P.E.R.C. NO. 2019-22

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF HOBOKEN,

Respondent,

-and- Docket No. CO-2018-222

HOBOKEN MUNICIPAL
EMPLOYEES ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission grants the City's motion for reconsideration of an interim relief application filed by the Association and granted by a Commission Designee. The Association's unfair practice charge alleges that the City violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., by unilaterally changing the Third Party Administrator (TPA) of its self-insured health insurance program while the parties were in negotiations for a successor collective negotiations agreement (CNA), and that the change increased employee contribution levels for health care. The Commission finds that, despite the increased dollar amount of employee contributions, the City complied with the Chapter 78 fourth tier contribution levels it was required to maintain until the parties negotiate different levels in a successor CNA because Chapter 78 defines the contribution levels as a percentage of the cost of coverage. The Commission notes that the record showed that health insurance costs would have increased by even more had the City not changed its TPA, and finds that the City's decision to change its premium calculation from a cost basis to an actuarial basis was within its prerogative to self-insure and did not change the level of health benefits to something that was not substantially equivalent to what the employees had previously.

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, Weiner Law Group, attorneys (Mark Tabakin, of counsel and on the brief; John A. Boppert and Margaret A. Miller, on the brief)

For the Charging Party, Limsky Mitolo, attorneys (Marcia J. Mitolo, of counsel)

DECISION

On October 11, 2018, the City of Hoboken (City) moved for reconsideration by the full Commission of I.R. No. 2019-5, 45 NJPER 117 (¶31 2018). In that decision, a Commission Designee (Designee) granted an application for interim relief that accompanied an unfair practice charge filed by the Hoboken Municipal Employees Association (HMEA). The charge alleges that the City violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., specifically 5.4a(1), (3), (5) and

(7),[1/] by unilaterally changing the Third Party Administrator (TPA) of its self-insured health insurance program from United Healthcare to CIGNA while the parties were in negotiations for a successor collective negotiations agreement (CNA). The charge alleges that the change, effective February 28, 2018, increased employee contribution levels for health care by as much as 25 percent.

The Designee's decision granting interim relief was issued on September 26, 2018. The Designee found that "it is undisputed that beginning February 28, 2018, the City unilaterally increased employees' share of the premiums for health insurance coverage." He found that the HMEA made the required Chapter 78[2/] fourth tier health care premium contributions in 2017, the last year of their most recent CNA. He rejected the City's assertion that Chapter 78, as codified at N.J.S.A. 40A:10-21.2, preempts collective

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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. . . (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. . . (7) Violating any of the rules or regulations established by the Commission."

2/ P.L. 2011, c. 78.

negotiations over employees' share of premium costs for the year 2018. He found that even if the Chapter 78 fourth tier level of contributions still governed premium costs in 2018, then the City "could not have unilaterally raised those statutorily set figures." Based on his finding that the City unilaterally changed employees' share of health care premium contributions that are no longer preempted by statute, the Designee held that the HMEA is substantially likely to prevail on the merits of its unfair practice charge and that the timing of the City's change constitutes irreparable harm because it was during collective negotiations for the next CNA. The Designee ordered the City to refund employees any portion of health care premiums paid since February 28, 2018 that exceed the amounts paid in 2017. He also ordered the parties to negotiate in good faith over employees' share of health insurance premiums, and noted that the dollar amount of Chapter 78 fourth tier level contributions paid by employees in 2017 applies until the parties alter those amounts by agreement.

FACTS

The HMEA's application for interim relief was supported by the March 16, 2018 certification of its President, Diane Carreras, and exhibits. The City's opposition to interim relief was supported by the September 17, 2018 certification of its

Business Administrator, Stephen Marks, and exhibits.[3/] The City and HMEA are parties to a CNA effective July 1, 2002 through June 20, 2005, and a series of Memoranda of Agreement (MOA) supplementing that CNA, the most recent MOA covering January 1, 2015 through December 31, 2017. The parties are in negotiations for a successor agreement.

