

I.R. No. 2010-13

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOMERSET COUNTY PARK COMMISSION,

Respondent,

-and-

Docket No. CO-2010-234

IBT LOCAL NO. 469,

Charging Party.

SYNOPSIS

A Commission Designee grants a request requiring the Somerset County Park Commission to reimburse employees the difference between former and present co-pay amounts that were unilaterally implemented until a new collective agreement is reached. With respect to a premium sharing issue, the Commission Designee retains jurisdiction to allow the parties the opportunity to attempt to reach a resolution in mediation, or to file additional documents on that issue.

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Appearances:

For the Respondent, Drinker Biddle & Reath, LLP,
attorneys (Marion B. Johnson, of counsel)

For the Charging Party, Timothy R. Hott, P.C. attorney

INTERLOCUTORY DECISION

On December 22, 2009, the International Brotherhood of Teamsters, Local No. 469 (IBT), filed an unfair practice charge with the Public Employment Relations Commission (PERC) alleging that the Somerset County Park Commission (Park Commission) 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). The IBT is the majority representative of three separate units of employees employed by the Park Commission. The IBT alleges that the Park Commission has unilaterally changed certain health benefits during collective negotiations for the parties' first collective agreements.

The unfair practice charge was accompanied by an application for interim relief. An Order to Show Cause was executed on January 12, 2010 scheduling a telephone conference call return date for February 9, 2010. That date was rescheduled to February 25, 2010 to give the parties an opportunity to attempt to resolve this matter in mediation. The parties submitted briefs, certifications and exhibits in support of their respective positions and argued orally on the return date.

The following pertinent facts appear:

The IBT represents three units of Park Commission employees, a foremen/assistant foreman's unit certified in August 2008; a non-supervisory blue collar unit certified in November 2008; and a park rangers unit certified in January 2009. All three units are negotiating for their first collective agreements with the Park Commission. All of the employees receive health and prescription benefits through a plan the Park Commission has with Horizon.

Effective January 1, 2009, employees choosing family, employee/spouse, or employee/child coverage began paying a certain amount of the health premium cost. There was no premium sharing for single employee coverage. In early 2009, the IBT filed charges regarding the implementation of premium sharing (CO-2009-184, CO-2009-232, CO-2009-233).

In a December 11, 2009 written notice, the Park Commission advised its employees of open enrollment and health benefit changes to be implemented January 1, 2010. The notice showed the following co-pay changes:

	<u>From</u>	<u>To</u>
PCP office visit co-pay	15	20
Specialist co-pay	15	40
Emergency Room co-pay	50	100
Hospital Inpatient co-pay	0	500
Hospital Outpatient co-pay	0	300
RX co-pay (30 day supply)	15/25/40	20/30/50
RX co-pay (mail 90 day supply)	15/25/40	40/60/100

The notice also showed the following semi-monthly pay period premium sharing assessments:

single	\$20.83
employee/spouse	\$41.06
employee/child	\$37.69
family	\$58.55

There was no evidence showing what the premium sharing cost for the last three items was before 2010.

The Park Commission has projected savings of more than \$331,00 based upon the above changes. The parties have another mediation session scheduled for March 15, 2010.

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 IBT has met the interim relief standards. PERC 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). Here, the Park Commission acknowledges it unilaterally implemented changes in the health benefits plan which meets the substantial likelihood of success standard. The law has also held that unilateral changes to terms and conditions of employment during negotiations for a collective agreement meets the irreparable harm standard. Galloway Tp. v. Galloway Tp. Ed. Assn., 78 N.J. 25, 48-49 (1978); Borough of Fairview, I.R. No. 97-13, 23 NJPER 155 (¶28076 1997); Garfield Bd. Ed., P.E.R.C. No. 80-67, 5 NJPER 542 (¶10279 1979).

In comparing the relative hardship to the parties if a restraint is granted or denied, I find - with respect to the co-pay changes - that by ordering the Park Commission to reimburse employees for the difference between the former and present co-pay amounts upon evidence the co-pay has been paid, rather than

ordering it to roll back the co-pays to their former amounts, the hardships to the parties are properly balanced. In Union Twp., I.R. No. 2002-7, 28 NJPER 86 (¶33031 2001), aff'd P.E.R.C. No. 2002-55, 28 NJPER 198 (¶33070 2002), PERC held that the establishment of a fund to reimburse employees for additional health care costs that were unilaterally imposed was sufficient to remedy such changes. Consequently, the Park Commission must reimburse employees for the difference in higher co-pays, and negotiate with the IBT upon its demand over procedures for reimbursement.

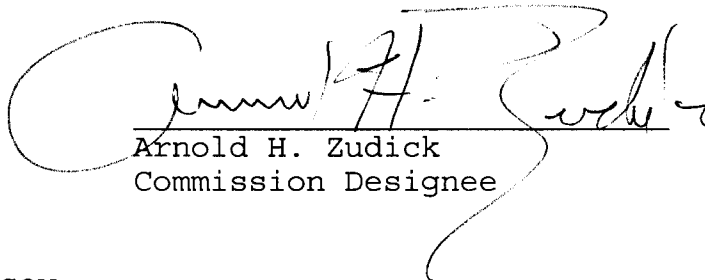
With regard to the premium sharing allegations, there is not sufficient evidence before me at this time to decide whether a restraint is appropriate. The parties are directed to address this issue in their upcoming mediation session and attempt to resolve the matter. The parties should take into consideration a bill pending in the Legislature requiring premium sharing. If this matter cannot be resolved, the IBT can submit additional evidence and argument concerning premium sharing by March 22, 2010. The Park Commission may then respond by March 29, 2010. Absent a resolution of the premium sharing issue and receipt of any additional information regarding that subject, I will schedule a conference call to decide that matter.

Based upon the above, I issue the following.

ORDER

The IBT's request for a restraint is granted to the extent that the Park Commission is required to reimburse employees the difference between the former and present co-pays enumerated above until a new agreement is reached. The Park Commission is directed to negotiate with the IBT upon its demand regarding reimbursement procedures.

I retain jurisdiction over the premium sharing issue. The parties are directed to continue negotiations through mediation over the premium sharing issue raised in this proceeding, and absent resolution of that issue may file additional documents in accordance with the schedule provided above.



Arnold H. Zudick
Commission Designee

DATED: March 2, 2010
Trenton, New Jersey