

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEWTON BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-2021-085

NEWTON EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission sustains the refusal of the Director of Unfair Practices to issue a complaint on an unfair practice charge filed by the Association against the Board. The charge alleges that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1, et seq. (Act) by unilaterally changing health insurance carriers for Association unit employees. Finding that the Association does not allege that the change in health carriers resulted in a reduction in the level of negotiated health benefits, the Commission holds that the Board's decision to change carriers was not mandatorily negotiable and does not violate the Act.

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, LLP, attorneys
(Stephen J. Edelstein, of counsel)

For the Charging Party,
Oxfeld Cohen, P.C., attorneys
(Rachel Leigh Adelman, of counsel)

DECISION

The Newton Education Association (Association) appeals from the refusal of the Director of Unfair Practices (Director) to issue a complaint and dismissal of an unfair practice charge it filed on October 29, 2020 against the Newton Board of Education (Board). D.U.P. No. 2021-5, __ NJPER __ (¶ 2021).^{1/} The charge alleges that the Board violated subsections 5.4a(1) and (5)^{2/} of

^{1/} The Association also filed an application for interim relief, which was denied by a Commission Designee on November 30, 2020. I.R. No. 2021-12, 47 NJPER 244 (¶56 2020).

^{2/} These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the
(continued...)

the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq., by announcing in September 2020 that it would unilaterally change unit employees' health insurance carrier from Horizon to Aetna.

We summarize the pertinent facts as follows. The parties' most recent collective negotiations agreement (CNA) expired in June 2020 and the parties are in collective negotiations for a new agreement. The CNA provides that the Board may change health insurance carriers for teachers as long as the health benefits are "substantially similar" to those under the previous carrier. The CNA provides that the Board may change health insurance carriers for custodians as long as the health benefits are "equal to or better than" those under the previous carrier.

In September 2020, the Board notified the Association that it planned to change unit employees' private health insurance carrier from Horizon to Aetna. The Association objected to the change in carriers and demanded to negotiate with the Board over the identity of the health insurance carrier. By e-mail of September 29, 2020, the Board's attorney rejected the Association's demand to negotiate over the change in carrier,

2/ (...continued)
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."

asserting that the Board has the prerogative to change carriers as long as the new coverage is equal to or better than the previous coverage. The change in carriers went into effect in January 2021. The Association does not allege that the change in carriers resulted in a change in the level of benefits or plan administration for either teachers or custodians.

In his March 17, 2021 decision, D.U.P. No. 2021-5, the Director, citing Commission precedent, held that the identity of a health insurance carrier is not mandatorily negotiable if the change in carrier does not result in a change in benefits or plan administration; therefore, the Board's unilateral decision to change health insurance carriers from Horizon to Aetna did not violate the Act and the unfair practice charge was dismissed.

On appeal, the Association asserts that, although it is not arguing that there was any change in the level of benefits caused by the Board's change of health insurance carriers, the identity of health insurance carriers should nonetheless be mandatorily negotiable despite Commission precedent. The Association argues that confirming whether a change in carriers has caused a change in benefits tasks employees with the burden of investigating and examining the different health plans to determine if the same level of benefits is maintained. It contends that the employees are then again burdened with justifying their entitlement to reimbursement when it is found that benefits have been reduced

under the new health insurance carrier. The Association asserts that the negotiability standard should be changed on this issue so that employers and unions must negotiate any change in health insurance carriers before changing. It argues that because of the P.L. 2011, c. 78 (Chapter 78) health insurance premium contribution requirements, employees now pay a substantial portion of their health insurance coverage and should have a proactive role in an employer's decision to change carriers rather than having to demonstrate later that the employer's change in carriers resulted in a change in health benefits.

The Board responds that this appeal should be dismissed as moot because the change in carriers occurred months ago and the parties already negotiated the Board's right to change carriers without changing benefits as memorialized in the last CNA. The Board asserts that there is no precedent supporting the Association's position and that the Association is asking the Commission to overturn decades of case law establishing that a public employer has a non-negotiable prerogative to change health insurance carriers as long as the change does not change the level of negotiated benefits. The Board argues that it cannot be found to have violated the Act where it had no obligation to negotiate over the change in health insurance carrier and the Association has not demonstrated that the benefits under the new carrier are not equal or better than under the previous carrier.

