I.R. 2016-6

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF NEWARK,

Respondent,

-and- Docket No. CO-2016-180

NEWARK POLICE SUPERIOR
OFFICERS' ASSOCIATION,

Charging Party.

CITY OF NEWARK,

Respondent,

-and- Docket No. CO-2016-184

NEWARK FRATERNAL ORDER OF POLICE LODGE 12,
NEWARK FIRE OFFICERS UNION IAFF LOCAL 1860, and
NEWARK FIREFIGHTERS UNION,

Charging Parties.

SYNOPSIS

A Commission Designee grants a consolidated application for interim relief filed by the Charging Parties (SOA, FOP, Local 1860 and NFU) alleging that the Respondent violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. ("Act") by unilaterally changing the terms and conditions of employment when the Respondent, in pertinent part, rescinded the Horizon Traditional Health Insurance Plan ("Traditional Plan") and substituted the Horizon Direct Access Plan ("Direct Access Plan") for the Charging Parties' active and retired members during negotiations for a successor collective negotiations agreement ("CNA") and for failing and refusing to supply relevant information requested by three of the Charging Parties relating to this matter.

The Respondent did not file a response to either interim relief application and the Designee found that the Charging Parties' applications were unopposed.

The Designee found that the undisputed evidence in the record demonstrated that the unilateral change in the level of health benefits by the Respondent and the failure to supply relevant information, during negotiations, caused a reduction in benefits and increased costs to affected active employees and retirees. Additionally, based on the CNA language regarding health benefits, there was no plausible contractual defense for the Respondent to the unfair practice charges.

The Designee found that the Charging Parties had established a substantial likelihood of prevailing in a final Commission decision on their legal and factual allegations and had established all the required elements to obtain interim relief.

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Appearances:

For the Respondent, Kenneth Calhoun, Assistant Corporation Counsel

For the Charging Party, John J. Chrystal III, President

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For the Charging Parties, Markowitz & Richman, attorneys, (Matthew D. Areman, of counsel); Zazzali, Fagella, Nowak, Kleinbaum & Friedman, attorneys (Paul L. Kleinbaum, of counsel); Law Offices of Craig S. Gumpel, LLC, attorneys (Craig S. Gumpel, of counsel)

INTERLOCUTORY DECISION

The two above unfair practice charges were consolidated for purposes of this interim relief matter with the agreement of the parties on March 18, 2016 with a return date scheduled for March 30, 2016. The Newark Police Superior Officers' Association ("SOA") initially filed an unfair practice charge on March 7, 2016 requesting interim relief and then amended the charge on March 9 alleging that the City of Newark ("City" or "Respondent") violated the New Jersey Employer-Employee Relations Act ("Act"), specifically subsections N.J.S.A. 34:13A-5.4(a)(1), (3), (5), and (7)[1/] by unilaterally changing the terms and conditions of employment when the City, in pertinent part, rescinded the Horizon Traditional Health Insurance Plan ("Traditional Plan") and substituted the Horizon Direct Access Plan ("Direct Access

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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; and, (7) Violating any of the rules and regulations established by the commission."

Plan") for active[2/] and retired members of the SOA during negotiations for a successor collective negotiations agreement ("CNA").

The Newark Fraternal Order of Police Lodge 12 ("FOP"), the Newark Fire Officers Union IAFF Local 1860 ("Local 1860"), and the Newark Firefighters Union ("NFU") filed a joint unfair practice charge on March 10, 2016 requesting interim relief with temporary restraints alleging that the City violated subsections (1) and (5) of the Act (see footnote 1 above) by unilaterally changing the terms and conditions of employment when the City, in pertinent part, rescinded the Traditional Plan (as set forth in the SOA's charge) and for failing and refusing to supply relevant information requested by the Charging Parties relating to this matter.

All Charging Parties requested that the City be restrained from eliminating the Traditional Plan for active and retired members effective April 1, 2016, and the FOP, Local 1860 and the NFU additionally requested that the City be ordered to supply the relevant information requested by them relating to this matter.

2/ Active members, but not retired members, had the ability to retain the Traditional Plan if the individual paid the cost difference between the Traditional Plan and the Direct Access Plan.

All of the Charging Parties[3/] filed briefs, certifications and exhibits.

