

I.R. No. 2011-40

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF PLAINSBORO,

Respondent,

-and-

Docket Nos. CO-2011-325  
and CO-2011-326

PLAINSBORO PBA LOCAL #319 AND  
PLAINSBORO SOA LOCAL #319A,

Charging Parties.

SYNOPSIS

A Commission Designee denies an application for interim relief on charges that Plainsboro Township violated the New Jersey Employer-Employee Relations Act by not offering an open enrollment period for health insurance and not permitting a newly hired police officer to choose a health insurance plan. The evidence did not establish that the negotiations process or unit members were irreparably harmed by the alleged changes in practices.

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Charging Parties.

Appearances:

For the Respondent, Ruderman & Glickman, attorneys  
(Mark S. Ruderman, of counsel)

For the Charging Parties, Klatsky, Sciarrabone &  
DeFillippo, attorneys (David J. DeFillippo, of counsel)

INTERLOCUTORY DECISION

On February 18, 2011, the Plainsboro PBA Local #319 (Local 319) and the Plainsboro SOA Local #319A (SOA) jointly filed an application for interim relief seeking to compel Plainsboro Township (Township) to offer an open enrollment period for its police officers to choose between two health insurance plans as well as to give a choice of health insurance plans to a newly hired police officer, Daniel Kanaley (Kanaley). Accompanying the application for interim relief were two unfair practice charges (one from Local 319 and the other from SOA) alleging that the

Township violated N.J.S.A. 34:13A-5.4a(1) through (7)<sup>1/</sup> of the New Jersey Employer-Employee Relations Act (Act) when it did not extend the opportunity to all officers to enroll in a new, replacement health insurance plan, the Aetna Open Access Plan.

On February 24, 2011, I executed an Order to Show Cause, scheduling a return date for March 25, 2011. The parties submitted briefs, certifications and other supporting documents; and argued orally on the return date.

The following facts appear:

Local 319 represents all police officers and corporals employed by the Township, while the SOA represents all Township police sergeants and lieutenants. Local 319 and SOA each have a separate collective negotiations agreement with the Township

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<sup>1/</sup> 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. (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."

covering the period of January 1, 2008 to December 31, 2010. The parties are negotiating successor agreements.

Article XII, ("Insurance"), of the agreement between Local 319 and Township provides in a pertinent part:

A. The Township shall provide dental plan, hospitalization insurance coverage and major medical insurance in effect at the end of 1991. Any difference in cost between an HMO and the Township insurance coverage shall be borne by the individual Employee. The Aetna Prescription co-pay shall be increased by Five Dollars (\$5.00). The Qualcare deductibles shall be increased from 100/200 to 200/500. Both changes are effective 1/1/06.

B. The Township has the right to change insurance carriers or institute a self-insurance program so long as the same or substantially similar benefits are provided.

Article XI, ("Insurance"), of the agreement between the SOA and Township provides in a pertinent part:

A. The Township shall provide dental plan, hospitalization insurance coverage and major medical insurance in effect at the end of 1991. Any difference in cost between an HMO and the Township insurance coverage shall be borne by the individual employee. Effective upon ratification by the parties, the following changes shall be implemented in the Health Insurance benefit:

1a. In the Aetna Plan, all existing co-pays shall be increased by \$10.00 (including prescription).

b. In the Qualcare Plan the deductible shall be \$300/\$600. The prescription co-pay shall be \$20.00. The office visit co-pay shall be \$10.00. The co-pays shall

be applied to the deductibles. The emergency room co-pays shall be \$25.00. The "in-network" coverage shall continue to be 100%, after the deductible. The "out of network" coverage shall be 80%, after the deductible, with a maximum out of pocket cost to be insured of a total of \$5,000.00

B. The Township has the right to change insurance carriers or institute a self-insurance program so long as the same or substantially similar benefits are provided.

On an annual basis, usually in December, employees have been permitted to select health insurance plans offered by the Township for the following calendar year. Upon hire, new employees historically have been permitted to choose health insurance plans.

For 2010, the plans offered to employees were the Aetna Plan or Qualcare Plan. As of December 2010, 102 out of 132 active officers were enrolled in the Aetna Plan. The remaining 30 active officers were enrolled in the Qualcare Plan.

At a December 7, 2010 meeting, representatives of Local 319 and SOA were informed by the Township that effective February 1, 2011, the Qualcare Plan would no longer be offered to employees. Instead, the Township would offer a substitute plan, the Aetna Open Access Plan.

