

I.R. No. 2009-8

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PASSAIC BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-2009-077

EDUCATION ASSOCIATION OF PASSAIC,

Charging Party.

SYNOPSIS

A Commission Designee denies an interim relief application seeking rescission of unilaterally implemented changes to the selected prescription drug plan coverages of certain married unit employees. The public employer allegedly converted "family coverage" jointly selected by unit employee spouses to one "individual" and one "parent and child" coverage(s). The changes, which did not reduce benefits, saved the public employer money.

The Designee found that the charging party did not demonstrate a substantial likelihood of success on the merits of its case. A recent grievance arbitration award on the nearly-identical issue denied the charging party's grievance. The charge was referred to the Director of Unfair Practices to determine if further processing was required.

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Appearances:

For the Respondent, Joel Miklacki, attorney

For the Charging Party, Oxfeld Cohen, attorneys
(Sanford R. Oxfeld, of counsel)

INTERLOCUTORY DECISION

On September 8, 2008, the Education Association of Passaic (Association) filed an unfair practice charge against the Passaic Board of Education (Board). The charge alleges that on or about March 26, 2008, the Board unilaterally changed the paid prescription drug plan for certain unit employees (i.e., married couples in which both spouses elected "family coverage"). It more specifically alleges that the Board business administrator advised of and then implemented a conversion from family coverage to "one single" and "one parent/child", resulting in cost savings to the Board. The Board's conduct occurred during collective

negotiations and allegedly violates 5.4a(1), (3) 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 an affidavit, supporting document and a letter brief seeking restoration of family coverage and payment of 50% of any cost savings to affected unit employees for the period in which that coverage was involuntarily changed. (The Association avers that N.J.S.A. 52:14-17.31a requires reimbursements for waivers of coverage under the health benefits program.)

On September 12, 2008, I issued an Order to Show Cause, setting October 8 as the return date. On or about October 2, the parties consented to a telephone conference call in lieu of personal appearances to argue the merits of the application. On September 9 and 15, 2008, the Board filed letters, together with copies of contract provisions and a grievance arbitration award.

^{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 the majority representative."

The Board asserts that the award “. . . addressed all issues now raised in [the Association’s] Order to Show Cause . . .” It seeks a denial of the application. The following facts appear.

The Association represents all teachers and support personnel employed by the Board. The parties’ collective agreement expired on August 31, 2007 and the parties are negotiating a successor contract. Article 23, “Insurance Protection”, provides in pertinent part:

The Board agrees to pay premiums for each employee under contract covered by this Agreement and his/her immediate family and dependents for a paid prescription drug plan. The carrier of this plan shall be the State Health Benefits Program. This plan shall be in effect throughout the life of this agreement.

Article 29 provides in pertinent part:

. . .[U]nilateral changes will not be made in the terms and conditions of employment which have been negotiated by the parties . . . [A]ny proposed changes in terms and conditions of employment not in this agreement but applicable to teachers covered by this agreement shall be negotiated with the Association.

Article 3, “Grievance Procedure”, provides three “levels” of appeal and ends in binding arbitration.

Some married couples represented by the Association and employed by the Board selected family coverage for prescription drugs. Other options are “individual”, “husband and wife” and “parent and child.”

On December 11, 2007, the Board business administrator wrote a letter to married couples, both spouses of which elected family coverage, advising that the plan did not coordinate benefits and that there was no possible benefit for one family receiving double family coverage. The letter specifically advised that premiums could be reduced while the plan would continue to "provide you and your family the same level of benefits . . ."

On January 4, 2008, the Association president wrote a letter to the Board business administrator advising that unilateral implementation of changes specified in his letter would violate the collective agreement. She also wrote that alteration of prescription plan coverage constituted a change in a term and condition of employment and that the Association was willing to negotiate the subject in successor contract negotiations.

On March 26, 2008, the Board implemented changes in prescription plan coverage for married couples. It converted family coverage to "one single" and "one parent/child."

On August 13, 2008, a grievance arbitration award was issued to the parties, denying a grievance filed by the Association. The parties stipulated this issue for arbitration: "Did the Board of Education violate Articles 23 and 29 of the collective bargaining agreement when, on or about March 26, 2008, it changed the prescription coverage status of employees who are married? If so, what shall be the remedy?"

The arbitrator determined that the Board's conduct did not change terms and conditions of employment. The arbitrator wrote:

It is merely an administrative change, not a change in benefits received by employees. Therefore, the Board did not have to negotiate the change in status designation. The only change in this situation is that the Board is receiving a cost savings and nowhere in the agreement is the Board precluded from realizing cost savings.

N.J.S.A. 52:14-17.31a concerns "waiver of coverage under health benefits program; refund for amount of premium previously paid; resumption of coverage." It permits municipalities to allow its employees, eligible for coverage as a dependent of the employee's spouse under the State Health Benefits Program or under another plan offered by the spouse's employer to waive coverage under the Program. The statute provides:

In consideration of filing such a waiver, a municipality may pay to the employee annually an amount, to be established in the sole discretion fo the municipality, which shall not exceed 50% of the amount saved . . .

ANALYSIS

A charging party may obtain interim relief in certain cases. 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. Also, 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 Association has not demonstrated a substantial likelihood of success on the merits of the case. Although the charge alleges a unilateral change in terms and conditions of employment, the Association has already processed through arbitration a grievance contesting the Board's conduct. On the nearly-identical allegation later asserted in the charge, the arbitrator ruled that the Board did not violate the collective agreement by unilaterally converting "family" prescription coverage of (both) married unit employees to one "individual" and one "parent/child" coverage.

The Commission has repeatedly held that deferral to a negotiated grievance procedure culminating in binding arbitration is generally appropriate when a change essentially alleges a violation of section 5.4a(5) interrelated with a breach of contract claim. State of New Jersey (Dept. Of Human Services), P.E.R.C. No. 840-148, 10 NJPER 419, 420-421 (¶15191 1984).

The Association has not met its burden to demonstrate that it has a substantial likelihood of proving the Board engaged in an unfair practice or that its conduct unilaterally changed a

term and condition of employment (contrary to the grievance arbitration award). Accordingly, I find that the Commission's interim relief standards have not been met and deny the application. The charge will be forwarded to the Director to determine whether further processing is required.

ORDER

The application for interim relief is denied.


Jonathan Roth
Commission Designee

DATED: October 15, 2008
Trenton, New Jersey