I issued an Order to Show Cause in the SOA application on March 14, 2016 with a return date for oral argument set for March 28, 2016. Also on March 14, I issued an Order to Show Cause without temporary restraints in the FOP, Local 1860 and NFU application with a return date for oral argument set for March 30, 2016. Both matters were consolidated by letter on March 18 to be heard on the March 30 return date.

The City did not file a response to either interim relief application. As a result, I find that the Charging Parties' applications are unopposed by the City.[4/] Since the City did not oppose the Charging Parties' applications, I cancelled the March 30 return date. On April 1, 2016, based on the termination of

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3/ "Charging Parties" will refer to all four unions unless they are identified individually.

4/ N.J.A.C. 19:14-9.3 Briefs, provides in pertinent part (emphasis added):

> "(b) By no later than two days before the return date, unless otherwise ordered by the Commission Chair or the designee, the respondent shall file an original and two copies of its answering brief and any opposing affidavits or verified pleadings, together with proof of service of a copy on all other parties. The answering brief shall set forth the grounds of opposition, together with copies of any papers relied on which are not in the charging party's or petitioner's submissions. If no answering brief is filed, the application may be considered to be unopposed, provided, however, that an unopposed application must still satisfy the standards for granting interim relief."

the Traditional Plan on that date, I issued the below Order granting interim relief to the Charging Parties as set forth in that Order.

Findings of Fact

The SOA is the majority representative of all superior officers in the ranks of sergeant, lieutenant, and captain; the FOP is the majority representative of all police officers and detectives; Local 1860 is the majority representative of all fire officers in the ranks of fire captain, battalion chief and deputy chief; and the NFU is the majority representative of all firefighters.

The City and the SOA and FOP are parties to separate CNAs with the City effective from January 1, 2009 through December 31, 2012 and are in negotiations for successor agreements and Local 1860 and the NFU are parties to separate CNAs with the City effective from January 1, 2013 through December 31, 2015 and are also in negotiations for successor agreements (Local 1860 and the City have entered into a one year extension agreement that has not been ratified by the City).

The separate provisions from each of the four CNAs are almost identical. All contain provisions, in pertinent part, that allow the City to change insurance carriers during the term of the agreement so long as substantially similar benefits but no

less than those presently in effect are provided by the new carrier:

> SOA
>
> The City reserves the right to change insurance carriers during the term of this Agreement so long as substantially similar benefits but no less than those presently in effect are provided by the new carrier.
>
> FOP
>
> The City reserves the right to change insurance carriers during the lifetime of the Agreement so long as substantially similar benefits, but no less than those presently in effect are provided by the new carrier.
>
> Local 1860
>
> The City reserves the right to change insurance carriers during the term of this Agreement so long as substantially similar benefits but no less than those presently in effect are provided by the new carrier.
>
> NFU
>
> The City reserves the right to change insurance carriers during the lifetime of this Agreement so long as substantially similar benefits and administrative procedures, but no less than those presently in effect, are provided by the new carrier.

The City on or about January 29, 2016, informed the Charging Parties that the Traditional Plan would no longer be an available benefit option and all eligible employees and their eligible dependents and all eligible retirees and their eligible dependents enrolled in the Traditional Plan would be

automatically enrolled in the Direct Access Plan effective April 1, 2016. Active employees, however, had the ability to remain in the Traditional Plan. The City issued the following "Traditional Plan Election Form" that provided in pertinent part:[5/]

> I ELECT TO CONTINUE COVERAGE THROUGH THE TRADITIONAL PLAN
>
> - I understand that the City is no longer offering the Traditional Plan due to the expense.
> - I've reviewed the Open Enrollment documents and do not wish to enroll in an alternative plan.
> - I understand that I am responsible for the cost difference between the Traditional Plan and the Direct Access Plan and will have to "buy-up" in addition to my premium contributions as per Ch. 78.

Local 1860 submitted the certification of Dominick D. Fanuele, the President of Fanuele Financial Group, a company that provides employee benefits brokerage and consulting services. Fanuele compared the benefits provided by the Traditional Plan to the benefits provided by the Direct Access Plan and certified in pertinent part:

> Under the Traditional Plan, the network is "passive." The Schedule of Benefits is the same regardless of whether you obtain services In or Out-of-Network. The Direct Access has distinctly separate benefits for In and Out-of-Network care.

5/ This exhibit was provided in the SOA's application.

