

P.E.R.C. NO. 95-37

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF GLASSBORO,

Respondent,

-and-

Docket No. CO-H-93-444

FRATERNAL ORDER OF POLICE,
GLASSBORO LODGE NO. 108,

Charging Party.

BOROUGH OF GLASSBORO,

Respondent,

-and-

Docket No. CO-H-94-73

GLASSBORO POLICE CAPTAINS;
GLASSBORO POLICE SERGEANTS
ASSOCIATION and GLASSBORO POLICE
ASSOCIATION SUPERIOR OFFICERS UNIT,

Charging Parties.

SYNOPSIS

The Public Employment Relations Commission finds that the Borough of Glassboro violated the New Jersey Employer-Employee Relations Act by unilaterally deducting HMO premium payments from the pay of employees represented by the Fraternal Order of Police, Glassboro Lodge No. 108, Glassboro Police Captain's, Glassboro Police Sergeants Association, and Glassboro Police Association Superior Officers Unit despite contract language in collective negotiations agreement clearly providing for HMO coverage at no charge to employees.

P.E.R.C. NO. 95-37

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOROUGH OF GLASSBORO,

Respondent,

-and-

Docket No. CO-H-93-444

FRATERNAL ORDER OF POLICE,
GLASSBORO LODGE NO. 108,

Charging Party.

BOROUGH OF GLASSBORO,

Respondent,

-and-

Docket No. CO-H-94-73

GLASSBORO POLICE CAPTAINS;
GLASSBORO POLICE SERGEANTS
ASSOCIATION and GLASSBORO POLICE
ASSOCIATION SUPERIOR OFFICERS UNIT,

Charging Parties.

Appearances:

For the Respondent, Timothy D. Scaffidi, attorney

For the Charging Parties, Markowitz & Richman, attorneys
(Stephen C. Richman, of counsel)

DECISION AND ORDER

On June 17, 1993, the Fraternal Order of Police, Glassboro Lodge No. 108 filed an unfair practice charge against the Borough of Glassboro. The FOP alleges that the Borough violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.,

specifically subsections 5.4(a)(1) and (5),^{1/} when it began charging employees a portion of the premium for HMO coverage. On September 8 and October 20, 1993, the Glassboro Police Captains, Glassboro Police Sergeants Association, and Glassboro Police Association Superior Officers Unit filed a similar charge and amendment.

On October 28, 1994, a Consolidated Complaint issued. The parties stipulated facts and waived their right to an evidentiary hearing and a Hearing Examiner's report and recommendation. They filed briefs.

Verbatim Stipulation of Facts

1. The unfair practice charge in Docket No. CO-93-444 was filed on or about June 17, 1993 by Fraternal Order of Police, Glassboro Lodge No. 108 (hereinafter "FOP") against the Borough of Glassboro (hereinafter "Borough") alleging that the Borough had unilaterally and without consultation or negotiation commenced charging bargaining unit employees a portion of the medical insurance premium in order to maintain HMO coverage.

2. The FOP is the majority representative of all detectives, detective first class, investigators and patrol officers.

^{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. (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."

3. The unfair practice charge in PERC Docket No. CO-94-73 was filed on or about September 18, 1993 [sic] by the Glassboro Police Sergeants Association, Glassboro Police Association Superior Officers Unit and the Glassboro Police Captains against the Borough.

4. The amended unfair practice charge in PERC Docket No. CO-94-73 was filed on or about October 20, 1993.

5. The Glassboro Police Sergeants Association is the majority representative of the sergeants employed by the Borough.

6. The Glassboro Police Association Superior Officers Unit is the majority representative of the lieutenants employed by the Borough.

7. The Glassboro Police Captains is the majority representative of the captains employed by the Borough.

8. Prior to 1984, the Borough provided health insurance coverage for the aforementioned employees and all full time Borough employees by participating in the State Health Benefits Plan. The Borough withdrew from the State Health Benefits Plan in 1984.

9. After withdrawal of the Borough from the State Health Benefits Plan in 1984, the Borough sponsored a self-funded health insurance program with a third party administrator. The current administrator is Frank J. Stracusa & Son. In addition, the Borough also offered coverage through two (2) HMO plans, U.S. Healthcare and Aetna.

10. From 1984 until May 1993 (i.e., the annual renewal date for all Health Insurance Plans) the Borough paid the full cost

of the employees['] participation in any of the health plans in accordance with the applicable provision of the collective bargaining agreements.

