D.U.P. NO. 97-36

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

In the Matter of

HAMILTON TOWNSHIP BOARD
OF EDUCATION,

Respondent,

-and- Docket No. CO-97-101

HAMILTON TOWNSHIP EDUCATION
ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses a charge filed by the Hamilton Township Education Association on the grounds that the charge did not allege a violation of the Act. The charge alleged that unit members were required to pay $240 annually toward benefits under their contract while employees in other bargaining units only had to pay $200 per annum for the same benefits.

D.U.P. NO. 97-36

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

In the Matter of

HAMILTON TOWNSHIP BOARD
OF EDUCATION,

Respondent,

-and- Docket No. CO-97-101

HAMILTON TOWNSHIP EDUCATION
ASSOCIATION,

Charging Party.

Appearances:

For the Respondent,
Hill Wallack, attorneys
(Joan Kane Josephson, of counsel)

For the Charging Party,
Bergman & Barrett, attorneys
(Michael T. Barrett, of counsel)

REFUSAL TO ISSUE COMPLAINT

On September 30, 1996, the Hamilton Township School Secretaries Association filed an unfair practice charge alleging that the Hamilton Township Board of Education violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically subsections 5.4(a)(1), (2), (3), (5) and (7)[1/] by

---

1/ These subsections 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

Footnote Continued on Next Page

requiring unit members to pay $240 per year toward benefits while employees in other negotiations units only have to pay $200 per year for identical benefits. The Association also maintains that the Board has changed health insurance carriers and that change extinguishes the Association's contractual waiver to seek relief at PERC or in any other forum concerning the $240 per annum copay provision.

The Board argues that it is only living up to the provisions contained in the parties' contract. Further, it asserts that the agreement clearly provides that the Association waives its right to appeal this issue to PERC. Lastly, the Board argues that even if the charge alleged a breach of contract, the charge should be dismissed under State of New Jersey (Dept. of Hum. Serv.), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984).

1/ Footnote Continued From Previous Page

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

The agreement between the parties covering from July 1, 1994 to June 30, 1998 provides in pertinent part:

> Article 9 - Deduction from Salary
>
> 9:7 Effective December 1, 1995, each employee shall have deducted from their salary the sum of $20.00 per month, which shall be for payment to the Board for the cost of all benefits provided to the employee pursuant to this Agreement. The maximum annual payment per employee shall be $240.00. The Hamilton Township School Secretaries' Association and all of its individual members waive and relinquish any and all rights or claims that it may now have or hereafter acquire against the Board arising from this copay provision for benefits within this Contract, whether before PERC or the contractual grievance procedure, Commissioner of Education, or any other court or administrative agency of competent jurisdiction.

The Charging Party has failed to allege an unfair practice.[2/]

The contract between the parties expressly provides that employees shall pay $20 per month, or $240 per year for medical benefits. Yet, the requirement that employees pay $240 per year for medical benefits is the basis of the unfair practice charge. The Charging Party has not even alleged a breach of contract. (Human Services).

Finally, a unilateral change of health insurance carrier is not an unfair practice. Boro of Metuchen, P.E.R.C. No. 84-91, 10 NJPER 127 (¶15065 1984).

2/ However, the binding effect of Article 9's waiver of rights under the Act is questionable. See Red Bank Reg. H.S. Bd. of Ed. v. Red Bank Reg. Ed. Ass'n, 78 N.J. 122 (1978).

Therefore, I do not believe that the Commission's complaint issuance standard has been met and will not issue a complaint on the allegations of this charge. The charge is dismissed. N.J.A.C. 19:14-2.3.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES

Edmund G. Gerber, Director

DATED: April 1, 1997
Trenton, New Jersey