

I.R. No. 2009-18

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF LODI,

Respondent,

-and-

Docket No. CO-2009-243

LODI PBA LOCAL 26,

Charging Party.

SYNOPSIS

A Commission Designee denies a request to restrain the Borough of Lodi from entering the State Health Benefits Program, but issues an order requiring the Borough to do what it volunteered to do; implement a procedure to reimburse employees for any benefit differences between the plan provided by the State Program and its existing self funded health program. The Borough must also negotiate with the PBA upon its demand over any other procedural issues related to reimbursement.

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Appearances:

For the Respondent, Scott G. Sproviero, of counsel

For the Charging Party, Loccke, Correia, Schlager,
Limsky & Bukosky, attorneys (Gregory G. Watts, of
counsel)

INTERLOCUTORY DECISION

On January 8, 2009, Lodi PBA Local 26 (PBA) filed an unfair practice charge with the Public Employment Relations Commission (Commission) alleging that the Borough of Lodi (Borough) violated 5.4a(1) and (5)^{1/} of the New Jersey Employer-Employee Relations

^{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."

The charging party also alleged the Board violated 5.4a(2), (3), (6) and (7) but there were insufficient facts to support those allegations.

Act, N.J.S.A. 34:13A-1 et seq. (Act). The PBA alleged that the Borough violated the Act by changing its health insurance benefit levels by switching from a self insurance plan administered by Insurance Design Administrators (IDA), to a plan provided by the New Jersey State Health Benefits Program (SHBP), and by unilaterally creating a reimbursement procedure to make employees whole for the difference between the benefit levels of the plans.

The unfair practice charge was accompanied by an application for interim relief. An Order to Show Cause was executed on January 13, 2009 scheduling a return date for January 27, 2009. The parties submitted briefs, certifications and exhibits in support of their respective positions and argued orally on the return date.

The PBA argued that by obtaining health insurance coverage through the SHBP, the Borough was changing procedures and reducing a number of benefit levels provided by the IDA plan. The PBA seeks to restrain the Borough from entering the SHBP. The Borough opposed any restraint, arguing that it was not abandoning the IDA plan but was entering the State plan to save money and that it had created a procedure to fully reimburse employees for any differences between the plans.

The following facts appear:

The Borough provides a traditional plan at no cost to employees covering 100% of qualifying medical expenses. There is

a \$100 employee deductible and \$200 family deductible per year, and a \$1.00 co-pay for prescriptions. The parties' July 1, 2005 - June 30, 2009 collective agreement did not require a particular insurance plan or carrier but required the Borough to pay all premium increases during the terms of the contract. Article 26, Section G provided:

G. The parties agree that there shall be no changes in future medical coverages until there has been negotiation on the subject. The employer shall provide advanced notice of any intended change together with sufficient information so that the PBA can evaluate said proposed change. The PBA shall then promptly meet and negotiate with the public employer as to the proposed change.

During the 2007 - 2008 fiscal year, the Borough experienced higher than expected claims which contributed to a budget shortfall of over \$800,000. In an effort to reduce its expenses, the Borough decided to enroll in the SHBP.

By memorandum of May 28 and June 5, 2008 sent to the PBA president, the Borough requested the parties start negotiations. There was no response. By memorandum of December 16, 2008 addressed to the PBA representative and representatives of other Borough employees, the Borough announced a meeting for December 23, 2008 to review the administration of its health plan. It is my understanding that a PBA representative attended the meeting.

In both the Borough's written certification filed in response to the PBA's application and in its oral argument on the

return date the Borough gave its assurance that it was maintaining the existing IDA plan. The Borough explained it had created a "re-adjudication procedure" administered by IDA and paid for by the Borough to reprocess claims already considered by the SHBP in order to make all employees whole based upon the existing IDA plan. The re-adjudication procedure will require covered individuals to submit their Horizon EOB's to a particularly assigned Borough employee who will have IDA reprocess those claims so they can be reimbursed based upon the benefit levels in the existing IDA plan.

The Borough recognized the SHBP did not provide the same level of coverage as the existing IDA Plan, but it committed itself to reimburse all employees to the levels provided by the IDA plan. By joining the SHBP and instituting a re-adjudication procedure, the Borough estimates a savings of from \$800,000 to \$1,000,000. The Borough notified all employees on January 14, 2009 that medical benefits would be provided through the SHBP and its self-funded re-adjudication procedure effective March 1, 2009.

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 Commission has held that the level of health benefits is mandatorily negotiable and may not be changed unilaterally. Piscataway Tp. Bd. Ed., P.E.R.C. No. 91, 1 NJPER 49 (1975). It has also held that for police and fire employees the identity of insurance carriers is a permissive, not a mandatorily subject of negotiations. Twp. of Union, P.E.R.C. No. 2002-55, 28 NJPER 198, 199 (¶33070 2002) and City of Newark, P.E.R.C. No. 82-5, 7 NJPER 439, 440 (¶12195 1981).

In this case, the parties' contract does not require a particular carrier or plan administrator. In cases where a change of carriers has resulted in a change in benefit levels, the Commission has not regularly restrained employers from making the carrier change, but has most often required employers to create a fund to reimburse employees for any differences in their benefit levels. Franklin Tp., P.E.R.C. No. 2006-103, 32 NJPER 135 (¶102 2006); Tp. of Union, I.R. No. 2002-7, 28 NJPER 86 (¶33031 2001). Orders requiring such funds have been issued to

ensure compliance even when employers have recognized their obligation and volunteered to create funds or procedures for reimbursement. City of Bayonne, I.R. No. 2009-11, 34 NJPER 369 (¶117 2008); Borough of Princeton, I.R. No. 2004-15, 30 NJPER 266 (¶92 2004).

Here too, the Borough has recognized its obligations and has agreed to negotiate with the PBA upon its demand over any other procedures regarding the re-adjudication process.

Based upon the above, I issue the following:

ORDER

The PBA's request for a restraint is granted to the extent that the Borough is required to maintain the same level of benefits as had been provided under its self-insured IDA plan until a new plan is negotiated or awarded through interest arbitration.

The Borough shall implement the re-adjudication procedure it has created or some other procedure negotiated between the parties based upon the PBA's demand, and reimburse employees the difference, if any, between the benefits provided by the SHBP plan and the benefits as they would have been provided by the IDA plan.

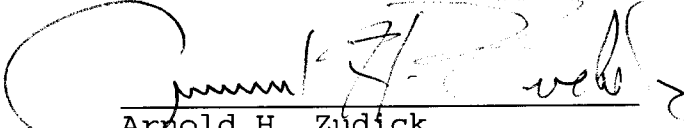
The Borough shall notify and provide the PBA and its members with the name of the individual or office to whom claims can be submitted. Claims shall be submitted by the Borough to IDA at

least twice per week (or more often, depending on the volume of claims) with reimbursement of said claims to be disbursed to members within one pay period from the date of submission of the claim to the Borough.

The Borough shall negotiate with the PBA upon its demand over any other procedural elements related to the re-adjudication/claims and reimbursement procedure.

The PBA's request to restrain the Borough from implementing the SHBP is denied.

This Order shall remain in effect until the underlying charge is resolved.^{2/}


Arnold H. Zudick
Commission Designee

DATED: February 17, 2009
Trenton, New Jersey

^{2/} The parties had requested a decision not issue until after February 6, 2009 to give them time to attempt to agree on an order. By letter of February 9, 2009, I was notified that no agreement had been reached.