

D.U.P. NO. 2024-14

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

STATE OF NEW JERSEY,
(DEPARTMENT OF CORRECTIONS),

Respondent,

-and-

Docket No. CO-2023-174

POLICEMEN'S BENEVOLENT ASSOCIATION,
LOCAL 105,

Charging Party.

Appearances:

For the Respondent,
Matthew J. Platkin, Attorney General
(Elizabeth A. Davies, Deputy Attorney General)

For the Charging Party,
Crivelli, Barbati & DeRose, LLC, attorneys
(Frank Crivelli, of counsel)

REFUSAL TO ISSUE COMPLAINT

On April 18, 2023 the Policemen's Benevolent Association, Local No. 105 ("PBA") filed an unfair practice charge against the State of New Jersey, Department of Corrections ("Department"). The PBA amended the unfair practice charge on April 20, 2023 and August 8, 2023. As amended, the charge alleges that the Department violated sections 5.4a (1), (5), and (7) of the New Jersey Employer-Employee Relations Act ("Act")^{1/} by cancelling

^{1/} These provisions prohibit public employers, their
(continued...)

health and prescription benefits for PBA members while those members are out of work on authorized leaves of absences. Specifically, the charge alleges that the Department's policies and procedures for collecting members' healthcare contributions while out on leave are inadequate and result in benefit cancellation even when the required payments are made. The PBA requests an order ". . . requiring the Department of the Treasury to correct its policies and procedures by developing new direct payment methods, or other policies or procedures as they may suggest that will be more reliable and prevent the wrongful and unlawful termination of Healthcare payments" and ". . . requiring a commitment from the Department of the Treasury to institute a new 'user friendly' and efficient electronic payment plan within a negotiated period of time that is satisfactory to the Local, Treasury and the [Department]."

The Department filed a position statement on July 10, 2023 and a supplemental position statement on August 23, 2023. The position statements were also served on the PBA.

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

The Commission has authority to issue a complaint where it appears that the Charging party's allegations, if true, may constitute an unfair practice within the meaning of the Act. N.J.S.A. 34:13A-5.4c; N.J.A.C. 19:14-2.1. The Commission has delegated that authority to me. Where the complaint issuance standard has not been met, I will decline to issue a complaint. N.J.A.C. 19:14-2.3.

I find the following facts:

The PBA is the exclusive majority representative of a group of rank-and-file law enforcement officers employed by the Department. (Rider to Unfair Practice Charge, at 1).

The PBA and the Department are parties to a collective negotiations agreement ("CNA") covering the term of July 1, 2015 through June 30, 2019. The parties subsequently executed two successor Memoranda of Agreement ("MOAs") covering the terms of July 1, 2019 through June 30, 2023, and July 1, 2023 through June 30, 2027.

Article XXXVII of the CNA contains the following provision:

Fringe Benefits

B. Contributions Towards Health and Prescription Benefits

7. An employee on leave without pay who receives health and prescription drug benefits provided by the State Health Benefits Program shall be required to pay the above-outlined contributions, and shall be billed by the State for these contributions. Health and prescription benefit coverage will cease if the

employee fails to make timely payment of these contributions.

(Rider to Unfair Practice Charge, at 1-2).

The subsequent MOAs executed by the parties did not remove or otherwise modify this provision.

N.J.S.A. 52:14-17.32e ("Termination of coverage; continuance upon payment of premium by employee") provides:

The coverage of an eligible State employee and of his dependents, if any, during any period of authorized leave of absence without pay shall terminate on the last day of the coverage period for which premiums have been paid; provided, however, the coverage of the employee and the employee's dependents may be continued by such employee, if the employee shall pay in advance the total premium required for the employee's coverage and the coverage of the employee's dependents during such period of authorized leave of absence without pay; provided, further, that no period of such continued coverage shall exceed a total of 9 months, or the equivalent number of payroll periods for those not reported on a monthly basis, during which the employee received no pay.

While active employees make contributions towards healthcare premiums through payroll deductions, employees on an unpaid leave of absence must send payments by money order or personal check (unless a personal check from that employee had previously been returned for insufficient funds) to the Department's Human Resources Office. Payments may not be sent electronically. (Rider to Amended Unfair Practice Charge, at 2; Department's July 10, 2023 Position Statement, at 3-4).

