P.E.R.C. NO. 2008-67

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CAMDEN COUNTY COLLEGE,
Respondent,
-and-
CAMDEN COUNTY COLLEGE ASSOCIATION OF ADMINISTRATIVE PERSONNEL,
Charging Party.

Docket No. CO-2008-295

CAMDEN COUNTY COLLEGE,
Respondent,
-and-
CAMDEN COUNTY COLLEGE FACULTY ASSOCIATION,
Charging Party.

Docket No. CO-2008-299

SYNOPSIS

The Public Employment Relations Commission denies the requests by the Camden County College Association of Administrative Personnel and the Camden County College Faculty Association for reconsideration of I.R. No. 2008-18. In that decision, a Commission designee denied a request for interim relief filed by the Associations in conjunction with unfair practice charges they filed against Camden County College. The charges allege that the College violated the New Jersey Employer-Employee Relations Act when the College replaced the existing AmeriHealth PPO Health Plan with the New Jersey State Health Benefits Program. The parties' agreement requires the College to pay the premium for the AmeriHealth plan or an equivalent plan. The Commission agrees with the designee that the Associations have not proven that they have a substantial likelihood of success on the merits of their cases. The Commission finds that the standards for interim relief have not been met and determines that this dispute should proceed to a forum where evidence can be presented and the contractual question of whether the new plan is equivalent can be resolved.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Charging Party.

Appearances:

For the Respondent, Brown & Connery, attorneys
(Christine P. O'Hearn, of counsel)

For the Charging Parties, Selikoff & Cohen, attorneys
(Keith Waldman, of counsel)

DECISION

On May 15, 2008, the Camden County College Association of Administrative Personnel and the Camden County College Faculty Association moved for reconsideration of I.R. No. 2008-18, 34 NJPER __ (¶__ 2008). In that decision, a Commission designee denied a request for interim relief filed by the Associations in conjunction with the unfair practice charges they filed against

Camden County College. The charges allege that the College violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1) and (5)[1/] and N.J.S.A. 34:13A-33[2/], when the College replaced the existing AmeriHealth PPO Health Plan with the New Jersey State Health Benefits Program. We deny reconsideration by the full Commission.

The parties' agreements require the College to "pay the premium for health insurance equivalent to the standard AmeriHealth Personal Choice" plan for each employee and his/her dependents. In his May 12, 2008 interlocutory decision, the Commission designee found that the State Health Benefits Program

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1/ 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" and "(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."

2/ This provision provides that: "Notwithstanding the expiration of a collective negotiations agreement, an impasse in negotiations, an exhaustion of the commission's impasse procedures, or the utilization or completion of the procedures required by this act, and notwithstanding any law or regulation to the contrary, no public employer, its representatives, or its agents shall unilaterally impose, modify, amend, delete or alter any terms and conditions of employment as set forth in the expired or expiring collective negotiations agreement, or unilaterally impose, modify, amend, delete, or alter any other negotiable terms and conditions of employment, without specific agreement of the majority representative."

was better than the Amerihealth plan in some respects and worse in others. He found that the "equivalence" standard, as opposed to an "equal to" or "equal to or better than" standard allows some room for evaluating particular plan factors to determine whether the contractual standard has been met. The designee stated that absent clear evidence that the plans are not equivalent, it was inappropriate for a Commission designee in an interim relief case to substitute his or her determination for that of an arbitrator on what constitutes an equivalent plan. The designee therefore denied interim relief finding that the Associations had not proven that they have a substantial likelihood of success on the merits of their cases and he further denied the Associations' request to establish a fund to compensate members for any potential out-of-pocket expenses incurred due to the change in health plans.

The Associations argue that the undisputed facts establish that at least certain benefit levels have been reduced by the change in plans and that the lower benefits were recognized by the designee in his decision. The Associations also argue that the designee erred when he declined to order the establishment of a fund on an emergent and interlocutory basis to pay all increases in out-of-pocket costs members will incur as a result of the plan change.

The College responds that there are no extraordinary circumstances warranting reconsideration and the designee properly found that the facts and circumstances did not require interim relief.

