

P.E.R.C. NO. 2010-88

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF MAPLEWOOD,

Respondent,

-and-

Docket Nos. CO-2008-325
CO-2008-326
CO-2009-082
CO-2009-088

FMBA LOCAL 425 (DISPATCHERS),
PBA LOCAL 44, SOA LOCAL 44A and
UNITED CONSTRUCTION TRADES &
INDUSTRIAL EMPLOYEES INTERNATIONAL
UNION,

Charging Parties.

SYNOPSIS

The Public Employment Relations Commission denies a motion for summary judgment filed by the Township of Maplewood in consolidated unfair practice cases filed by FMBA Local 425 (Dispatchers), PBA Local 44, SOA Local 44A and the United Construction Trades & Industrial Employees International Union (UCTIE). The charges allege that the Township violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., when it ceased providing traditional health insurance and reduced the provider network and in the charge filed by UCTIE, it changed health insurance coverage contrary to the parties' agreement. The Township argues that negotiations over fundamental changes to the State Health Benefits Program are preempted by N.J.S.A. 52:14-17.25 et seq. The Commission holds that the Township cannot be ordered to continue the SHBP Traditional Plan, but an arbitrator may determine whether the Township was contractually obligated to maintain a level of health benefits and defers the charges to arbitration.

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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Appearances:

For the Respondent, Genova, Burns & Giantomasi,
attorneys (Sandra Polledri, of counsel and on the
brief; Carolyn Buccerone, on the brief)

For the Charging Parties, PBA Local 44, SOA Local 44A
and FMBA Local 425, Marc D. Abramson, consultant

For the Charging Party, United Construction Trades &
Industrial Employees International Union, Law Offices
of Steven Goldblatt, P.C., attorneys (Steven Goldblatt,
of counsel)

DECISION

On September 28, 2009, the Township of Maplewood moved for summary judgment in a consolidated complaint based on unfair practice charges filed by FMBA Local 425 (Dispatchers), PBA Local 44, SOA Local 44A and the United Construction Trades & Industrial Employees International Union (UCTIE). The charges filed by the FMBA, PBA and SOA allege that the Township violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et

seq., specifically 5.4a(1) and (5),^{1/} when it ceased providing traditional health insurance and reduced the provider network. The charge filed by the UCTIE alleges that the Township violated the Act when it changed health insurance coverage contrary to the parties' contract, which requires any plan alteration to be substantially similar to the employees' current coverage. Complaints issued, the cases were consolidated, and the Township then filed this motion. We deny the motion.

Summary judgment will be granted if there are no material facts in dispute and the movant is entitled to relief as a matter of law. N.J.A.C. 19:14-4.8(d); Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 540 (1995); Judson v. Peoples Bank & Trust Co., 17 N.J. 67, 73-75 (1954).

The following facts are undisputed.

Each of the four collective negotiations agreements provides that the Township shall provide medical coverage to all full-time employees and that the Township reserves the right to change carriers and/or self-insure so long as substantially similar

^{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 . . . (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."

benefits are provided. The PBA, SOA and FMBA agreements also include Retention of Benefits provisions that provide that all working conditions shall be maintained and continued by the Township during the term of the agreements.

The Township has participated in the State Health Benefits Program ("SHBP") for at least 20 years. In December 2007 and January 2008, the Township received Certifying Letters from the New Jersey Division of Pensions and Benefits. These letters advised all participating local governments that the State Health Benefits Commission ("SHBC") would be implementing revisions to the SHBP effective April 1, 2008. Those revisions included the addition of two Preferred Provider Organizations: NJ Direct 10 and NJ Direct 15. NJ Direct 10 was designated as the successor to the Traditional Plan and NJ Direct 15 replaced NJ PLUS. The SHBP would maintain two Health Maintenance Organization providers and eliminate three others. These revisions were the result of statutory changes in 2007 that are codified at N.J.S.A. 52:14-17.26(j) and N.J.S.A. 52:14-17.28(c).

On or about January 11, 2008, the Township distributed a memorandum to all department heads explaining the changes to the SHBP. These unfair practice charges ensued.

The Township argues that negotiations over fundamental changes to the SHBP are fully and completely preempted by N.J.S.A. 52:14-17.25 et seq.

The PBA, SOA and FMBA respond that although the statutes speak in the imperative as to the SHBC, the Township has the discretion not to participate in the SHBP. The unions argue that to permit the Township to hide behind the changes affecting the SHBC would render meaningless the Township's obligation to negotiate the level of benefits with its majority representatives. The UCTIE responds that the changes violate the contract and require denying summary judgment or, in the alternative, referring the matter to arbitration for a determination as to whether the new plan is substantially equivalent.

The Township requested and was granted permission to file a reply brief. The Township argues that it could not continue to participate in the SHBP without implementing the fundamental changes adopted by the Legislature. The Township asserts that it did not change carriers, but simply implemented statutorily-mandated changes. As for the unions' argument that the Township can leave the SHBP, the Township responds that such a result would be against public policy because public employers' leaving the SHBP would reduce its membership and dilute its bargaining power, leading to higher costs, increased administrative expenses, and reduced benefits.

Borough of East Rutherford, P.E.R.C. No. 2009-15, 34 NJPER 289 (¶103 2008), aff'd 36 NJPER 33 (¶15 App. Div. 2010),

addresses the Township's claim that, as a matter of law, it cannot be contractually obligated to maintain the level of health benefits. As we said in that case, the level of health benefits is generally negotiable absent a preemptive statute or regulation and a grievance contesting a change in a negotiated level of benefits is generally arbitrable. In re Council of New Jersey State College Locals, 336 N.J. Super. 167 (App. Div. 2001). No statute or regulation requires that the Township participate in the SHBP. Local employers can withdraw from the SHBP at any time consistent with their obligations under existing collective negotiations agreements. New Jersey School Bds. Ass'n v. State Health Benefits Comm'n, 183 N.J. Super. 215, 218, 224 (App. Div. 1981).

We agree with the Township that it cannot be ordered to continue the SHBP Traditional Plan. That portion of the SHBP was eliminated by statute. See N.J.S.A. 52:14-17.26(j); City of Bayonne, P.E.R.C. No. 2008-41, 34 NJPER 9 (¶4 2008) (arbitrator could not order the employer to continue the previous co-pay levels since the SHBC had exercised its authority to set higher levels).

However, the Township cannot insulate itself from a determination as to whether it breached its alleged contractual obligation to maintain a certain level of health benefits. Whether the Township was contractually obligated to maintain a

level of health benefits other than the level of benefits currently offered by the SHBP is a question of contract interpretation that should most appropriately be placed before a grievance arbitrator. That is why we routinely defer these kinds of questions to binding arbitration and will do so here as well.

ORDER

The Township of Maplewood's motion for summary judgment is denied. The unions may file grievances within 30 days challenging the alleged breaches of the contractual health benefits provisions, if they have not already done so. Should the Township assert procedural defenses to arbitration, the matter will be remanded to the Hearing Examiner for hearing.

BY ORDER OF THE COMMISSION

Commissioners Eaton, Fuller, Krengel, Voos and Watkins voted in favor of this decision. None opposed. Commissioner Colligan recused himself.

ISSUED: June 24, 2010

Trenton, New Jersey