I.R. NO. 82-6

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOUTH ORANGE-MAPLEWOOD
BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-82-230

SOUTH ORANGE-MAPLEWOOD EDUCATION ASSOCIATION, SOUTH ORANGE-MAPLEWOOD AUDIO VISUAL TECHNICIANS ASSOCIATION, SOUTH ORANGE-MAPLEWOOD SECRETARIES ASSOCIATION, SOUTH ORANGE-MAPLEWOOD PUBLIC SCHOOL SERVICE ASSOCIATION,

Charging Parties.

SYNOPSIS

The Commission designee has refused to restrain the Board of Education of South Orange-Maplewood from withdrawing from the State Health Benefits Plan.

The contract between the Board of Education and the South Orange-Maplewood Education Association (Charging Party) provides that the Board will provide coverage equal to or greater than coverage provided under the State Health Benefits Plan. It was found that the existence of this language raised a substantial question as to whether the Board would be bound to remain within the State Health Benefits Plan.

Accordingly it was not shown that the Charging Party demonstrates a substantial likelihood of success at a full plenary hearing.

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Charging Parties.

Appearances:

For the Respondent, Wolff & Samson, Esqs.
(Ronald E. Wiss, Esq.)

For the Charging Parties, Ruhlman & Butrym, Esqs.
(Richard A. Friedman, Esq.)

INTERLOCUTORY DECISION

On March 10, 1982, the South Orange-Maplewood Education Association filed an Unfair Practice Charge with the Public Employment Relations Commission alleging that the South Orange-Maplewood Board of Education was violating the New Jersey Employer-Employee Relations Act, as amended, N.J.S.A. 34:13A-1 et seq. More specifically, the charge alleges that the Charging Parties and Respondent were parties to a collective bargaining agreement which was effective for the 1981-82 school year. The agreement provides the following provision:

Health Insurance

The Board agrees to pay full costs of the premium for health insurance coverage for all teachers and their immediate families (spouse and eligible children) of all teachers covered by this agreement. The insurance coverage and service to be included shall be equal or better than, but may not be less than the current coverage as listed below:

The New Jersey State Health Benefits Program Hospital Service Plan of New Jersey--Blue Cross Medical Surgical Plan of N.J.--Blue Shield	Comp. Group Plan
Rider J Major Medical Full Family Dental Plan	

The agreements negotiated by the Audio Visual Technicians Association and the South Orange-Maplewood Public School Service Association provide for the same benefits. The agreement negotiated by the South Orange-Maplewood Secretaries Association was for the same benefits, except that the Full Family Dental Plan is effective as of January 1, 1982, and any change in health benefits granted to any other union for the 1981-82 school year is granted to the secretarial unit. The charge was amended to include these units.

Pursuant to the negotiated agreement Respondent was enrolled in the State Health Benefits Plan. At its February 22nd meeting without prior negotitions with the Charging Parties, Respondent resolved to terminate its participation in the State Health Benefits Program thereby cancelling coverage for all active and retired employees. Since that date Respondent has forwarded a resolution to the State Health Benefits Commission requesting withdrawal. It

was alleged that the Respondent's action constitutes a violation of the Act because the Association will be deprived of (1) the benefits of the State Health Benefits Plan for the duration of the negotiated agreement and thereafter by unilateral action of the Respondent without negotiations; (2) pursuant to the State Health Benefits Plan, payment for employees who retire and who have retired is made by deduction from pension checks. The manner of administration of insurance for retirees will now change since this method is unavailable and retirees will be forced to directly pay Respondent; (3) the Association members will be permanently deprived of the opportunity to again participate in the State Health Benefits Plan since once withdrawn Respondent cannot re-enroll; (4) the Associtions members have been deprived of any insurance coverage whatsoever since no substitute coverage has been obtained; (5) the Association members are deprived of all of the benefits provided by the State Health Benefits Plan which will not be duplicated through whatever alternative insurance is obtained if Respondent does obtain alternative insurance. This loss includes but is not limited to: (b) coverage for survivors of any Association members who become deceased; (c) recognition of Association members' children as dependents through the end of the calendar year in which they will reach the age of 23 years; (e) conversion benefits pursuant to N.J.A.C. 17:9-7.2; (f) the requirement that employees who elect to participate in a health maintenance organization in lieu of the ordinary program must receive

supplementary major medical benefits which is not offered to those electing coverage under HMOs in other programs; (g) other benefits specified within the State Health Benefits Plan Act, which benefits are too numerous to list here but are hereby incorporated by reference.

The Charging Parties also submitted an Order to Show Cause with their Unfair Practice Charge. Said Order was signed and the hearing date was set for March 25, 1982. At that time the Respondent submitted a brief and supporting affidavit in opposition to the request for interim relief.