Finally, the Board disputes the Association's contentions that Chapter 78 contributions or the burden of demonstrating reduced benefits and seeking reimbursements are viable policy arguments for changing the law to require negotiations over changes in health insurance carriers.

The Commission has authority to issue a complaint where it appears that a charging party's allegations, if true, may constitute an unfair practice within the meaning of the Act. N.J.S.A. 34:13A-5.4(c); N.J.A.C. 19:14-2.1. Where the complaint issuance standard has not been met, the issuance of a complaint may be declined. N.J.A.C. 19:14-2.3; CWA Local 1040, D.U.P. No. 2011-9, 38 NJPER 93 (¶20 2011), aff'd, P.E.R.C. No. 2012-55, 38 NJPER 356 (¶120 2012). After a careful review of the parties' submissions, we sustain the Director's decision not to issue a complaint and dismiss the Association's unfair practice charge.

The Commission has consistently held that "[a]n employer's choice of health insurance carriers is not mandatorily negotiable so long as the negotiated level of benefits is not changed." Rockaway Bor. Bd. of Ed., P.E.R.C. No. 2010-9, 35 NJPER 293 (¶102 2009); Paterson State-Op. Sch. Dist., P.E.R.C. No. 2011-43, 36 NJPER 452 (¶174 2010); City of Newark, P.E.R.C. No. 82-5, 7 NJPER 439 (¶12195 1981). However, an employer's selection or change of insurance carrier becomes mandatorily negotiable if the change would affect the level of benefits or administration of the plan.

Union Tp., P.E.R.C. No. 2002-55, 28 NJPER 198 (¶33070 2002); Hamilton Tp. Bd. of Ed., P.E.R.C. No. 97-104, 23 NJPER 178 (¶28089 1997); Metuchen Bor., P.E.R.C. No. 84-91, 10 NJPER 127 (¶15065 1984).

Here, the Board unilaterally changed health insurance carriers but the Association does not allege that the change in carriers resulted in a reduced level of benefits. In Paterson State-Op. Sch. Dist., P.E.R.C. No. 2011-43, supra, the Commission dismissed an unfair practice charge challenging the school district's change in health insurance carrier because the same level of benefits was maintained. Because there is no allegation here that the Board's unilateral change of health insurance carrier from Horizon to Aetna caused a reduction in the parties' negotiated level of health benefits, we find that the Board exercised its managerial prerogative to change health insurance carriers and did not violate the Act.

We note that in unfair practice cases where the public employee union has alleged and demonstrated that a change in health insurance carrier resulted in a reduction in the level of contractual health benefits, the Commission has found violations of the Act and ordered appropriate remedies including the establishment of a fund for employees to cover medical costs which would have been paid under the previous health plan. See, e.g., Lakeland Reg. Bd. of Ed., P.E.R.C. No. 2014-38, 40 NJPER

278 (¶107 2013). The Commission has also found that allegations of changes to the level of negotiated health benefits caused by an employer's unilateral change of health insurance carriers are legally arbitrable and an arbitrator may determine an appropriate remedy if such a contractual violation is found. See, e.g., Essex Cty., P.E.R.C. No. 2020-40, 46 NJPER 359 (¶88 2020), aff'd, 2021 N.J. Super. Unpub. LEXIS 659 (App. Div. 2021); Matawan-Aberdeen Reg. Bd. of Ed., P.E.R.C. No. 2019-42, 45 NJPER 378 (¶98 2019), aff'd, 2020 N.J. Super. Unpub. LEXIS 1505 (App. Div. 2020). Neither of these situations applies here, as this case does not involve a claim by the Association, either in an unfair practice charge or request for arbitration, that the Board's change in health insurance carrier caused a reduction in the level of negotiated health benefits.

ORDER

The Director's refusal to issue a complaint is sustained and the Association's unfair practice charge is dismissed.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Jones, Papero and Voos voted in favor of this decision. Commissioner Ford recused himself. Commissioner Bonanni was not present.

ISSUED: May 27, 2021

Trenton, New Jersey