From our earliest interim relief cases, our designees have recognized the extraordinary nature of the remedy sought. In denying interim relief in Little Egg Harbor Tp., P.E.R.C. No. 94, 1 NJPER 37 (1975), our designee stated:

> In reaching this conclusion, the undersigned is most cognizant of and sensitive to the extraordinary nature of the remedy sought to be invoked and the limited circumstances under which its invocation is necessary and appropriate. The Commission's exclusive remedial powers, normally intended to be exercised subsequent to a plenary hearing, will not be called into play for interim relief in advance of such hearing except in the most clear and compelling circumstances.

A Commission designee acts on behalf of the full Commission. N.J.A.C. 19:10-4.1. An interim relief order is a decision issued during unfair practice litigation after a charging party has shown it has a substantial likelihood of success when a final decision is issued at the end of the case. N.J.A.C. 19:14-9.1. Only in cases of exceptional importance will we intrude into the regular interim relief process by granting a motion for reconsideration by the full Commission. A designee's interim relief decision should rarely be a springboard for continued interim relief litigation. N.J.A.C. 19:14-8.4; North Hudson

Regional Fire and Rescue, P.E.R.C. No. 2008-61, 34 NJPER __ (¶__ 2008); City of Passaic, P.E.R.C. No. 2004-50, 30 NJPER 67 (¶21 2004).

The level of health benefits is mandatorily negotiable and may not be changed by an employer unilaterally. Piscataway Tp. Bd. of Ed., P.E.R.C. No. 91, 1 NJPER 49 (1975). A contract clause requiring the employer to maintain the level of health benefits may create additional protections for employees. It may also provide a contractual defense for the employer to an unfair practice allegation that the employer violated the Act by acting unilaterally. Many contracts permit changes to "equivalent" or "substantially equivalent" benefit plans. An employer will not be found to have acted unilaterally if the contract authorizes a particular change in health benefits. City of South Amboy, P.E.R.C. No. 85-16, 10 NJPER 511, 512 (¶15234 1984).

Even though we defer most disputes over health benefit changes to binding arbitration, we will order interim relief in cases where there is a clear repudiation or violation of the contractual benefit level. We agree with the designee that in order to get interim relief in this case, the Association would have had to have proven that the new plan is not "equivalent to" the old plan. Because such proof requires resolution of the contractual question of what constitutes an equivalent plan, the standards for interim relief could not be met. However, the

dispute may proceed to a forum where evidence can be presented and the contractual question resolved. See Stafford Tp. Bd. of Ed., P.E.R.C. No. 90-17, 15 NJPER 527 (¶20217 1989) (unfair practice charges alleging unilateral changes in health benefits will ordinarily be deferred to binding arbitration because the contract often sets the benefit level and the conditions under which the employer may change benefits).

The Associations contend that even though the designee found interim relief inappropriate, he still should have ordered the establishment of a fund to reimburse members for out-of-pocket expenses incurred as a result of the alleged change in benefits. They contend that the establishment of a fund in change of health benefits cases has become pro forma even if the interim relief standard has not been met.

The cases cited by the Associations in support of their argument for establishing a fund are distinguishable. In two cases, a fund was established after the designee granted the request for interim relief. Bridgeton Bd. of Ed., I.R. No. 2006-8, 31 NJPER 315 (¶123 2005); Union Tp., I.R. No. 2002-7, 28 NJPER 86 (¶33031 2001) recon. den. P.E.R.C. No. 2002-55, 28 NJPER 198 (¶33070 2002). In one case, the designee found that there was insufficient information about the plans to decide whether reimbursement to employees would be necessary and therefore granted a request for a panel of employer and insurance company

representatives to consider reimbursement requests. City of Orange, I.R. No. 2005-10, 31 NJPER 56 (¶130 2005). And in one case, the employer agreed to the establishment of a fund. Borough of Princeton, I.R. No. 2004-15, 30 NJPER 92 (¶266 2005). The remaining cases cited by the Associations were consent orders where the employer agreed to establish a fund. The College opposes the establishment of a fund in this case.

We deny reconsideration by the full Commission. The case will now continue to be processed in the normal course and to a forum where evidence can be presented and the factual dispute can be resolved.

ORDER

The motion for reconsideration is denied.

BY ORDER OF THE COMMISSION

Chairman Henderson and Commissioners Branigan, Buchanan, Fuller, Joanis and Watkins voted in favor of this decision. None opposed.

ISSUED: June 26, 2008

Trenton, New Jersey