P.E.R.C. NO. 97-138

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF PERTH AMBOY,

Respondent,

-and- Docket No. CO-H-95-13

PBA LOCAL 13,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission dismisses a Complaint against the City of Perth Amboy. The Complaint, based on an unfair practice charge filed by PBA Local 13, alleges that the City violated the New Jersey Employer-Employee Relations Act by changing the company it uses to manage its workers' compensation plan. In particular, the PBA alleges that the City changed the established list of physicians, imposed pre-certification requirements, and increased travel to receive treatment. The Commission finds that the disputed aspects of the plan either were not changed or are preempted by workers' compensation statutes.

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, Fogarty & Hara, attorneys
(Rodney T. Hara, of counsel)

For the Charging Party, Abramson & Liebeskind
(Marc D. Abramson, consultant)

DECISION AND ORDER

On July 13, 1994, PBA Local 13 filed an unfair practice charge against the City of Perth Amboy. The charge alleges that the 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 changing the company it uses to manage its workers' compensation plan. In particular, the PBA alleges that the City changed the established list of physicians, imposed pre-certification requirements, and increased travel to receive treatment.

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...."

On November 10, 1994, a Complaint and Notice of Hearing issued. The employer filed an Answer admitting that it had changed companies, but denying the other allegations. The City asserts as affirmative defenses that the administration of workers' compensation benefits is preempted by N.J.S.A. 34:15-7 et seq. and that it had a prerogative to change companies.

On February 27 and 28, 1996, Hearing Examiner Jonathon Roth conducted a hearing. The parties examined witnesses, introduced exhibits, and filed post-hearing briefs.

On July 31, 1996, the Hearing Examiner recommended dismissing the Complaint. H.E. No. 97-5, 22 NJPER 349 (¶27181 1996). He found that although there were differences in the manner in which employees obtained treatment for compensable injuries under the new program, workers' compensation statutes, particularly N.J.S.A. 34:15-15 and 34:15-19, preempted negotiations. He concluded that the employer did not violate subsection 5.4(a)(1) or 5.4(a)(5).

On September 18, 1996, after an extension of time, the PBA filed exceptions challenging two of the Hearing Examiner's factual findings and asserting that the workers' compensation statutes and regulations did not "expressly, specifically and comprehensively" preempt negotiations over the changes at issue. On September 23, the employer filed a response. It urges adoption of the recommendation that the Complaint be dismissed, but maintains, in a cross-exception, that the Hearing Examiner should

have concluded that the manner in which a public employer administers its workers' compensation program is a managerial prerogative and would not be negotiable even absent preemption.

We have reviewed the record. We incorporate the Hearing Examiner's findings of fact. (H.E. at 3-8).2/ We reject the exceptions to findings no. 7 and 10. In finding no. 7, the Hearing Examiner summarizes the instructions contained in the referenced exhibits. The finding is consistent with the testimony cited by the charging party that a Mastercare nurse directs employees for treatment. Finding no. 10 is also accurate. The PBA president did not specify how far some officers had to go to receive treatment, nor did he know whether longer trips were necessary to receive special treatment.

We need not decide whether the workers' compensation statute and regulations preempt negotiations over all aspects of an employer's workers' compensation scheme. The disputed aspects of the plan either were not changed or are preempted.

Before February 1, 1994, the employer had a list of doctors from which injured employees had to choose. Employees were directed to select one of three general practitioners from the approved list. The employer continues to have an approved list of doctors and that list is more than double the size of the pre-change list.

2/ We correct the first transcript citation in finding no. 4 to read (CP-1, 1T16-6 to 1T17-10).

N.J.S.A. 34:15-19 requires an injured employee to submit to a physical examination if requested by the employer or risk losing benefits. It separately permits an employee to elect a physician to be present. These provisions support the conclusion that the employer has the statutory authority to choose its examining physician. We view the pre-certification requirement as part of the physician and treatment selection process.

Finally, even if the distance an injured employee must travel to a treating physician were mandatorily negotiable, the charging party has not proven that employees must now travel farther. Under all these circumstances, we agree with the Hearing Examiner that the City's actions did not violate the Act.

