

I.R. NO. 2002-7

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of  
TOWNSHIP OF UNION,

Respondent,

-and-

Docket No. CO-2002-152

FMBA LOCAL NO. 46,

Charging Party.

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TOWNSHIP OF UNION,

Respondent,

-and-

Docket No. CO-2002-153

FMBA LOCAL NO. 246,

Charging Party.

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TOWNSHIP OF UNION,

Respondent,

-and-

Docket No. CO-2002-163

PBA LOCAL NO. 69,

Charging Party.

SYNOPSIS

The Commission Designee declines to restrain the Township from changing health care insurance carriers on January 1, 2002, but restrains the Township from changing employee health care benefits. The Designee finds that the anticipated change in carrier will significantly effect the scope of in-network providers, impacting on employees' ability to obtain medical treatment without incurring additional up-front expenses.

The Township is ordered to establish an interim program that guarantees that employees have funds available to them to pay any up-front or additional costs of medical treatment that would have been covered under the former plan. Alternatively, the Township may maintain the Horizon plan pending compliance with any statutory or contractual obligations. The Township is also directed to provide Charging Parties with all relevant documents concerning the insurance coverage.

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Docket No. CO-2002-163

PBA LOCAL NO. 69,

Charging Party.

Appearances:

For the Respondent  
Lum, Danzis, Drasco, Positan & Kleinberg, attorneys  
(Joseph M. Wenzel, of counsel)

For the Charging Party, FMBA Local 46  
Fox & Fox, attorneys  
(David I. Fox, of counsel)

For the Charging Party, FMBA Local 246  
Fox & Fox, attorneys  
(David I. Fox, of counsel)

For Charging Party, PBA Local 69  
Zazzali, Fagella, Nowak, Kleinbaum & Friedman, attorneys  
(Paul L. Kleinbaum, of counsel)

INTERLOCUTORY DECISION

On November 30, 2001, FMBA Local No. 46 and FMBA Local No. 246 simultaneously filed unfair practice charges with the Public Employment Relations Commission alleging that the Township of Union violated 5.4a(1) and (5) of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.<sup>1/</sup> On December 4, 2001, PBA Local No. 69 also filed an unfair practice charge against the Township alleging the same violations. Charging Parties allege that the Township violated the Act when it announced its intention to switch health care insurance carriers effective January 1, 2002. Charging Parties allege that the change in carriers violates the parties' current contracts and results in a change in employee health care benefits. Charging Parties also allege that the Township failed to provide them with adequate information concerning the proposed changes in carrier.

Applications for Interim Relief accompanied the charges seeking a restraint of the change in carrier. On December 3, 2001, an Order to Show Cause was executed and a return date was

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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. (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."

set for December 27, 2001. The parties submitted briefs, affidavits and exhibits in accordance with Commission rules and argued orally on the return date. The following relevant facts appear.

PBA Local 69 represents the Township's police officers, FMBA Local 46 represents the Township's firefighters and Local 246 represents the fire superior officers. Each of the locals has a current collective negotiations agreement with the Township covering the period January 1, 2000 through December 31, 2003. Each of the contracts contains an "Insurance" article<sup>2/</sup> which requires in section 1(a) and (b) that the Township provide group health insurance, including basic medical coverage and major medical coverage, for active employees and retirees together with their dependents,

...at least equal to that which has heretofore been in effect, subject to paragraph K.<sup>3/</sup>

Paragraph K of the insurance article establishes a Group Health Insurance Review Committee composed of representatives of each of the Township's negotiations units and the Township administrator. The contract article provides in relevant part,

...the purpose of the review committee shall be to review and recommend to the Township Committee appropriate modifications to group health coverage to either enhance benefit levels, reduce

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<sup>2/</sup> The FMBA contracts' insurance article is found at Article XI; the PBA's is found at Article IV.

<sup>3/</sup> The PBA contract refers to paragraph H.

costs, or both. Recommendations of the group health insurance committee shall be by majority vote of the voting members present at a properly constituted meeting, which shall then be binding on the [union] upon acceptance by the Township.

In addition, the PBA contract contains a "Retention of Benefits" provision at Article XVII which provides that,

...all conditions of employment and other benefits which are presently in existence between the parties of this contract but which are not specifically mentioned in this contract shall be continued at the same level as presently in existence until the execution of a new contractual agreement between the parties.