Article XIII, Section 4. of the CNA provides:

> In the event the City elects to change health care providers, the City agrees to maintain medical benefits at levels substantially equivalent to the current medical benefits.

The City has been utilizing a self-insured health plan and Third Party Administrator (TPA) to provide customer service and claims payment services for its medical benefits program. In December 2017, the City notified HMEA that it was changing its TPA from UMR/United Healthcare to IAA/Cigna. The City asserts that the change was made because United's fees for services would have increased approximately 25% in 2018, the labor unions had complained about the services provided by United, and Cigna had a larger network of medical providers.

Marks certifies, and the HMEA does not dispute, that the plan administered by Cigna is equal to or better than the plan

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3/ The City also submitted new exhibits with its motion for reconsideration, which the HMEA argues must be disregarded because they were not submitted in response to the interim relief application. The Commission did not consider these documents.

administered by United and that the Cigna plan did not change medical benefits or co-payments except that it increased the number of in-network of providers by about 10 percent. Marks certifies, and the HMEA does not dispute, that because United's 2018 quote for services was higher than Cigna's quote, actual employee health care costs would have increased regardless of whether the City changed its TPA. Marks certifies that employee health care costs increased in February 2018 because the cost of medical insurance increased based on the high volume of claims in 2017. Specifically, Marks certifies that the City paid $19,578,687.43 for claims in 2017, which was $5,845,147.10 more than it paid in 2016. To determine the Chapter 78 health care contribution rates for 2018, the City obtained actuarial opinions from Segal Consulting and Fairview. Segal projected the City's annual health care costs to be $19,125,624.00 and Fairview projected the costs to be $19,248,252.59. The City elected to utilize the actuarial opinion from Fairview.

On February 15, 2018, the Benefits Coordinator sent a letter to all City employees explaining that the costs of medical benefits had increased for 2018 due to rising health insurance costs and the high volume of claims in 2017. The letter attached a chart showing the rates for 2018 as compared to 2017. The benefits cost chart shows, for example, a monthly increase in single medical benefits from $588.67 to $814.49 (38.4% increase)

and an increase in family medical benefits from $1,605.74 to $2,217.96 (38.2% increase).[4/] The portions of those premiums to be paid by HMEA members are determined by the Chapter 78 contribution charts based on employee salary ranges that were also attached to the letter.

ARGUMENTS

The City argues that the law and record do not support the Designee's conclusion that the HMEA is substantially likely to prevail on the merits. Specifically, it asserts that the Designee's finding that the City unilaterally increased employees' share of premiums is factually incorrect because the record shows that the employee share of premiums remained exactly at the Chapter 78 fourth tier level in 2018. The City explains that the only change was an increase in actual premiums for providing coverage, which was a result of rising insurance costs based on increased claims in 2017. It argues that the Designee erred by finding that the City committed an unfair practice simply through normal fluctuations in the costs of health insurance premiums, when employee contribution levels towards such costs did not change. The City asserts that, per N.J.S.A. 40A:10-21.2 and Clementon Bd. of Ed., P.E.R.C. No. 2016-10, 42

4/ As prescription and vision benefits costs remained unchanged and dental costs declined slightly from 2017 to 2018, the total monthly cost for all health care benefits combined increased 24.6% for single and family plans.

NJPER 117 (¶34 2015), it maintained employee contribution levels because they constituted the status quo until a successor agreement is reached.

The HMEA responds that the Chapter 78 employee contribution levels are not defined as percentage levels of the cost of coverage but rather as a fixed dollar amount of the cost of coverage. The HMEA asserts that its employees paid the full premium share required by Chapter 78 and reached full implementation of those statutory contribution levels in 2017, and asserts the fixed dollar amount of those contribution levels remain in effect until the parties negotiate a successor CNA. It also contends that the City's changed TPA and change from a past cost basis to an actuarial basis to determine the premium levels for 2018 resulted in an increase in actual health care premium costs without negotiations. Finally, it argues that N.J.S.A. 40A:10-21.1d allows an employer to determine the amount of health care premium contributions by means of a collective negotiations agreement, and that those contributions may be agreed to "as a share of the cost, or percentage of the premium or periodic charge."