11. Article XI(A) of the collective bargaining agreement between the FOP and the Borough effective January 1, 1992 until December 31, 1993 provides:

(A) Medical and Health Plans eg. [sic] Blue Cross, HMO, Health Place, Major Medical, Prescription Plan, etc. shall be paid fully by the Employer. There shall be no decrease in benefits of the above plans and the members mentioned in Article I shall receive any improvements or upgrading of benefits which are given to any other Borough employee at no cost to the Employee. If there should be an anticipated change of the medical plan carrier, the F.O.P. shall be given advance notice of said change. (Attached hereto and marked as Attachment No. 1 is a copy of Article XI of the collective bargaining agreement).

12. The collective bargaining agreements covering the sergeants, lieutenants and captains contains [sic] virtually identical language to that quoted above in Article XI(A) of the collective bargaining agreement between the FOP and the Borough. (Attached hereto and marked as Attachment No. 2 is a copy of Article XII of the Glassboro Police Sergeants contract; Attached hereto and marked as Attachment No. 3 is a copy of Article XII of the Glassboro Police Association's Superior Officer's Unit; and attached hereto and marked as Attachment No. 4 is a copy of Article XII of the Glassboro Police Captains contract).

13. From 1984 until May 1, 1993 (i.e., the annual renewal date for all health insurance plans), the premiums charged for the HMO Plans were actually less expensive than the Borough's self-funded plan. However, the Borough was advised by its [sic] Third party Administrator on April 19, 1993 there would be increases in premiums for the HMO and Aetna coverage effective May 1, 1993. (see attached breakdown Attachment No. 5) above and beyond the Borough Plan. As a result, the cost of the HMO coverage would exceed the cost of the Borough's self-funded plan effective May 1, 1993.

14. By notice of April 26, 1993 (see attached Attachment No. 6), the Borough advised its employees that starting May 1, 1993, employees would have to self contribute in order to maintain their HMO health insurance coverage. The amount of the self contribution would be the difference between the HMO premiums and the cost of the Borough's self insured plan. A copy of the April 26, 1993 notice is attached hereto as Attachment No. 6[.] Employees were allowed to convert to either plan until May 15, 1993.

15. The change went into effect as scheduled on May 1, 1993. Thereafter, the Borough commenced charging any bargaining unit employees and all Borough employees who elected to remain in the HMO plans.

16. Many of the employees covered by the collective bargaining agreements switched from the HMO to the Borough's self-funded plan in order to avoid the cost of the premiums effective May 1, 1993.

The parties agreed that the stipulated facts constitute the complete record. The charging parties acknowledged that to the extent the stipulated facts are insufficient to sustain their burden of proof by a preponderance of the evidence, the Complaint may be dismissed. Similarly, the respondent acknowledged that it too must rely on the sufficiency of the stipulated record to sustain any affirmative defenses it has asserted, or to rebut or disprove the prima facie case established by the charging parties.

The charging parties allege that the employer repudiated a contractual agreement to provide HMO coverage paid fully by the employer. The employer responds that while each of the collective negotiations agreements provides for health insurance at no charge to the employee, the parties never contemplated that employees who elected HMO coverage should be provided that coverage at no cost. It further argues that implicit in the statutes providing for HMOs is the understanding that the money to pay for them is handled like a cafeteria plan where the same amount of money which an employer is willing to spend on its own plan can be used by an employee for an HMO.

In Bridgewater Tp., P.E.R.C. No. 95-28, 20 NJPER ____ (¶ ____ 1994), we rejected the Borough's defense that N.J.S.A. 26:2J-29 preempts a public employer's agreement to pay the full cost of HMO coverage, even when the cost of that coverage exceeds the cost of the employer-sponsored health plan. N.J.S.A. 26:2J-29 provides:

Any employee of the State or any subdivision of the State or any institution supported in whole or in part by the State may elect to enroll in a health maintenance organization and have all deductions from his salary or wages and all contributions being paid by his employer to any health insurer paid instead to a health maintenance organization; provided, however, in no event, shall an employer under this section make a contribution to any alternative health benefits program greater than the contribution being made to any health plan pursuant to a contract in existence on the effective date of this act. Any such employee shall at least annually be allowed to choose an alternative health benefits program made available through his employer. [Emphasis supplied]

We found that the underlined language protected employers, at the time of the statute's passage in 1973, from being obligated to pay more for an HMO than they had already contracted to pay for other health insurance. This section was part of a larger statutory scheme authorizing HMOs. N.J.S.A. 26:2J-1 et seq. At the time it required employers to make HMOs available to employees, the Legislature guaranteed that employers would not be forced to pay more for health insurance than they had already contracted for. The Legislature did not, however, expressly, specifically, or comprehensively prohibit employers from agreeing to pay the full cost of HMOs. Bethlehem Tp. Ed. Ass'n v. Bethlehem Tp. Bd. of Ed., 91 N.J. 38 (1982).