Given this ruling, we need not consider the cross-exception.

ORDER

The Complaint is dismissed.

BY ORDER OF THE COMMISSION

Millicent A. Wasell
Chair

Chair Wasell, Commissioners Boose, Buchanan, Finn, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioner Klagholz was not present.

DATED: May 29, 1997
Trenton, New Jersey
ISSUED: May 30, 1997

H.E. NO. 97-5

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF PERTH AMBOY,

Respondent,

-and- Docket No. CO-H-95-13

PBA LOCAL 13,

Charging Party.

SYNOPSIS

A hearing examiner recommends that the Commission dismiss a complaint alleging that a public employer unilaterally changed terms and conditions of employment of police officers by hiring a managed care organization to administer (and change) workers compensation benefits. The changes concern the list of doctors, precertification requirements, etc.

The hearing examiner recommends that N.J.S.A. 34:15-1 et seq., the workers compensation law, preempts collective negotiations over changes in the level of benefits available under workers compensation.

The hearing examiner also recommends that the City's action did not independently violate 5.4(a)(1) of the Act.

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law. If no exceptions are filed, the recommended decision shall become a final decision unless the Chairman or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

H.E. NO. 97-5

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF PERTH AMBOY,

Respondent,

-and- Docket No. CO-H-95-13

PBA LOCAL 13,

Charging Party.

Appearances:

For the Respondent,
Fogarty & Hara, attorneys
(Rodney T. Hara, of counsel)

For the Charging Party,
Abramson & Liebeskind
(Marc D. Abramson, Consultant)

HEARING EXAMINER'S RECOMMENDED REPORT AND DECISION

On July 13, 1994, PBA Local 13 filed an unfair practice charge against the City of Perth Amboy. The charge alleges that on February 1, 1994, the City switched its "workers compensation managing company" from Insurance Dynamics Consulting, Inc. to MasterCare, Inc. The change in "claims administrators" resulted in changes in the established list of physicians, the imposition of precertification requirements and increases in time and travel expenses. The City's action is an alleged unilateral change in

terms and conditions of employment, violating 5.4(a)(5) and (1)[1/] of the New Jersey Employer Relations Act, N.J.S.A. 34:13A-1 et seq. The PBA also alleges that the City's action is an independent violation of 5.4(a)(1).

On November 10, 1994, the Director of Unfair Practices issued a Complaint and Notice of Hearing. On November 29, the City filed an Answer, admitting retaining MasterCare, Inc. as its workers compensation managing company and denying other allegations. It contends that the administration of workers compensation benefits is preempted by N.J.S.A. 34:15-7 et seq.; and that it is a managerial prerogative.

On February 27 and 28, 1996, I conducted a hearing at which the parties examined witnesses and presented exhibits. Post-hearing briefs were filed after extensions of time were granted, on June 20, 1996.

Upon the record, I make the following:

FINDINGS OF FACT

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, or refusing to process grievances presented by the majority representative."

1. The City of Perth Amboy is a public employer within the meaning of the Act. Perth Amboy Policemen's Benevolent Association, Local No. 13 is a public employee representative within the meaning of the Act and represents all City police officers.

2. The parties' applicable collective negotiating agreement ran from January 1, 1992 to December 31, 1993 (C-3).[2/] Article XIII of the agreement, "Sick Leave", Section E, states that after employees injured on duty exhaust sick leave pay, they "shall be entitled to worker's compensation benefits...." Article XV, "Health and Welfare Benefits", includes provisions on hospitalization benefits, major medical coverage, group life insurance and dental benefits. Under this provision, the City agreed to "assume full cost of hospitalization and major medical coverage..."

3. In January 1993, the City contracted with Insurance Dynamics Consulting Services, Inc., to be its "claims adjuster" for "insured and self-funded insurance programs...[of] workers compensation, auto liability and general liability" (J-1; 2T123).[3/]

4. For at least two years (1992 and 1993), police officers injured on the job were directed to select one of three "general

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2/ "C" represents Commission exhibits, followed by the number given the exhibit. Similarly, "J" represents joint exhibits, "CP" represents charging party exhibits, and "R" represents respondent exhibits.