STANDARD

N.J.A.C. 19:14-8.4 provides that a motion for reconsideration may be granted only where the moving party has established "extraordinary circumstances." In City of Passaic,

P.E.R.C. No. 2004-50, 30 NJPER 67 (¶21 2004), we explained that we will grant reconsideration of a Commission Designee's interim relief decision only in cases of exceptional importance:

> In rare circumstances, a designee might have misunderstood the facts presented or a party's argument. That situation might warrant the designee's granting a motion for reconsideration of his or her own decision. However, 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.
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> [Ibid.]

We find that this is a case of exceptional importance given that Chapter 78 statutory mandates are implicated. I.R. No. 2019-4 characterized the facts, and granted interim relief, on the basis that the City increased employee contribution levels for healthcare beyond Chapter 78 mandates. Our review of the record reveals that the increase in employee contribution levels was driven by an increase in the underlying cost of health insurance. Compliance with I.R. No 2019-4 would result in the City reimbursing HMEA employees for increases in health insurance costs despite that, under these facts, the increases do not constitute a unilateral change in a negotiable benefit. Therefore, we grant the City's motion for reconsideration.

ANALYSIS

Article XIII of the CNA allows the City to change health care providers as long as it maintains medical benefits that are "substantially equivalent" to the HMEA's current benefits. It is undisputed that the City did not decrease benefit levels as far as coverage, networks, deductibles, co-pays, etc.

N.J.S.A. 40A:10-21.1a provides that public employees shall contribute toward the cost of health care at levels to be phased in over four years. N.J.S.A. 52:14-17.28c sets forth "the amount of contribution to be paid pursuant to N.J.S.A. 40A:10-21.1" as a "percent of the cost of coverage" based on salary range and type of coverage (individual, member with child or spouse, or family). The percentage of employee contribution levels toward the cost of health insurance premiums grows in proportion to increases in salary range.[5/]

N.J.S.A. 40A:10-21.2 provides that during negotiations for the next CNA to be executed after employees in a unit have reached the full Chapter 78 fourth tier contributions levels, the parties "shall conduct negotiations concerning contributions for health care benefits as if the full premium share was included in

5/ "Cost of coverage" for non-SHBP and non-SEHBP plans is defined by N.J.S.A. 52:14-17.28c as: "the premium or periodic charges for health care, prescription drug, dental, and vision benefits, and for any other health care benefit, provided pursuant to P.L.1979, c.391 (C.18A:16-12 et seq.), N.J.S.40A:10-16 et seq., or any other law by a local board of education, local unit or agency thereof . . ."

the prior contract." N.J.S.A. 40A:10-21.2 also provides that: "After full implementation [of Chapter 78 contribution levels], those contribution levels shall become part of the parties' collective negotiations and shall then be subject to collective negotiations in a manner similar to other negotiable items between the parties." In Clementon Bd. of Ed., P.E.R.C. No. 2016-10, 42 NJPER 117 (¶34 2015), appeal dismissed as moot, 43 NJPER 125 (¶38 2016), the Commission interpreted identical language from Chapter 78 applicable to school boards, stating:

> N.J.S.A. 18A:16-17.2 also expressly, specifically and comprehensively sets out that Tier 4 levels of employee contributions shall constitute the status quo once employee contribution levels become negotiable when it states that "negotiations concerning contributions for health care benefits [shall be conducted] as if the full premium share was included in the prior contract. . . ."
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> [42 NJPER at 119.]

The parties agree that N.J.S.A. 40A:10-21.2 sets the full Chapter 78 contribution level as the status quo during negotiations for a successor agreement, and therefore the fourth tier contribution level paid by HMEA members in 2017 should continue in 2018 unless and until the parties negotiate for a different contribution percentage for their next CNA. However, the HMEA seeks to define "employee contribution levels" or "employee premium share" as a fixed dollar amount rather than as a percentage of the premium cost of health insurance coverage.

