

I.R. No. 2011-21

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF SPRINGFIELD,

Respondent,

-and-

Docket No. CO-2011-155

PBA LOCAL NO. 76,

Charging Party.

SYNOPSIS

A Commission Designee denies a request to restrain a public employer from changing health insurance carriers, but issues an Order (consistent with the employer's conduct) requiring the employer to maintain a fund for the purpose of reimbursing unit employees and providing "up-front" payments, as necessary, in order to provide the same level of benefit under the new plan that were provided under the previous plan(s). The Designee also orders the parties to negotiate payment procedures.

I.R. No. 2011-21

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF SPRINGFIELD,

Respondent,

-and-

Docket No. CO-2011-155

PBA LOCAL NO. 76,

Charging Party.

Appearances:

For the Respondent, Scarinci Hollenbeck, attorneys
(Matthew Giacobbe, of counsel)

For the Charging Party, Mets, Schiro & McGovern, LLP
(James Mets, of counsel)

INTERLOCUTORY DECISION

On October 18, 2010, PBA Local No. 76 (PBA) filed an unfair practice charge against Springfield Township (Township), together with an application for interim relief, a certification, exhibits and a brief. The charge alleges that on July 13, 2010, the Township passed a resolution to enroll unit employees in the State Health Benefits Program (SHBP) and to create a fund to reimburse employees for cost differences between the current plan and the SHBP, effective on November 1, 2010. The charge alleges that the Township has unilaterally changed health insurance plans and refused to "stay implementation" of the SHBP, thereby repudiating Article XI, section 5 of the parties' collective negotiations agreement. The charge alleges that the contract

provision permits the Township to change insurance plans provided that the new plan yields "substantially equivalent coverage at no added cost to employees" and permits the PBA to seek arbitration over changes in coverage, during which implementation of the new plan is stayed.

The Township's conduct allegedly violates 5.4a(1) and (5)^{1/} of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (Act).

The application seeks an Order restraining the Township from repudiating Article XI, section 5 of the agreement and enjoining the Township from implementing the new health plan with lesser benefits than the predecessor plan.

On October 19, 2010, I signed an Order to Show Cause, specifying October 28 as the return date for argument on the application in a telephone conference call. I also directed the Township to file an answering brief, together with opposing certification(s) and proof of service upon the PBA by October 26. On October 26, the Township requested a brief extension of time to file its response, with the consent of the PBA. 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. (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."

Township's reply was filed on October 27. On the same day, the parties requested that argument be rescheduled to October 29, in light of their efforts to informally dispose of the matter. On October 29, the parties argued their cases in a conference call. The following facts appear.

The PBA and the Township signed a collective negotiations agreement on behalf of patrol officers, corporals and detectives extending from January 1, 2007 through December 31, 2010.

Health insurance is currently provided to employees by Oxford Health Insurance. Article XI (Insurance), section 5 provides:

The Township may change insurance plan provided the new plan is substantially equivalent in coverage levels and at no additional cost to employees to the coverage specified in Section 1(A) above. The Township shall notify PBA in writing at least 30 days prior to the changes becoming effective. If the PBA objects to the changes within 10 days on the grounds that the new coverage is not substantially equivalent to the prior coverage, the PBA may submit the issue to an Arbitrator. The Arbitrator shall be selected through the procedures of the Public Employment Relations Commission. The changes shall be stayed until the conclusion of the Arbitration proceeding. Only if the Arbitrator finds that the new coverage is substantially equivalent to or better than the prior coverage, may the Township proceed with the changes.

On July 13, 2010, the Township passed a resolution declaring its participation in the SHBP, commencing November 1, 2010. The resolution also provides a "reserve fund" of \$100k to ". . .

compensate employees and/or retirees who have incurred a liability as a result of the difference in benefits coverage between the present plan (Oxford Insurance) and the State Health Benefits Program." The resolution also provides that ". . . a unilateral change in health benefits which results in less benefits being provided to employees may constitute an unfair practice under [the Act]" and that the "reserve fund" is being created ". . . to avoid any harm to its employees and retirees and to avoid any charge of an unfair labor practice."

On August 18, 2010, the parties met for collective negotiations on a successor agreement. The Township's proposal included the change to the SHBP. On August 25, the Township provided the PBA a written, detailed comparative analysis of the Oxford plans and the plans under the SHBP. The four-page comparison chart of benefit coverages under the Oxford plans ("traditional" and "PPO") and SHBP plans demonstrate that many benefits are identical (i.e., Oxford PPO and SHBP Direct 10); many Oxford "traditional" benefits are more generous than SHBP "Direct 10" benefits; some benefits require a \$10 co-pay under the SHBP in order to be identical to some Oxford coverages; and some are better under the SHBP than under the Oxford plan.

James Morton, the PBA president certifies that as a consequence of the change in plans, he,

. . . may be compelled to forgo medical treatment and medically necessary

prescriptions to avoid the increase in up-front costs associated with the new plan. Even if these costs are reimbursed to me by the Township from a fund at a later date, I may still forgo treatment and prescription drugs because I may not be able to charge these costs or receive reimbursement prior to the time that the charges must be paid.