The contracts unquestionably obligate the Borough to pay the full cost of HMO coverage. Bridgewater controls the preemption issue. Absent any other facts or argument suggesting that the Borough has a valid defense to the claim that it repudiated clear

contractual provisions, we find a violation of subsections 5.4(a)(1) and (5) and order the Borough to restore the status quo and make employees whole for any losses incurred as a result of the unfair practices.

ORDER

The Borough of Glassboro is ordered to:

A. Cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act, particularly by unilaterally deducting HMO premium payments from the pay of employees represented by the Fraternal Order of Police, Glassboro Lodge No. 108, Glassboro Police Captains, Glassboro Police Sergeants Association, and Glassboro Police Association Superior Officers Unit despite contract language in collective negotiations agreements clearly providing for HMO coverage at no charge to employees.

2. 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, particularly by unilaterally deducting HMO premium payments from the pay of employees represented by the Fraternal Order of Police, Glassboro Lodge No. 108, Glassboro Police Captains, Glassboro Police Sergeants Association, and Glassboro Police Association Superior Officers Unit despite contract language in collective negotiations agreements clearly providing for HMO coverage at no charge to employees.

B. Take this action:

1. Immediately cease deducting HMO premium payments from the pay of unit members represented by the Fraternal Order of Police, Glassboro Lodge No. 108, Glassboro Police Captains, Glassboro Police Sergeants Association, and Glassboro Police Association Superior Officers Unit.

2. Reimburse unit members for any HMO premium deductions made after May 1, 1993.

3. Reimburse unit members who switched from an HMO to the Borough's self-funded plan in order to avoid the cost of the premiums effective May 1, 1993 for any expenses incurred as a result of their leaving the HMO.^{2/}

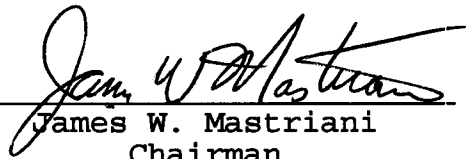
4. Permit employees who switched from an HMO to the Borough's self-funded plan in order to avoid the cost of the premiums effective May 1, 1993 to switch back to an HMO as soon as possible.

5. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice shall, after being signed by the Respondent's authorized representative, be posted immediately and maintained by it for at least sixty (60) consecutive days. Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

^{2/} The parties stipulated that many employees switched to the Borough's self-funded plan in order to avoid the cost of the premiums effective May 1, 1993. The majority representatives requested this relief and the employer did not object to it.

6. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply with this order.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Klagholz and Ricci voted in favor of this decision. Commissioner Goetting voted against this decision. Commissioner Wenzler was not present.

DATED: December 16, 1994
Trenton, New Jersey
ISSUED: December 19, 1994



NOTICE TO EMPLOYEES



**PURSUANT TO
AN ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION
AND IN ORDER TO EFFECTUATE THE POLICIES OF THE
NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,
AS AMENDED,**

We hereby notify our employees that:

WE WILL cease and desist from interfering with, restraining or coercing our employees in the exercise of the rights guaranteed to them by the Act, particularly by unilaterally deducting HMO premium payments from the pay of employees represented by the Fraternal Order of Police, Glassboro Lodge No. 108, Glassboro Police Captains, Glassboro Police Sergeants Association, and Glassboro Police Association Superior Officers Unit despite contract language in collective negotiations agreements clearly providing for HMO coverage at no charge to employees.

WE WILL cease and desist from 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, particularly by unilaterally deducting HMO premium payments from the pay of employees represented by the Fraternal Order of Police, Glassboro Lodge No. 108, Glassboro Police Captains, Glassboro Police Sergeants Association and Glassboro Police Association Superior Officers Unit despite contract language in collective negotiations agreements clearly providing for HMO coverage at no charge to employees.

WE WILL immediately cease deducting HMO premium payments from the pay of unit members represented by the Fraternal Order of Police, Glassboro Lodge No. 108, Glassboro Police Captains, Glassboro Police Sergeants Association and Glassboro Police Association Superior Officers Unit.

WE WILL reimburse unit members for any HMO premium deductions made after May 1, 1993.

WE WILL reimburse unit members who switched from an HMO to the Borough's self-funded plan in order to avoid the cost of the premiums effective May 1, 1993 for any expenses incurred as a result of their leaving the HMO.

WE WILL permit employees who switched from an HMO to the Borough's self-funded plan in order to avoid the cost of the premiums effective May 1, 1993 to switch back to an HMO as soon as possible.

Docket Nos. CO-H-93-444 & CO-H-94-73

BOROUGH OF GLASSBORO

(Public Employer)

Date: _____

By: _____

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State Street, CN 429, Trenton, NJ 08625-0429 (609) 984-7372

APPENDIX "A"