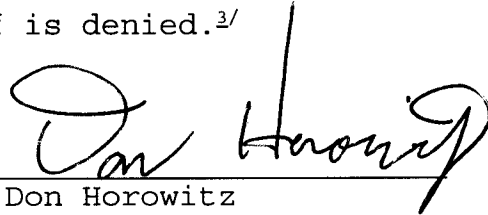
^{2/} The record does not show the sums assessed for dental plans.

plan enjoyed by other Prosecutor's employees, provided the Assistant Prosecutors choosing such coverage paid the premiums. And, the Respondents do not dispute the Association's claims that improved dental coverage, available to other Prosecutor's employees, has not yet been made available to Assistant Prosecutors. Other than the Association's general assertion that the improved plan is better, the record does not contain any specifics as to coverage differences or how employees have been affected, either economically or physically, by the absence of the plan that the Prosecutor allegedly agreed to make available.

While in Franklin and Closter, unilateral changes in the level of health benefits were deemed to warrant interim relief, this dispute is distinguishable. In those cases, detrimental and specific changes or reductions were made in the coverage available to employees, that were shown to, or were likely to, limit access to treatments or medications that were previously available. Here the affected employees continue to have the coverage they have received for many years. The allegation that they bargained for improved coverage, that has not been implemented, describes an employer action that may violate the Act and/or repudiate a negotiated agreement. But I cannot say that failing to honor an agreement to improve benefits constitutes irreparable harm, where existing benefits have not been shown to have been diminished.

ORDER

The request for interim relief is denied.^{3/}

A handwritten signature in black ink, appearing to read "Don Horowitz", written over a horizontal line.

Don Horowitz
Commission Designee

Dated: October 1, 2008
 Trenton, New Jersey

^{3/} Respondents' brief argues that the unfair practice charge should be dismissed. Such an application is premature. See N.J.A.C. 19:14-4.1 et seq.