The Township's employees are currently covered by a traditional indemnity health insurance plan through Horizon Blue-Cross/Blue Shield. According to the unrebutted certifications of FMBA President Robert Brower and PBA President Dale Baird, Horizon's plan includes a "network" of approximately 17,200 participating physicians/practitioners in New Jersey and 71 participating hospitals. In addition, Horizon has 603,500 in-network physicians and 6,100 hospitals in its national network.

At the request of the Township, the Group Health Insurance Review Committee met on August 16, 2001. The Township proposed to the committee that the health insurance carrier be changed from Horizon to the Oxford Health Plan. Apparently the committee never got to the point of voting on the change. On November 16, 2001, the Township announced to all employees that it intends to terminate health insurance coverage with Horizon and to sign a contract for coverage with Oxford to be effective January 1, 2002. Oxford has

provided the Township employees with a letter promising to provide coverage "equal to or better than" that provided to employees by Horizon's plan.

Oxford Medical Plan's network includes 11,500 physicians in the New Jersey area and an unknown number of participating hospitals. According to the affidavit of Township Administrator Frank Bradley, Oxford Medical has contracted with another carrier, Multi-Plan, to provide coverage for retirees and employee dependents living outside the New Jersey area. Multi-Plan's network accesses 390,000 physicians and 3,100 hospitals.

In-network physicians provide services at a fee equal to the "customary and usual" rate established by the carrier. Therefore, under the current level of coverage provided through Horizon, an employee using an in-network provider can expect to be covered for 80% of the provider's charges, after deductibles are satisfied. Use of a provider outside the carrier's network (i.e., an out-of-network physician) may result in the employee being billed for the amount not reimbursed (referred to as "balance billing"). In addition, providers not in network may require up-front payment for services rather than wait for the employee to obtain insurance reimbursement.

FMBA President Brower surveyed his members to determine whether they or their dependents would lose coverage as a result of the change in carrier. Of the 40 members responding, 33 indicated that their physicians were not members of the Oxford Medical Plan network.

Beginning in August 2001 and several times thereafter, FMBA and PBA requested additional information concerning the plan offered by Oxford. Although a summary of Oxford's plan benefits has recently been provided to the unions, a comprehensive document such as a copy of the Township's contract with Oxford or the full insurance plan itself has apparently not been provided. The Township asserts that it has provided the unions with all of the documentation in its possession.

#### ANALYSIS

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).

First, Charging Parties argue that the change in carrier from Horizon to Oxford violates N.J.S.A. 34:13A-5.4a(5), which prohibits changes in terms and conditions of employment without negotiations. The FMBA locals argue that, because the carrier change will significantly change the level of benefits, the Township

should be restrained from changing carriers. The PBA joins that argument and also argues that the terms of its current contract, specifically its retention of benefits clause, requires the Township to retain Horizon as the carrier for the life of the collective agreement.

I decline to restrain the Township from changing carriers. I find that Charging Parties have not satisfied the substantial likelihood of success on the merits component of the interim relief test. The Commission has long held that the selection of an insurance carrier is not a mandatory subject of negotiation. An employer has the right to select which carrier will provide the agreed-upon level of health insurance benefits. However, the level of benefits may not be altered without good faith negotiations. Borough of Metuchen, P.E.R.C. No. 84-91, 10 NJPER 127 (¶15065 1984); City of Newark, P.E.R.C. No. 82-5, 7 NJPER 439 (¶12195 1981); Borough of Paramus, P.E.R.C. No. 86-17, 11 NJPER 502 (¶16178 1985); Lakeland Reg. Bd. of Ed., D.U.P. No. 97-39, 23 NJPER 415 (¶28291 1997); Township of Irvington, D.U.P. No. 94-31, 20 NJPER 144 (¶25069 1994).

The Charging Parties also argue that the Township has altered the contractual level of benefits without first submitting the benefit change to the Group Health Insurance Review Committee. The Township points to the "equal to or better than" guarantee



letter submitted by Oxford and maintains that it has not reduced coverage.<sup>4/</sup>

I find that the unions have demonstrated a substantial likelihood of success on the merits of their claim that employee benefits are being changed by the change in carriers. Under Horizon, an employee using an in-network provider could expect to pay only 20% of the cost of the provider's charges after deductibles. While technically, the same statement could be made about Oxford's in-network providers, the fact is, the pool of in-network providers has shrunk significantly -- from 17,200 to 11,500 -- a reduction of 33%. In fact, the unions have demonstrated that a significant number of employees use physicians who were in the Horizon network, but are not in Oxford's network. Therefore, with Oxford, a Township employee using the same treating physician as before, will no longer be assured 80% coverage of the charges.