The Department sends a letter to employees who go out on an unpaid leave of absence. The letter advises that health benefits

will be terminated for employees not in pay status unless the employee "initiates action for continuation of coverage." The letter indicates which health, prescription, and/or dental program the employee is enrolled in, and provides the procedures by which an employee can make payments during an unpaid leave of absence. The letter also provides, in part, "[i]f you fail to submit the check or money order by the date indicated above, your coverage will be terminated. Upon return to work, you must re-enroll into the Health Benefit, Prescription Program, and Dental [Program] by completing an enrollment application within ten (10) days." (Department's August 23, 2023 Position Statement, at Ex. A).

The Union asserts that despite following the State's processes, members on unpaid leaves of absences have received notification from the Department of Treasury indicating that healthcare contribution payments were never received. In some cases, members have had benefits cancelled without being notified by the Treasury. It is a time consuming process for benefits to be reinstated once they are cancelled. (Rider to Amended Unfair Practice Charge, at 2).

The Union provided nine (9) examples of members who had health benefits terminated despite making required payments to the State: Senior Correctional Police Officer Corey Russo ("Russo"); Senior Correctional Police Officer Fritas ("Fritas");

Senior Correctional Police Officer Lao ("Lao"); Senior Correctional Police Officer Kelvin Roman ("Roman"); Senior Correctional Police Officer Guallpo ("Guallpo"); Senior Correctional Police Officer Armona ("Armona"); Senior Correctional Police Officer Jesus Reyes ("Reyes"); Senior Correctional Police Officer Capria Covington ("Covington"); and Senior Correctional Police Officer Alan Hoffman ("Hoffman"). (Rider to Amended Unfair Practice Charge, at 3-5).

The State investigated the nine incidents cited by the Union in the amended unfair practice charge and determined that: four cases (Russo, Freitas, Lao and Roman) involved benefits that were cancelled due to a State/Department error; three cases (Guallpa, Armona, and Covington) involved an employee error; one case (Hoffman) involved a member who was on an unauthorized leave (rather than an authorized leave) of absence and did not actually have health benefit payments lost; and one case (Reyes) occurred in March of 2022 and details on the termination of benefits were no longer available. In the cases of Freitas, Lao, and Roman, the employee who was responsible for the error resulting in cancellation of benefits has since resigned, and the Human Resources Manager has implemented checks and balances to prevent the mistake from reoccurring. (Department's August 23, 2023 Position Statement, at 2-7).

The Department contends that the charge “involves a small number of isolated incidents” and “[w]hile the clerical errors processing the employees’ healthcare coverage were unfortunate, the incidents do not constitute a violation of the Act.” The Department notes that “[o]f the 745 DOC employees who were out on leave at any point in the last year, only six percent (forty-two employees) had their benefits reinstated after their benefits had been terminated.” (Department’s August 23, 2023 Position Statement, at 2, 8).

The Department asserts without contradiction that the procedures for collecting healthcare benefit contributions from employees that are out of work on an unpaid leave of absence have been in place and unchanged since 2014, and that the State uses the same process for employees of all State Departments.^{2/} The Department further asserts that it is a “painstaking and time-consuming process” for the DOC (and the member) to reinstate a member’s health benefits once cancellation has occurred. (Department’s August 23, 2023 Position Statement, at 4).

2/ The PBA’s amended charge does not state how long the Department’s procedures for collecting contributions from members on unpaid leaves of absence have been in place. The charge does state, however, that “[t]he problem has been ongoing for a significant period of time” (Rider to Amended Unfair Practice Charge, at 2.

ANALYSIS

N.J.S.A. 34:13A-5.3 entitles a majority representative to negotiate on behalf of unit employees over their terms and conditions of employment. Section 5.3 also defines an employer's duty to negotiate before changing working conditions:

Proposed new rules or modification of existing rules governing working conditions shall be negotiated with the majority representative before they are established.

See also, Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Assn., 78 N.J. 25, 48 (1978)

Health insurance is a mandatorily negotiable term and condition of employment, as is its availability. State of New Jersey, P.E.R.C. No. 2000-12, 25 NJPER 402, 403 (¶30174 1999); Bor. of Woodcliff Lake, P.E.R.C. No. 2004-24, 29 NJPER 489 (¶153 2003); Willingboro Bd. of Ed. And Employees Assn. of Willingboro Schools, 178 N.J. Super 477 (App. Div. 1981). The Commission has also held that payments of health insurance premiums for employees on unpaid leaves of absence are mandatorily negotiable. Hopewell Valley Reg. Bd. of Ed., P.E.R.C. No. 97-91, 23 NJPER 133 (¶28065 1997); West Orange Bd. of Ed., P.E.R.C. No. 92-114, 18 NJPER 272 (¶23117 1992), aff'd. NJPER Supp. 2nd 291 (¶232 App. Div. 1993). Unilateral changes in health benefits violate the obligation to negotiate in good faith. Bor. Of Closter, P.E.R.C. No. 2001-75, 27 NJPER 289 (¶32104 2001); Tp. of Pennsauken,

P.E.R.C. No. 88-53, 14 NJPER 61 (¶19020 1987); City of South Amboy, P.E.R.C. No. 85-16, 10 NJPER 511 (¶15234 1984).