3/ "2T" represents the second day of transcript, followed by the page number. "1T" represents the first day of transcript, etc.

practitioners" from the City's approved list of eighteen physicians. "The employee will be treated, evaluated, and referred for more specialized care if deemed necessary by the treating physician." (CP-1; 1T120) The list included two cardiologists, four orthopedists, three ophthalmologists, four surgeons and two dentists. Nine practitioners had offices in Perth Amboy; five had offices in Edison and four had offices in Woodbridge (the latter two cities are within a ten-minute drive from Perth Amboy).

Injured officers selected a generalist on the list who could prescribe a diagnostic treatment, such as an MRI (magnetic resonance imaging) scan or a specialist (on the approved list). If the officer disagreed with the doctor's opinion, he or she could arrange for a second opinion or was assigned to another physician (1T16, 1T17).

5. The City experienced abuses of the workers compensation system. Employees ostensibly recuperating on workers compensation leave were observed playing outside or were seen away from home (2T124). Physicians often did not provide requested return-to-work dates of injured employees or even if they were provided, the City could not professionally assess the determination. The City discussed these issues with Insurance Dynamics, Inc. No resolution was reached before the City was solicited by MasterCare, Inc., a managed care organization (2T124-2T126).

6. On February 1, 1994, MasterCare commenced performance on an eleven month contract with the City to provide "day-to-day

management and approval of the medical care, treatment and rehabilitation of [City] employees...who have suffered work related injuries and illnesses..." (J-2). The contract requires MasterCare to "establish and maintain" procedures regarding "pre-certification of treatment, tracking of patient care, case management protocols, patient referrals, utilization review, quality assurance, fraud and abuse..." (J-2).[4/]

MasterCare, Inc. is certified by the N.J. Department of Insurance as an approved managed care organization in many counties, including Middlesex (R-6). MasterCare is approved to "provide medical services under a workers' compensation policy" (R-6). See also, N.J.A.C. 11:6-2.1 et seq.

7. On February 8, 1994, the Mayor distributed notices to City employees identifying MasterCare as the new "workers compensation managing company." Attached was a MasterCare brochure entitled, "What to do if you get hurt on the job" (R-8; J-4).

It directs employees to advise their supervisors of work-related injuries. If a supervisor is unavailable, employees must call MasterCare at a 1-800 telephone number and its agent (a registered nurse) directs the employee to the "appropriate doctor" or medical facility. The brochure warns that visiting one's "own private doctor" for a work-related injury without authorization may

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4/ After February 1, 1994, Insurance Dynamics, Inc. continued as claims administrator for the City by paying claims and assisting in determining whether an employee could return to work with limitations (2T161).

not be reimbursable. It also advises that in emergencies, employees may simply go to the nearest hospital emergency room.

9. MasterCare has a physician "network" and recruits doctors, both generalists and specialists, who submit proof of license, malpractice insurance, board certification, etc. (2T95; J-3). These materials are reviewed by a "credentialing committee", comprised of the MasterCare medical director (a medical doctor), the CEO, and an attorney (2T94). By February 1994, MasterCare had about 40 doctors in Middlesex County, alone (J-3). More physicians were added by the date of Hearing (2T95-2T96).

The City asked MasterCare to solicit (for the network) those physicians included in the earlier-approved list (2T96; see finding 4). About 8 of the 18 physicians listed in CP-1 are now in the network (CP-1; J-3; 2T96).

10. Naomi Lubrani is a registered nurse employed as a "nurse case manager" by MasterCare (2T5). She makes medical appointments and directs medical care for injured City employees (2T7). After soliciting certain medical information from the injured employee, she determines, or if necessary, asks the MasterCare medical director to determine, which network primary care physician or specialist should be assigned the case (2T12).