Officers enrolled in the Qualcare Plan were offered the opportunity to enroll in the new Aetna Open Access Plan or the pre-existing Aetna Plan. The officers who had chosen the Aetna

Plan the year before were not permitted to enroll in the Open Access Plan. There was no open enrollment offered to the police officers enrolled in the Aetna Plan for 2011.

On January 1, 2011, the Township hired a police officer, Daniel Kanaley. He was not permitted to enroll in the expiring Qualcare Plan or the new Open Access Plan. He was allowed only to enroll in the Aetna Plan.

On January 6, 2011, Local 319 and SOA filed a joint grievance with the Township. The grievance asserts that the Township has repudiated the parties' respective labor agreements by not allowing all police officers, including new hires, the opportunity to enroll in the health insurance plan of their choice on an annual basis.

#### 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).

In Little Egg Harbor Tp., the designee wrote:

[t]he undersigned is most cognizant of and sensitive to the extraordinary nature of the remedy sought to be invoked and the limited circumstances under which its invocation is necessary and appropriate. The Commission's exclusive remedial powers, normally intended to be exercised subsequent to a plenary hearing, will not be called into play for interim relief in advance of such hearing except in the most clear and compelling circumstances.

N.J.S.A.34:13A-33 provides in relevant part:

Notwithstanding the expiration of a collective negotiations agreement, . . . no public employer . . . shall unilaterally impose, modify, amend, delete or alter any terms and conditions of employment . . . without specific agreement of the majority representative.

Local 319 and SOA argue that the Township violated the Act by repudiating the health insurance provision of their contracts and changing terms and conditions of employment while the parties are negotiating successor agreements. They claim that the Township is contractually bound to provide two health insurance plans and that unit members by practice have the ability to select a health insurance plan annually. They also claim that newly hired police officers, by practice, have the right to choose a health plan at the commencement of their employment.

The unions concede that the Township had the contractual right to change insurance carriers (Qualcare Plan to Aetna Open Access Plan) and that the benefits provided under the Aetna Open Access Plan are "the same or substantially similar" to the benefits provided by the former Qualcare Plan, as required by parties' contracts. Local 319 and SOA object to the Township limiting enrollment in the Aetna Open Access Plan to only those officers whom were enrolled in the Qualcare Plan.

The Township argues that the parties' contracts expressly allow it to change insurance carriers "so long as the same or substantially similar benefits are provided" by the new plan. It contends that it is not required to maintain a specific number of health insurance carriers or plans, in this case two as argued by the unions, nor is it obligated to permit employees to select plans annually. If, as the unions claim, it has violated the parties' contracts, then Local 319 and SOA should file grievances and adhere to the parties' grievance procedures. Finally, the Township argues that the alleged unfair practices do not warrant emergent relief because the level of benefits have not been reduced for a single employee, that is, those officers who selected the Aetna Plan in 2010 still have the Aetna Plan and those officers enrolled in the Qualcare Plan were given the opportunity to enroll in a plan which indisputably has the same or similar benefits.



I deny Local 319 and SOA's application for interim relief because they have not established the requisite irreparable harm. All police officers who were employed as of December 31, 2010 have a health insurance plan of their choosing. There are no allegations of reduced level of health benefits for those officers. The only work place change at issue for them is whether the officers enrolled in the Aetna Plan should have been permitted to enroll in the Qualcare Plan in December or the new Aetna Open Access Plan. Even assuming that there has been a change in practice of allowing employees to switch plans once a year and even assuming that the change occurred during negotiations for successor agreements, I do not believe that kind of change irreparably harms the negotiations process or employees to justify the invocation of the Commission's extraordinary remedial powers in advance of a plenary hearing.

With regard to the new hire Officer Kanaley, I was not provided an affidavit or certification which established that he would have selected the former Qualcare Plan or new Aetna Plan given a choice. It is purely speculative which plan he would have chosen given the option. I am unwilling to grant emergent relief for Kanaley on the record before me. He was given the same health insurance plan that a clear majority of unit members have elected to have.

Accordingly, I deny the charging parties' application for interim relief. I will forward the charges to the Director of Unfair Practices for further processing.

ORDER

The application for interim relief is denied.

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Perry O. Lehrer  
Commission Designee

DATED: March 25, 2011  
Trenton, New Jersey