In City of Newark, P.E.R.C. No. 95-108, 21 NJPER 229 (¶26146 1995), the Commission found that the City violated the Act when it reduced its network of participating hospitals from 85 to 56. The Commission found that the reduction in the network amounted to a change in employee benefits which the City was contractually obligated to maintain for the life of the contract. I find this

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<sup>4/</sup> In addition, at oral argument the Township asserted that the addition of Multi-Plan as Oxford's secondary carrier will substantially enhance the scope of the in-network providers. However, no evidentiary proffer was made to support that contention.

case applicable to the facts presented here. The Township's change in carrier demonstrably changes the network of participating providers so as to constitute a change in employee benefits.

In addition, I find irreparable harm.<sup>5/</sup> If the Township proceeds to switch carriers to Oxford, the employees may well be required to pay the up-front cost of treatment at the time service is rendered rather than await partial reimbursement. And even then, the reimbursement level is uncertain, since an Oxford non-network provider may bill the employee for the balance. As the Commission recently observed in Borough of Closter, P.E.R.C. No. 2001-75, 27 NJPER 289 (132104 2001), the cost of medical care today is such that an employee may forego treatment rather than pay up-front costs and await reimbursement. Therefore, the issue is not merely one of money damages that could be remedied at the conclusion of the case.

I, therefore, restrain the Township from changing employee medical benefits, and specifically, from changing the employees' ability to receive medical treatment by a provider in the former Horizon network, at no up-front cost to the employee and at no additional cost to the employee.

The Township is directed to establish an interim program that guarantees that employees have funds available to them to pay

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<sup>5/</sup> The Township did not argue any issue with regard to harm.

any up-front costs of medical care and any additional costs of medical treatment that would have been covered under the Horizon plan, during the pendency of this litigation. This interim order will remain in effect pending a final Commission order in this matter. See Closter. The Township is directed to negotiate the procedures for implementing the fund with the Charging Parties. Alternatively, the Township may maintain the Horizon plan pending compliance with any statutory or contractual obligations.

With regard to Charging Parties' application for interim relief concerning retirees, I deny the application. As former employees, employees who are already retired are not "employees" within the definition of the New Jersey Employer-Employee Relations Act, and therefore, it appears that this Commission has no jurisdiction over alleged violations of section 5.4a(5) of the Act concerning retirees. See Borough of Belmar, P.E.R.C. No. 89-27, 14 NJPER 625 (¶19262 1988).

Finally, the Charging Parties are entitled to information that may be relevant in administering their respective collective agreements, including the maintenance of health insurance benefits. See Lakewood Bd. of Ed., P.E.R.C. No. 97-44, 22 NJPER 397 (¶27215 1996). Therefore, the Township shall within ten days, provide Charging Parties with all relevant documents concerning the insurance coverage. If the information is not currently in the Township's possession, it shall make every good faith effort to obtain the information from Oxford Health Plan and Horizon Blue Cross/Blue Shield.

This interim order will remain in effect until the conclusion of proceedings before the Commission or before an arbitrator, should the issues be deferred to arbitration.

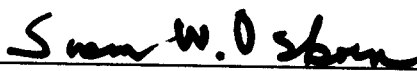
ORDER

The Township is directed to establish an interim program that guarantees that employees have funds available to them to pay any up-front costs of medical care and any additional costs of medical treatment that would have been covered under the Horizon plan, during the pendency of this litigation. The Township is directed to negotiate the procedures for implementing the fund with the Charging Parties. Alternatively, the Township may maintain the Horizon plan pending compliance with any statutory or contractual obligations.

The Township is directed, within ten days, to provide Charging Parties with all relevant documents concerning the insurance coverage.

This interim order will remain in effect until the conclusion of proceedings before the Commission or an arbitrator, should the issues be deferred to arbitration.

The remaining sections of the Application for Interim Relief are denied.



Susan Wood Osborn  
Commission Designee

DATED: December 28, 2001  
Trenton, New Jersey