The MasterCare choice of physician is usually guided by geography; that is, the physician's office will be within a 5 to 7 mile radius of the employee's home (2T13-2T14). Normally, appointments with primary care physicians are feasible within one

day and appointments with specialists are feasible within two to three days (2T14-2T15). Other considerations (for example, an orthopedist's expertise on a particular body part) figure in the selection process (2T17).

Employee requests for a particular physician are noted, but not usually followed, unless a second opinion is necessary (2T18). Employees do not have the right to go to the doctor(s) of their choosing, even if they are in the network (2T79).

Prescriptions for physical therapy are typically approved by MasterCare (2T25-2T27). Physical therapy treatment locations are also selected for their geographic proximity to the injured employee's home (2T24). MasterCare telephones employees to check on their progress; guidelines exist for diagnosis and duration of treatment (2T33-2T34).

MasterCare orders network doctors to complete "duty determination " forms for injured employees, describing the diagnosis, treatment plan, recommended activity level, etc. The completed forms are then sent to the public employer (2T81-2T83).

11. The most frequent on-the-job injuries among officers require orthopedic treatment (1T30). Only two orthopedists are listed in the Middlesex County MasterCare network (J-3; 1T31). A third was added to the network sometime after February 1994, making

the total one less than the four named orthopedists in the City's earlier approved list (2T96; CP-1).[5/]

After February 1, 1994, police officers were required to get MasterCare approval for diagnostic treatment recommended by primary care physicians (1T34, 1T64, 1T107, 2T132). This procedure is consistent with MasterCare's authority in managing workers compensation cases.

One retired police officer's office visit to a network workers compensation doctor in Hazlet is twelve miles from Perth Amboy (2T142). Hazlet is two or three miles from his home in Aberdeen.

ANALYSIS

N.J.S.A. 34:13A-5.3 requires that "proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established." The N.J. Supreme Court recently wrote of this provision:

> ...Stated negatively, this rule, known as the prescription against unilateral change of the status quo, prohibits an employer from unilaterally altering the status quo concerning mandatory bargaining topics, whether established by expired contract or by past practice, without first bargaining to impasse.
>
> [Neptune Tp. Bd. of Ed. v. Neptune Tp. Ed. Assn., S. Ct. Dkt. No. A-102-95, 5/8/96, slip op. at p. 5].

5/ The PBA president conceded the possibility that some physicians in the MasterCare network were not included on the MasterCare provider list (1T60; J-3).

"Mandatory bargaining topics" are by definition within the scope of collective negotiations. The Commission determines in the first instance whether a "matter in dispute" is within the scope of negotiations. N.J.S.A. 34:13A-5.4(d). Paterson Police PBA No. 1 v. Paterson, 87 N.J. 78 (1981), outlines the steps of a scope of negotiations analysis for police officers:

> First, it must be determined whether the particular item in dispute is controlled by a specific statute or regulation. If it is, the parties may not include any inconsistent term in their agreement. If an item is not mandated by statute or regulation but is within the general discretionary powers of a public employer, the next step is to determine whether it is a term and condition of employment as we have defined that phrase. An item that intimately and directly affects the work and welfare of police and firefighters, like any other public employees, and on which negotiated agreement would not significantly interfere with the exercise of inherent or express management prerogatives is mandatorily negotiable....
>
> [Id. at 92-93].

The scope of negotiations for police officers is broader than for other employees (N.J.S.A. 34:13A-16 provides for a permissive as well as mandatory category of negotiations). I need only consider whether the alleged change was a mandatory subject, since the subsection allegedly violated (5.4(a)(5)) only prohibits unilateral changes in mandatorily negotiable terms and conditions of employment. See, e.g., Bor. of Metuchen, P.E.R.C. No. 84-91, 10 NJPER 127, 128 (¶15065 1984).

The level of health benefits provided by an employer is a term and condition of employment. Unilateral changes of those benefits violate the Act. City of Newark, P.E.R.C. No. 82-5, 7 NJPER 439 (¶12195 1981); Tp. of Pennsauken, P.E.R.C. No. 88-53, 14 NJPER 61 (¶19020 1987).[6/]

The City contends that N.J.S.A. 34:15-1 et seq., the New Jersey Workers' Compensation Law, preempts negotiations and that changes in benefits provided under the statute are not mandatorily negotiable.