As discussed above, N.J.S.A. 52:14-17.28c sets forth Chapter 78 contributions as a "percent of the cost of coverage" and sets employee contribution levels as specific percentages of premium costs that increase as employee income ranges increase. Thus, N.J.S.A. 40A:10-21.2, by reference to "full implementation of the premium share set forth in [N.J.S.A. 52:14-17.28c]" defines employee contribution levels as a percent of the premium cost of coverage.

The income/percent contribution chart set forth in N.J.S.A. 52:14-17.28c matches the City's Chapter 78 fourth tier contribution chart included with its February 15, 2018 memo. The City did not increase employee contribution levels for health care premiums in 2018. Rather, the actual costs of health insurance premiums increased due to an approximate 38% increase in the medical portion of health benefits from 2017 to 2018 that was based on actuarial cost estimates that took into account the claims paid in 2017 for the unit. Furthermore, based on quotes the City received from both the prior United TPA plan and the current Cigna TPA plan, the cost of health insurance would have increased by more if the City had not changed its TPA. Therefore, the record does not support that the change in TPA caused the increase in the dollar amount that employees were contributing to health insurance.

The HMEA also asserts that the cost of health insurance increased because the City changed its premium calculation from a cost basis to an actuarial basis. The parties agree that, per Local Finance Notice 2011-20R and IRS Code Section 4980B(f)(4), the City was legally permitted to use an actuarial basis for establishing the premiums or periodic charges for its self-insured health insurance program. However, the HMEA asserts that the City's change in its method for determining the premium costs amounts to a unilateral change in health benefits. We find that the City's decision to utilize a different accepted method for determining premium costs was within its prerogative to self-insure. The City's change in calculation methodology for health insurance premiums did not change the level of health benefits to something that was not "substantially equivalent" to what the employees had previously.

Finally, we address HMEA's assertion that under N.J.S.A. 40A:10-21.1d, "the authority to determine an amount of contribution . . . by means of a binding collective negotiations agreement . . . shall remain in effect with regard to contributions, whether as a share of the cost, or percentage of the premium or periodic charge" and therefore the parties could have agreed to a "share of the cost" instead of the employee contribution levels set forth in N.J.S.A. 52:14-17.28c. However, the HMEA ignored the final part of that sentence noting that such contributions shall remain in effect "in addition to the

contributions required under subsections a. and b. of this section." The "subsection a." referred to is N.J.S.A. 40A:10-21.1a, quoted earlier, which mandates the aforementioned percentage contributions per N.J.S.A. 52:14-17.28c. Moreover, the Commission and Appellate Division have held that N.J.S.A. 40A:10-21.1d sets a floor for health care contributions at Chapter 78 levels until full implementation. New Brunswick M.E.A., P.E.R.C. No. 2017-22, 43 NJPER 173 (¶52 2016), aff'd, 453 N.J. Super. 408, 418 (App. Div. 2018) (employer is not preempted from requiring employees to pay contractually agreed upon premium contributions that exceed Chapter 78 levels).

Based upon all of the above, we disagree with the Designee's finding that "it is undisputed that beginning February 28, 2018, the City unilaterally increased employees' share of the premiums for health coverage" and his conclusion that "the City made a unilateral change in a mandatorily negotiable subject, the amount of health insurance premiums to be paid by employees, an issue that is no longer preempted by statute." 45 NJPER at 118. We find that the City maintained, and did not increase, Chapter 78 fourth tier employee contribution levels. Those levels became the status quo following full implementation of Chapter 78 in 2017, the last year of the prior CNA. Accordingly, we vacate the

Designee's Order granting interim relief and transfer the case to the Director of Unfair Practices for further processing.[6/]

ORDER

The motion for reconsideration is granted and the Order granting interim relief is vacated. The case is transferred to the Director of Unfair Practices for further processing.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Jones, Papero and Voos voted in favor of this decision. None opposed. Commissioner Boudreau was not present.

ISSUED: December 20, 2018

Trenton, New Jersey

6/ To the extent the Association is disputing the City's claims regarding the cost of health care for 2018, that factual dispute is not appropriate for resolution in an interim relief proceeding and can be resolved in an evidentiary hearing.