

D.U.P. NO. 94-21

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-93-56

HAMILTON TOWNSHIP ADMINISTRATORS'
AND SUPERVISORS' ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge alleging that the public employer violated subsections 5.4(a)(1), (3) and (5) of the Act when it announced the termination of certain health insurance coverages for retired employees.

The Director relied in part on a determination by the New Jersey State Health Benefits Commission and upon case law indicating that the subject is preempted by legislation. See N.J.S.A. 52:14-17.38.

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Appearances:

For the Respondent,
Destribats, Campbell, DeSantis & Magee, attorneys
(Dennis M. DeSantis, of counsel)

For the Charging Party,
Lake & Schwartz, attorneys
(Robert M. Schwartz, of counsel)

REFUSAL TO ISSUE COMPLAINT

On August 10, 1992, the Hamilton Township Administrators' and Supervisors' 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. The Association alleges that the Board violated subsections 5.4(a)(1), (3) and (5) of the Act^{1/} when it announced that it

^{1/} These subsections prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the

would terminate certain health insurance coverages for retired employees on September 1, 1992. On August 11, 1992, the Association filed an application for interim relief with the Commission, asking that the Board show cause why an order should not be issued restraining it from cancelling the specified health insurance coverages on September 1, 1992.

On September 1, 1992, a Commission Designee issued a decision denying the application. Hamilton Tp. Bd. of Ed., I.R. No. 93-4, 18 NJPER 461 (¶23208 1992).

On January 29, 1993, I issued a letter tentatively dismissing the charge.

On or about February 8, 1993, the Association responded, asking that a final decision be pended while other litigation was processed. Specifically, it awaited response to the plaintiff's (retired teachers) argument that N.J.A.C. 17:9-1.7 permitted local boards of education to request approval to deviate from guidelines promulgated by the New Jersey State Health Benefits Commission. The Board agreed to the request and we pended a final decision.

1/ Footnote Continued From Previous Page

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."

On September 27, 1993, the New Jersey State Health Benefits Commission issued a final administrative decision concerning the Board's proposed deviation from the guidelines over prescription drug and dental expense contracts purchased by local employers. The Commission refused to approve any deviation because "it would be contrary to the long-standing policy of uniformity of benefits....which has been consistently recognized and supported by the legislative history, administrative practice and by judicial decisions."

On December 6, 1993, we advised the parties on our receipt of the decision and requested the charging party to respond in writing as why the charge should not be dismissed. No response was received.

The Association asserts that contract Article IV of its collective agreement with the Board provides that retired administrators and supervisors receive paid coverage in the Board's prescription drug insurance and dental insurance plans. The Association states that on July 28, 1992, the Superintendent informed the Association that the Board would terminate prescription drug insurance coverage and dental insurance coverage for retired employees, effective September 1, 1992. The Superintendent's letter indicated that the Board's action was based upon a determination by the State Health Benefits Commission.

The Association argues that prescription drug insurance and dental insurance are mandatorily negotiable terms and conditions of

employment and that the termination of these coverages constitutes a repudiation of the contract and a unilateral change in mandatorily negotiable terms and conditions of employment and therefore, an unfair labor practice. N.J.S.A. 13A-5.4(a)(1) and (5).^{2/}

The Board asserts that it participates in the New Jersey State Health Benefits Plan and, therefore, is subject to and bound by the New Jersey State Health Benefits Act, N.J.S.A. 52:14-17.25 et seq. On May 21, 1992, the New Jersey State Health Benefits Commission informed the Board that certain State Health Benefits Commission guidelines prohibit the district from providing paid-for dental and prescription drug insurance benefits to retirees. The Board states that it then contacted each of the negotiations units having contracts containing retiree prescription and dental insurance benefits and informed the units' representatives that such benefits would be terminated as of September 1, 1992.

The Hamilton Township Administrators' and Supervisors' Association is the majority representative of a unit of principals,

^{2/} On August 24 and September 3, 1992, the Board filed two scope of negotiations petitions claiming that retiree dental and prescription benefits, as provided in the Association agreement, and in the agreement with the Hamilton Township Education Association, are beyond the scope of negotiations. The Education Association did not respond to the petition. Since the latter scope of negotiations petition did not arise in course of collective negotiations, or pursuant to the processing of a matter in the negotiated grievance procedure or as matter of special circumstances, the Commission will not recognize any dispute under N.J.S.A. 34:13A-5.4(d) and will dismiss the petition. Cinnaminson Tp. Bd. of Ed., P.E.R.C. No. 78-11, 3 NJPER 323 (1977).

vice principals and supervisors employed by the Board. The Board and the Association are parties to a collective negotiations agreement covering the period from July 1991 through June 1993. The parties' agreement contains a provision which states:

Effective July 1, 1988, upon retirement, the Administrators/Supervisors of record and those employed thereafter will receive a lifetime...paid coverage in the Board's Prescription and Dental Plans in accordance with the qualifications as follows:

The Administrator/Supervisor must have served 25 years of creditable service in TPAF or PERS with at least 10 years in Hamilton Township.