The Network - The passive network in place under the Traditional Plan is Horizon's PPO network. This is larger than the network in place under the Direct Access plan which utilizes Horizon's "Managed Care" network.

Basic Surgical - The Traditional Plan pays **ALL** surgical benefits at 100%, regardless of whether they are incurred In or Out-of-Network. This includes the surgeon's fee, assistant surgeon (if required) anesthesia and facility charges. Out-of-Network fees are subject to Reasonable and Customary limits but are covered in full. Under the Direct Access plan, Out-of-Network charges are reimbursed at **60% after the $5,000 Deductible.**

- Note - Plan documents on file indicate that, under the Traditional Plan, Out-of-Network surgical expenses are covered at the 90th percentile. Many Horizon administered plans have started using more limited allowances in recent years. This results in a higher likelihood of charges being excluded by the plan. The information available for the Direct Access plan does not confirm the standard used to determine the Out-of-Network allowance.

Under the Traditional Plan, the deductible and coinsurance come into play under the "Major Medical" portion of the plan. All charges that exceed the Basic Benefit limit and that are not covered under the Basic Hospital and Surgical benefits are covered under the Major Medical. There are some major differences in the deductibles and coinsurance levels between the plans. For In-Network care, the Traditional and Direct Access plan both cover hospitalization and related services, as well as surgical care at 100%. However, the Out-of-Network care under the Direct Access plan is inferior to the Major Medical portion of the Traditional Plan in the following areas:

- Deductible - Under the Traditional Plan, the calendar year Deductible is $250 per person. The Deductible for Out-of-Network care under the Direct Access plan is $5,000 per individual and $10,000 per family.

- Coinsurance - The Major Medical plan under the Traditional pays at 80% after the $250 Deductible has been met. After the $5,000 ($10,000 family) deductible has been met, the Direct Access pays at 60%! So clearly, there is a high amount of potential out-of-pocket expenses under the Direct Access compared to the Traditional.

- Maximum Out-of-Pocket (MOOP) - As stated above, the Traditional Plan does not impose a deductible or coinsurance on Basic Surgical charges. The deductible applies only to Supplemental/Major Medical expenses. The Affordable Care Act requires all plans to have a MOOP. As of 2016 the MOOP for the Traditional Plan can be no more than $6,850 per individual and $13,700 per family per year. After the Out-of-Pocket limit is reached, covered expenses are reimbursed at 100% for the remainder of the calendar year. In the Traditional Plan an individual was required to pay 20% of covered Major Medical expenses after the deductible was met.

- Under Direct Access, there are separate In and Out-of-Network, MOOP limits. The In-Network individual limit is $1,500. The family limit is $3,000. However, there is a sizeable difference in the Out-of-Pocket exposure for Out-of-Network claims. With Direct Access, an individual is responsible for up to $10,000 and the family limit is $20,000. **Because of this high Out-of-Pocket exposure, this is one area where the Traditional Plan has a**

significant advantage over the Direct Access plan. <u>The Traditional Plan ALWAYS has better benefits if care is obtained Out-of-Network.</u>

- Emergency Room - The Direct Access plan imposes a $25 copay for use of the Emergency Room. The Traditional Plan had 100% coverage for emergency medical or accidental injury.

- Second Surgical Opinions - Traditional Plan pays 100% for these visits. Direct Access requires a $25 copay (surgeons are considered Specialists) In-Network. Deductible and coinsurance apply Out-of-Network.

- Chiropractic - The DA covers this service but imposes a 25 visit annual limit. The Traditional Plan has a 30 visit limit.

- **Overall Reimbursement Levels - This is a key benefit of the Traditional Plan that is not available under the Direct Access plan.** Under the Traditional Plan, Horizon generally applied Reasonable and Customary limits to only four categories of expenses - Surgeon, Assistant Surgeon, Anesthesiology and Chiropractic charges. All other expenses are typically paid "at charges." This is a more liberal reimbursement standard than is available under the Direct Access plan. For example, this made it unlikely that a patient would receive a bill for lab work with any portion of that charge considered in excess of Reasonable and Customary. This is important because charges that are excluded by the plan because they are determined to exceed the Reasonable and Customary guidelines are the responsibility of the patient. They DO NOT accumulate toward deductibles or

> out-of-pocket limits. They are excluded entirely.