Anthony Cancro, the Township Administrator certifies that coverage under the SHBP is "substantially equivalent to or better than" the previous Oxford plan. The SHBP requires the enrollment of all employees in a participating municipality. If the Township is restrained from enrolling unit employees in the SHBP, none of its other employees may enroll. Cancro certifies that ". . . as the contract with Oxford has been cancelled, all Township employees will be without health insurance coverage if the requested relief is granted."

On September 10, 2010, the PBA filed a request for submission of a panel of arbitrators with the Commission (AR-2011-189). The grievance concerns "changing health coverage to lesser coverage levels."

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. 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 level of health benefits is mandatorily negotiable and may not be changed unilaterally. Piscataway Tp. Bd. of Ed., P.E.R.C. No. 91, 1 NJPER 49 (1975. In Camden Cty. College, P.E.R.C. No. 2008-67, 34 NJPER 254, 255 (¶89 2008), the Commission wrote:

A contract clause requiring the employer to maintain the level of health benefits may create additional protections for employees. It may also provide a contractual defense for the employer to an unfair practice allegation that the employer violated the Act by acting unilaterally. Many contracts permit changes to "equivalent" or "substantially equivalent" benefit plans. An employer will not be found to have acted unilaterally if the contract authorizes a particular change in health benefits. City of South Amboy, P.E.R.C. No. 85-16, 10 NJPER 511, 512 (¶15234 1984).

The Designee in Camden Cty. College wrote that, ". . . the equivalence standard, as opposed to the 'equal to' or 'equal to or better than' standards, for example, allows some room for evaluating particular plan factors to determine whether the contractual standard has been maintained". I.R. No. 2008-18, 34 NJPER 104 (¶45 2008). The determination of whether the SHBP is

"substantially equivalent" to the Oxford plans is a matter of contract interpretation and resolvable by an arbitrator after a comparative analysis of both plans.

The comparative chart of the plans show differences in the level of benefits. Certain benefits of the SHBP are not as generous as those in the Oxford plans. The Township has established a fund in order to compensate unit employees for deficiencies in coverages set forth in the SHBP, compared with the Oxford plans.

There is a substantial likelihood that the PBA would succeed in proving a unilateral change. And since that change occurred while the parties are in negotiations for a successor agreement, I find that the irreparable harm requirement has been met. Union Tp., I.R. No. 2002-7, 28 NJPER 86 (¶33031 2001) recon. den. P.E.R.C. No. 2002-55, 28 NJPER 198 (¶33070 2002).

Considering the public interest and the relative hardship to the parties, I find that in evaluating differences in the plans and costs associated with prohibiting implementation of the SHBP, the public interest would not be served by an Order which will result in (a temporary) loss of health insurance coverage for other Township employees. In light of the Township's creation of a fund to compensate unit employees for any deficiencies in SHBP coverage, I find that the PBA has not met all interim relief

standards. The Township is not required to return to the Oxford plans.

In Union Tp., the Designee, with the Commission's approval, ordered the creation of a program or fund to address changes in health benefit levels. Although the Township has created such a fund, the PBA is entitled to an Order requiring its administration. Specifically, the fund will both reimburse employees for co-payments and provide them or their providers "up-front" payments, as reasonably and promptly necessary in order to yield the same level of benefits under the SHBP that were provided under the respective Oxford plans. See Princeton Borough, I.R. No. 2004-15, 30 NJPER 266 (¶92 2004). The fund shall be replenished from time to time as necessary.

The PBA has also alleged that the Township has repudiated the parties' agreement by refusing to stay implementation of the SHBP until its grievance is resolved (in the Township's favor) in arbitration. The Township asserts that it has complied with its contractual duty to provide "substantially equivalent or better" benefits.

By implementing the SHBP before an arbitrator has assessed the matter of "substantial equivalency," the Township appears to have repudiated the agreement. Almost two months lapsed from the date on which the resolution was passed to the date on which the PBA filed its request for arbitration. If the request was filed

earlier, (and the parties sought an expedited award) an arbitrator might have issued an award in advance of this late date. Under all the circumstances, I deny the PBA's requested relief (i.e., an Order requiring the Township to maintain the Oxford plan for PBA unit members) because it would not serve the public interest if all other Township employees would start work in November without health insurance benefits.

ORDER

The Township shall create and maintain a fund which will be administered for the purpose of reimbursing unit employees co-payments and providing them or their health provider(s) "up-front" payments, as reasonably necessary, in order to yield the same level of benefits under the SHBP that were provided under the respective Oxford plans. The Township shall also negotiate with the PBA upon demand over reimbursement/"up-front" payment procedures, subject to the confidentiality requirements of a third party fund administrator.

The PBA's request to maintain the Oxford health plans is denied.


Jonathan Roth
Commission Designee

DATED: October 29, 2010
Trenton, New Jersey