P.E.R.C. NO. 95-78

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HAZLET TOWNSHIP BOARD OF EDUCATION,

Respondent,

-and- Docket No. CO-94-311

HAZLET TEACHERS' ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission remands to the Director of Unfair Practices to initiate deferral to arbitration an unfair practice charge filed by the Hazlet Teachers' Association against the Hazlet Township Board of Education. The charge alleges that the Board violated the New Jersey Employer-Employee Relations Act by unilaterally altering the health insurance coverage of unit employees when it added a preferred provider program to the existing health benefits program. The Commission states that it has long held that deferral to binding arbitration is the preferred mechanism when a charge essentially alleges a violation of Subsection 5.4(a)(5) into a related alleged breach of contract.

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, Kenney, Gross, McDonough & Stevens, attorneys (Michael J. Gross, of counsel)

For the Charging Party, Zazzali, Zazzali, Fagella & Nowak, attorneys (Richard A. Friedman, of counsel)

DECISION AND ORDER

On April 19, 1994, the Hazlet Teachers' Association filed an unfair practice charge against the Hazlet Township Board of Education. The charge alleges that the employer 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/] by unilaterally altering the health insurance coverage of unit employees when it added a preferred provider program to the existing health benefits program.

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...."

The Board submitted documents to the Director. A letter from the insurance carrier to the Board announced that a preferred provider program would be effective 2/1/94 and that the Board could expect an estimated net savings of $35,401 for 1992. Those documents also suggest that employees using preferred providers may reduce their coinsurance liability. For example, an employee using a network provider might see a reduction in the cost of a doctor's visit from $40 to $28 and of a lab charge from $200 to $140. The Board urged that no Complaint issue.

On August 23, 1994, the Director of Unfair Practice refused to issue a Complaint. D.U.P. No. 95-2, 20 NJPER 351 (¶25180 1994). He found, based in part the on employer's documents and arguments, that employees who use a preferred provider will have reduced co-payments. Nevertheless, he found that the health provider, not the employer, imposed the alleged increased level of benefits and that the Board was not in a position to control, administer, or reject the unsolicited preferred provider program.

On September 1, 1994, the Association appealed.[2/] It argues that the Director placed an improper and unrealistic burden on the Association to demonstrate that the Board could not control, administer or reject the coverage offered by the carrier. The Association contends that the Board is in the best position to come forward with proofs about its relationship with the carrier. It

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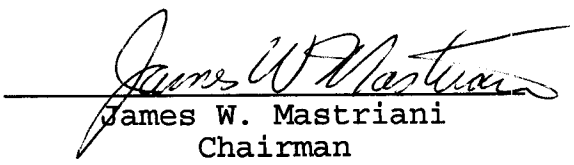
contractual interpretation which are best decided through the parties' negotiated grievance procedure. We have long held that deferral to binding arbitration is the preferred mechanism when a charge essentially alleges a violation of subsection 5.4(a)(5) interrelated with an alleged breach of contract. See Stafford Tp. Bd. of Ed., P.E.R.C. No. 90-17, 15 NJPER 527 (¶20217 1989); see also Morris Cty., P.E.R.C. No. 94-103, 20 NJPER 227 (¶25111 1994); Cape May Cty. Sheriff, P.E.R.C. No. 92-105, 18 NJPER 226 (¶23101 1992). We therefore remand this matter to the Director to initiate the deferral process.

ORDER

This matter is remanded to the Director of Unfair Practices for action consistent with this opinion.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioner Boose abstained from consideration.

DATED: March 24, 1995
Trenton, New Jersey
ISSUED: March 27, 1995