Fanuele concluded his certification with the following:

> With the information I have been provided, it is my opinion that the benefits provided by the Direct Access Plan are significantly less than those provided with the Traditional Plan. It is further my opinion that the benefits provided by the Direct Access Plan are not even substantially similar benefits to those provided by the Traditional Plan if that is the standard.

As set forth above, the FOP, Local 1860 and the NFU all requested information from the City relevant to the change from the Traditional Plan to the Direct Access Plan. The FOP President, James M. Stewart, certified:

> In response to the City's actions in this matter, by letter dated February 11,2016, I wrote to [the City's Personnel Director] requesting information about the City's elimination of this benefit and specifically requested whether employees who were to remain in the Traditional Plan would incur any costs for remaining in that plan. I also requested the number of active bargaining unit employees and their eligible dependents who are enrolled in the Horizon Traditional Plan. Similar information was requested for the retirees and their eligible dependents. The City has failed/refused to respond to the FOP's February 11,2016 request for information.

The Local 1860 President, Anthony Tarantino, certified, "I also sent a letter to the City requesting the names of the retirees who are participants in the Traditional Plan because I do not have that information ... The City did not respond to my

letter, nor did it provide me with the information requested."

The NFU President, Charles West, certified:

> On February 11, 2016, I sent an email to the City requesting the names of active and retired NFU members who are participants in the Traditional Plan because I do not have that information ... I also stopped by the City Personnel office and personally requested this information from [a City Personnel employee] who told me that he would reply by the end of the day. A follow-up email was sent to the City on February 22, 2016 reiterating my request for the information ... The City did not respond to my emails, or my personal request nor did it provide me with the information requested.

Conclusions of Law

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[6/] 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); Burlington Cty., P.E.R.C. No. 2010-33, 35 NJPER 428 (¶139 2009), citing Ispahani v. Allied Domecq Retailing United States, 320 N.J. Super. 494 (App. Div. 1999)

6/ Material facts must not be in dispute in order for the moving party to have a substantial likelihood of success before the Commission.

(federal court requirement of showing a substantial likelihood of success on the merits is similar to Crowe); 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 stated:

> [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.

Unilateral Changes in Health Benefits

The Commission set forth the standard for addressing unilateral changes in health benefits in Union Tp. and FMBA Local No. 46, FMBA Local No. 246 and PBA Local No. 69, I.R. No. 2002-7, 28 NJPER 86 (¶3031 2001), recon. den. P.E.R.C. No. 2002-55, 28 NJPER 198 (¶33070 2002):

> We begin with an overview of our approach to unilateral changes in health benefits. The level of health benefits is mandatorily negotiable and may not be changed by an employer unilaterally. Piscataway Tp. Bd. of Ed., P.E.R.C No. 91, 1 NJPER 49 (1975). For police and firefighters, the identity of the carrier is a permissive, not mandatory, subject of negotiations. City of Newark, P.E.R.C No. 82-5, 7 NJPER 439, 440 (¶12195 1981). However, where changing the identity of the carrier affects terms and conditions of employment, e.g., the level of insurance

benefits or the administration of the plan, an alternative carrier is a mandatory subject for negotiations. Ibid.

In Borough of Metuchen, P.E.R.C. No. 84-91, 10 NJPER 127 (¶15065 1984), we found that a unilateral change in insurance carriers violated the obligation to negotiate in good faith. The level of insurance benefits under the new plan was different from and, in certain important respects, lower than that previously provided. That certain benefits of the new plan were greater was irrelevant in determining that there was an unfair practice. Id. at 128. We ordered the employer to reimburse employees for any financial losses incurred due to the change in carriers. In that case, no employees had to pay money up front under either plan, and we did not consider whether it would have been appropriate to require a return to the previous plan in the absence of a specific exception raising that point. Id. at 128, 130 n.5.

After Metuchen, we issued an important decision holding that a mere breach of contract does not amount to an unfair practice. State of New Jersey (Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984). Health benefit levels are often set by contract. One might have thought, after Human Services, that a unilateral change in the level of health benefits would be viewed as a mere breach of contract, not an unfair practice. City of South Amboy, P.E.R.C. No. 85-16, 10 NJPER 511 (¶15234 1984), however, clarified that we are not divested of our unfair practice jurisdiction simply because the employer asserts that the contract permits the unilateral action or because the unfair practice, if proved, may also breach the contract. Employees have a statutory right not to have health benefits unilaterally reduced when the employer changes carriers. As we said in South Amboy, a unilateral

> reduction in insurance protection which would affect every member of the negotiations unit is akin to an employer's decision to reduce wages unilaterally. Id. at 512. If proved, both would amount to a statutory violation.
>
> 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, for example, "equivalent" or "substantially equivalent" benefit plans. An employer satisfies its negotiations obligation when it acts pursuant to the contract. Id. at 512.