In this case, based on the record, I cannot find that the Department failed to negotiate in good faith or unilaterally changed a term and condition of employment for unit members on unpaid leaves of absence. The Department has asserted without contradiction that the procedures for collecting healthcare benefit contributions from employees that are out of work on an unpaid leave of absence have been unchanged since 2014. The Union does not contest this assertion, specify a date when the alleged unilateral change occurred, or point to a specific Departmental policy that modified the healthcare contribution payment procedure. The Union does not allege that the members specified in the amended charge have been treated differently than members out on unpaid leaves of absence in the past, nor does it allege that the Department has refused to negotiate with the Union about how to remedy this issue going forward. In fact, the charge itself notes that the ". . . problem has been ongoing for a significant period of time and both personnel from the [Department] and the Local have tried to remedy this issue to no avail." (Rider to Unfair Practice Charge, at 2). Based on these facts, I cannot find that the Department unilaterally altered a term and condition of employment or refused to negotiate in good faith.

It is also undisputed that some members on unpaid leaves of absence continue to make required contribution payments and do not experience health benefit cancellation at all. The Union has presented only four examples of members having benefits cut off due to a Department error. These examples appear to be, as the Department suggests, "isolated incidents," especially considering that 745 unit members have been out on a leave of absence in the past year. Further, while the charge alleges that the Department of Corrections violated the Act, it is undisputed that the Department of the Treasury provides the mechanism by which continued benefit payments are made for employees of all state departments. It is also relevant that health benefits for unit members on unpaid leaves of absence are terminated for non-payment pursuant to state statute, not any policy of the Department.^{3/}

Considering the totality of the parties' conduct, it is also clear from the record that the Department has taken steps to investigate and remedy the cancellation of benefits once it became aware of the same. For example, the Department asserts

^{3/} As noted above, N.J.S.A. 52:14-17.32e (Termination of coverage; continuance upon payment of premium by employee") provides, in part, ". . . the coverage of the employee and the employee's dependents may be continued by such employee, if the employee shall pay in advance the total premium required for the employee's coverage and the coverage of the employee's dependents during such period of authorized leave of absence without pay"

that the employee who was responsible for three of the four Departmental errors (resulting in a member's benefit cancellation) has resigned, and the Human Resources manager ". . . has implemented additional checks and balances to prevent this problem from occurring again." Indeed, since the amended charge was filed, there has been no allegation that additional members had health benefits wrongfully terminated while out on an unpaid leave of absence. There is also no allegation that the Department refused to reinstate benefits once they were wrongfully cancelled, or any other indication that the Department acted in bad faith once it became aware of a cancellation. Based on the record, I cannot conclude that the Department unilaterally "cancell[ed] a member's healthcare benefits" in violation of section 5.4a (5) the Act.

I am cognizant of the inconvenience that results from a cancellation of health benefits for employees on unpaid leaves of absence. The cancellation is especially frustrating where, as alleged here, employees are impacted through no fault of their own. However, based on this record and relevant PERC precedent, I cannot conclude that the alleged conduct constitutes a violation of the Act.

Accordingly, I find that the complaint issuance standard has not been met and decline to issue a complaint on the allegations of this charge. N.J.A.C. 19:14-2.1.^{4/}

ORDER

The unfair practice charge is dismissed.

/s/ Ryan M. Ottavio
Ryan M. Ottavio
Director of Unfair Practices

DATED: March 27, 2024
Trenton, New Jersey

This decision may be appealed to the Commission pursuant to N.J.A.C. 19:14-2.3. See N.J.A.C. 19:14-2.3(b).

Any appeal is due by April 2, 2024.

^{4/} Regarding the remaining allegations, while the charge alleges that the Department violated a "rule[] or regulation[] established by the Commission" in violation of section 5.4a (7), no specific rule or regulation allegedly violated has been cited. Willingboro Bd. Of Ed., 6 NJPER 459, 460 (¶11235 1980). Further, given that the Union failed to show that the Department unilaterally changed a term and condition of employment or failed to negotiate in good faith, I cannot find that the Department's conduct derivatively violates section 5.4a (1) of the Act.