The parties' 1988-1991 agreement contained the same provision. The Board participates in the New Jersey State Health Benefits Plan.

On or before May 21, 1992, the State Health Benefits Commission notified the Hamilton Township Board of Education that State Health Benefits Commission Guidelines prohibited the continuance of paid-for prescription drug insurance and dental insurance after employees' retirement. On or about July 28, 1992, the Board Superintendent notified the Administrators' Association president by letter that pursuant to State Health Benefits Commission guidelines, the Board would terminate the prescription drug insurance and dental insurance coverages for retirees as of September 1, 1992. The superintendent's letter also advised the Association of the availability of COBRA continuation of insurance at group rates and further notified the Association that if it desired to discuss the impact of these changes, it should contact the Superintendent. The Association did not contact the

Superintendent to discuss the changes; instead, it filed the instant unfair practice charge.

N.J.A.C. 17:9-1.7 states:

Pursuant to the provisions of N.J.S.A. 52:14-17.25 et seq., it is the policy of the State Health Benefits Commission that when local governments purchase insurance contracts of health benefits, such as prescription drug, dental expense and vision care coverages, such...coverage...must adhere to the guidelines approved by the State Health Benefits Commission.... Local governments cannot deviate from such guidelines in purchasing such...coverages without the approval of the State Health Benefits Commission.

The New Jersey State Health Benefits Commission has issued, "Guidelines for Prescription Drug Contracts issued pursuant to Chapter 12, P.L. 1975." Those guidelines state, in pertinent part:

VII Termination

The coverage of an employee...shall cease immediately upon the termination of his employment or by reason of his ceasing to be a participant in the classes eligible for coverage....

There is no conversion at the termination of employment; there is no continuance of coverage into retirement.

....The coverage of an employee, whose eligibility has ceased because of his resignation, temporary layoff, separation through a reduction in force or for any other reason...shall be terminated.

The State Health Benefits Commission issued a similar guideline for Dental Expense Contracts.

In State v. State Supervisory Employees' Ass'n., 78 N.J. 54 (1978), the Supreme Court stated that "the adoption of any specific statute or regulation setting or controlling a particular term and

condition of employment will preempt" negotiations on that subject. However, to be preemptive, the statute must speak in the imperative and leave nothing to the employer's discretion. 78 N.J. at 80-82. Further, in Council of New Jersey State College Locals v. State Board of Higher Education, 91 N.J. 18 (1982), the Court stated that to preempt negotiations, a regulation "must fix a term and condition of employment...expressly specifically and comprehensively." 91 N.J. at 30.

The Board argues that the above-referred statutes and the State Health Benefits Commission regulations and guidelines preempt negotiations on this issue, inasmuch as they prohibit employers from providing paid-for prescription drug and dental benefits to retirees.

In Town of Kearny, P.E.R.C. No. 83-12, 8 NJPER 441 (¶13208 1982), the parties negotiated a contractual provision which provided health insurance benefits to retirees. The Town participates in the State Health Benefits Program. After the Town was informed by the State Health Benefits Commission that the State Health Benefits Act prohibited paid-for health insurance to retirees with less than 25 years of credited service in the retirement system, the Town terminated retiree health insurance benefits. Based upon the State Health Benefits Commission's interpretation of the State Health Benefits Act prohibiting health insurance coverage to certain retirees, this Commission concluded that the applicable language of the State Health Benefits Act (N.J.S.A. 52:14-17.38) preempted

negotiations on this issue and dismissed the charge. Accord, Morris County Prosecutor, P.E.R.C. No. 91-120, 17 NJPER 346 (¶22155 1991); Little Egg Harbor Tp., P.E.R.C. No. 90-123, 16 NJPER 398 (¶21165 1990); Cf. City of Camden, P.E.R.C. No. 83-128, 9 NJPER 220 (¶14104 1983). The September 17, 1993 State Health Benefits Commission decision is dispositive of this issue.

Finding that the subject is outside the scope of negotiations and the pertinent contract clause is unenforceable, I dismiss the charge. N.J.A.C. 19:14-2.3.

BY ORDER OF THE DIRECTOR
OF UNFAIR PRACTICES


Edmund G. Gerber, Director

DATED: January 10, 1994
Trenton, New Jersey