The Respondent maintains that it has acted in accordance with the exact terms of the collective bargaining agreement by providing the employees with insurance coverage and service which was "equal or better than" the level of benefits available under the New Jersey State Health Benefits Plan. The Respondent argued that through the bargaining process and the language of the pertinent provision, the Board obtained the right to provide health insurance coverage by whatever means it chose as long as the benefits and services provided were equal to or better than those available in the State at the time and that pursuant to the language of the contract its employees never had the right to participate in the State Plan. It is maintained that the Board did not alter any terms and conditions of employment when it decided to cease participation in the State Plan effective May 1, 1982, and to provide employees with identical benefits and services under its self-insured, reinsurance benefit plan.

It is undisputed that the Board of Education notified the State Health Benefits Plan it intended to withdraw from the Plan. It is also undisputed that the Board of Education was prepared to institute a self-funded, reinsured health benefits program. This program would be administered by the Rasmussen Agency of East Orange, New Jersey. Pursuant to proposals submitted by the Rasmussen Agency, the benefits would track those of the State Health Benefits Plan.

It is noted that the contracts dating back to the 1969-70 contract were submitted into evidence. The 1969-70 contract provided that the Board would pay for one-third the cost of premiums for Blue Cross-Blue Shield, Rider J and Major Medical. In the 1970-71 contract that language was changed to the language in the current contract, specifically the insurance coverage and service to be included shall be equal to or better than and may not be less than..." Also within the current contract there is a provision for binding arbitration. The Board here concedes that the provisions of the self-insured health benefits coverage are governed by the binding arbitration provisions of the contract. Accordingly any dispute as to whether the level of benefits is equivalent to the State Health Benefits Program can be resolved via arbitration.

The Charging Parties' argument that the level of benefits is mandatorily negotiable is not in dispute. See In re Piscataway Twp. Bd/Ed, P.E.R.C. No. 91, 2 NJPER 49 (1975); In re County of Middlesex, P.E.R.C. No. 79-80, 5 NJPER 194 (¶10111 1979). They argue, however, that the very nature of the benefits under the State

Health Benefits Plan are so unique that no other plan can be its true equivalent and argue that since that is the case that the coverage itself is mandatorily negotiable. See City of Newark, P.E.R.C. No. 82-5, 7 NJPER 439 (¶12105 1981). They point out several situations such as conversion privileges and rights of retirees to collect under the pension plan. Here again the Board takes the position that whatever rights are in the State Health Benefits Plan that a separate carrier is capable of providing will be provided in their own self-insurance plan. They do acknowledge that retirees under the plan will have to separately pay their premiums since the premiums cannot be deducted from their State pension checks but they recognize the right of teachers who transfer to other school districts to have their coverage maintained until they can be covered under their new school district's plan in general. The Board maintains it will attempt to administer the new insurance plan in as similar a manner to the State Plan as possible. They further acknowledge that any administrative differences which affect the delivery of benefits is subject to binding arbitration under the contract.

The reason for the Board's withdrawal from the State Health Benefits Plan was the recent Appellate Division decision in New Jersey School Boards Assn. v. State Health Benefits Plan, Docket No. A-1576-81-TI (Feb. 26, 1981) which held that local participants in the State Health Benefits plan must purchase the same coverage as the State does for its own employees. This coverage is more expensive than the coverage heretofore provided for local participants.

It is the Board's position that under the terms of the

contract it is not obligated to provide the higher level of coverage. It does acknowledge, however, that this issue is an appropriate one for arbitration.

The standards that have been developed by the Commission for evaluating the appropriateness of interim relief are similar to those applied by the courts when confronted with similar applications. The test is twofold: the substantial likelihood of success on the legal and factual allegations in the final Commission decision, and the irreparable nature of the harm that will occur if the requested relief is not granted. 1/ These standards must be satisfied before the requested relief will be granted.

The instant motion can be decided on the contractual language between the parties. That language does expressly provide for alternate insurance coverage, i.e. which coverage shall be equal to or better than...the New Jersey State Health Benefits Program. The very nature of this language recognizes the viability of alternative insurance programs. Accordingly the undersigned cannot say that the Charging Parties have a substantial likelihood of success on its factual allegations before the full Commission. Accordingly, the application for interim relief is denied.

Edmund G. Gerber
Hearing Examiner

DATED: April 15, 1982
Trenton, New Jersey

1/ See In re Twp. of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975); In re State of New Jersey (Stockton State College, P.E.R.C. No. 76-6, 1 NJPER 41 (1975); and In re Twp. of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975).