The CNA provisions in the instant matter with respect to the change in the level of health benefits, as set forth above, require "substantially similar benefits, but no less than those presently in effect."[7/]

The Commission in Union Tp. addressed the specific CNA language in that matter:

> This employer is contractually obligated to maintain "at least equal" benefits. Had it negotiated different contract language, it would have been able to argue that the contract authorized the current change. For example, the employer might have been able to argue that this change was to an "equivalent," or "substantially equivalent" health plan, had the contract provided that defense.

7/ The NFU provision has an additional requirement regarding "administrative procedures."

I find that in the instant matter the language "but no less than those presently in effect" is the equivalent of "at least equal" as set forth in Union Tp. I also find that the level of benefits in the Direct Access Plan is clearly less than the benefits provided in the Traditional Plan and not even substantially similar. Even without the undisputed evidence from the Fanuele certification, the fact that active employees who wanted to continue coverage in the Traditional Plan would have to pay the cost difference between the plans and "buy-up" demonstrates that the new benefits under the Direct Access Plan are less than those that were in effect under the Traditional Plan. Additionally, the Traditional Plan was not even made available to the retirees.[8/]

FOP, Local 1860 and NFU Information Request

As set forth above, the FOP, Local 1860 and the NFU requested information from the City relevant to the change from the Traditional Plan to the Direct Access Plan.

The requirement of an employer to provide information to a majority representative regarding information that is necessary

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8/ See Voorhees Tp. and Voorhees Police Offrs Assn, Voorhees Sgts Assn and Sr Offrs Assn of FOP Lodge 56 and FOP, NJ Labor Counsel, P.E.R.C. No. 2012-13, 38 NJPER 155 (¶44 2011), aff'd 39 NJPER 69 (¶27 2012), a scope of negotiations determination case, regarding the ability of a majority representative to enforce contractual provisions after a unilateral increase in prescription co-pays by the employer.

to represent its members is well settled. The Commission stated in City of Newark, P.E.R.C. No. 2015-64, 41 NJPER 447 (¶138 2015):

> N.J.S.A. 34:13A-5.4(a)(5) prohibits public employers from "refusing to negotiate in good faith with a majority representative concerning terms and conditions of employment." An employer's refusal to provide a majority representative with information that the union needs to represent its members constitutes a refusal to negotiate in good faith. UMDNJ, P.E.R.C. No. 93-114, 19 NJPER 342 (¶24155 1993), recon. granted P.E.R.C. No. 94-60, 20 NJPER 45 (¶25014 1994), aff'd 21 NJPER 319 (¶26203 App. Div. 1995), aff'd 144 N.J. 511 (1996). An employer must supply information if there is a probability that the information is potentially relevant and that it will be of use to the representative in carrying out its statutory duties. State of N.J. (OER), P.E.R.C. No. 88-27, 13 NJPER 752 (¶18284 1987), recon. den. P.E.R.C. No. 88-45, 13 NJPER 841 (¶18323 1987), aff'd NJPER Supp. 2d 198 (¶177 App. Div. 1988). Relevance is determined through a discovery-type standard; therefore, a broad range of potentially useful information is allowed to the union for effectuation of its representational duties.

In this matter, the information requested by the FOP, Local 1860 and the NFU from the City, as set forth above (cost difference between the plans and the members/retirees/dependents enrolled), was necessary for them as majority representatives to represent their members regarding the change from the Traditional Plan to the Direct Access Plan and should have been provided by

the City in a timely manner. See also Lakewood Bd. of Ed., P.E.R.C. No. 97-44, 22 NJPER 397 (¶27215 1996).

Employers are not authorized to unilaterally change terms and conditions of employment in expired CNAs during negotiations. N.J.S.A. 34:13A-33, entitled "Terms, conditions of employment under expired agreements," provides:

> Notwithstanding the expiration of a collective negotiations agreement, an impasse in negotiations, an exhaustion of the commission's impasse procedures, or the utilization or completion of the procedures required by this act, and notwithstanding any law or regulation to the contrary, no public employer, its representatives, or its agents shall unilaterally impose, modify, amend, delete or alter any terms and conditions of employment as set forth in the expired or expiring collective negotiations agreement, or unilaterally impose, modify, amend, delete, or alter any other negotiable terms and conditions of employment, without specific agreement of the majority representative.

An employer's unilateral alteration of the status quo during negotiations for a successor agreement constitutes a refusal to negotiate in good faith in violation of subsection 5.4(a)(5) of the Act and meets the irreparable harm portion of the interim relief standards because it has a chilling effect on negotiations. Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Assn., 78 N.J. 25 (1978); Rutgers, the State University and Rutgers University Coll. Teachers Ass'n, et al., P.E.R.C. No. 80-66, 5

NJPER 539 (¶10278 1979), aff'd as mod. NJPER Supp. 2d 96 (¶79 App. Div. 1981).

In Closter Bor., P.E.R.C. No. 2001-75, 27 NJPER 289 (¶32104 2001), the Commission also specifically addressed unilateral changes to health benefits when granting reconsideration of an interim relief decision:

> Unilateral changes in health benefits violate the obligation to negotiate in good faith. South Amboy; Metuchen. If a change occurs during contract negotiations, the harm is exacerbated. Galloway, 78 N.J. at 48-49. Unilateral changes, even during the ratification process, can shift the balance of power in the collective negotiations process. Such changes are unlawful and, where appropriate, will be rescinded if the standards for obtaining interim relief have been met.

Based on the above, I find that the Charging Parties have demonstrated that they have a substantial likelihood of prevailing in a final Commission decision on their legal and factual allegations and that material facts are not in dispute. Crowe. I also find that the Charging Parties will suffer irreparable harm if interim relief is not granted based on the City's actions with respect to the unilateral change in health benefits and the failure to provide relevant information since the standing and status of the Charging Parties has been undermined and, as set forth by the Court in Galloway, any unilateral change in a term and condition of employment during

negotiations has a chilling effect and undermines labor stability. Additionally, the eligible individuals who were enrolled in the Traditional Plan will suffer irreparable harm because they will clearly be required to pay more for medical treatments under the Direct Access Plan and may forgo medical treatment as a result. Closter.

Next, in deciding whether to grant interim relief, the relative hardship to the parties must be considered and a determination made that the public interest will not be injured by the interim order. Crowe. In this case, since the City has not opposed these applications, it has not identified any specific harm to it from restoring the status quo with the health benefits and providing the requested information. I find that the relative hardship to the parties weighs in favor of the Charging Parties due to the chilling effect on negotiations and the impact on the individuals affected by the unilateral change to the health benefits. In considering the public interest, I find that it is furthered by adhering to the tenets expressed in the Act which require the parties to engage in collective negotiations prior to changing terms and conditions of employment. Adhering to the collective negotiations process results in labor stability and promotes the public interest. The application for interim relief is granted as set forth in the

below Order. Accordingly, this case will be transferred to the Director of Unfair Practices for further processing.

ORDER

The Respondent is enjoined from rescinding the Traditional Health Insurance Plan and to maintain and/or restore coverage for the Charging Parties' active and retired Fire Officers, Police Superior Officers, Police Officers and Firefighters who were participants in that plan before the Respondent's change;

The Respondent shall create a fund available to reimburse costs to the affected Charging Parties' active members who incurred additional costs for remaining in the Traditional Health Insurance Plan and for retired members who were transferred to the Direct Access Plan as a result of the Respondent's unilateral action;

The Respondent shall notify and provide the Charging Parties and their affected active and retired members with the name of an individual or office to whom or where claims should be submitted. Reimbursement claims may be verified by the Respondent and disbursements must be made within a reasonable time from the date of submission; and,

The Respondent will provide the relevant information as requested by the Charging Parties in CO-2016-184 relative to this matter regarding the names of the active and retired members that

were enrolled in the Traditional Health Insurance Plan by Friday, April 8, 2016.

This Order will remain in effect pending the disposition of the charges or the further order of the Commission.

DAVID N. GAMBERT
COMMISSION DESIGNEE

DATED: April 28, 2016

Trenton, New Jersey