A statute or regulation will not preempt negotiations unless it expressly, specifically, and comprehensively fixes a term and condition of employment, thereby eliminating the employer's discretion to vary it. Bethlehem Tp. Bd. of Ed. v. Bethlehem Tp. Ed. Assn., 91 N.J. 38, 44 (1982); State v. State Supervisory Employees Assn., 78 N.J. 54, 80 (1978). The issue is not whether a statute authorizes an employer to adopt a program, but whether the statute mandates an employment condition and eliminates the parties' discretion to vary that employment condition through a negotiated

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6/ The Commission noted in Pennsauken that cases involving unilateral changes in health benefits are deferrable when the charge alleges a violation of subsection 5.4(a)(5) interrelated with a breach of contract. State of New Jersey (Dept. of Human Services), P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984); Brookdale Comm. College, P.E.R.C. No. 83-131, 9 NJPER 267 (¶14122 1983). The Commission has deferred such cases. See, e.g., Hazlet Bd. of Ed., P.E.R.C. No. 95-78, 21 NJPER 164 (¶26101 1995); 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).

agreement. Hunterdon Cty. Freeholders Bd and CWA, 116 N.J. 322 (1989).

N.J.S.A. 34:15-43 provides that,

> every employee of the State, county, municipality or any board of commission or any other governing body...who may be injured in the line of duty shall be compensated under and by virtue of the provisions of this article and article 2 of this chapter (R.S. 34:15-7 et seq.).

N.J.S.A. 34:15-15 provides that,

> the employer shall furnish to the injured worker such medical, surgical and other treatment, and hospital service as shall be necessary to cure and relieve the worker of the effects of the injury and to restore the functions of the injured member or organ where such restoration is possible...7/

7/ In Benson v. Coca-Cola Co., 120 N.J. Super. 60 (App. Div. 1972), the Court wrote of this provision:

> We agree that free choice of physician is repugnant to legislative intent in New Jersey. But under the rule we here enunciate, the choice of physician is not free to the workman until after employer's refusal or neglect to provide the treatment required by statute....[T]he nature of the treatment required by the statute and its reasonable necessity (or adequacy of the treatment given or offered, if any) may be measured on a post hoc appraisal of the medical facts....There is no question but that the duty to provide adequate and proper medical treatment is upon the employer and is absolute (citation omitted).
>
> [Id. at 65-66].

N.J.S.A. 34:15-19 requires that an injured employee,

> if so requested by his employer, must submit himself for physical examination and x-ray at some reasonable time and place within this State, and as often as reasonably requested, to a physician or physicians authorized to practice under the laws of this State. If the employee requests, he shall be entitled to have a physician or physicians of his own selection present to participate in such examination.

In 1993, N.J.A.C. 11:6-2.1 et seq. was enacted,

> ...to encourage the use of managed care to furnish injured workers with such medical, surgical and other treatment, and hospital service as shall be necessary to cure and relieve the worker of the effects of the injury and to contain medical costs under workers compensation coverage by providing eligible employers with a method whereby they may select a managed care alternative to traditional workers compensation medical care at a reduced premium.

This code details the qualifications necessary for a company to become a "managed care organization" for purposes of workers compensation insurance.

Other statutory provisions give "exclusive original jurisdiction" to the Division of Workers Compensation for "...all claims for workers' compensation benefits..." (N.J.S.A. 34:15-49), including claims alleging employer discrimination (N.J.S.A. 34:15-39.1); make an employer's "actual knowledge of the occurrence of the injury" a condition, without which "...no compensation shall be due..." (N.J.S.A. 34:15-17); and allow the employer to petition to overrule "...the refusal of an injured employee to accept proferred medical and surgical treatment deemed necessary by the physician selected by the employer..." (N.J.S.A. 34:15-23).

I recommend that N.J.S.A. 34:15-15 preempts collective negotiations over the selection and numbers of physicians designated to treat an employee injured on the job. The preemption necessarily includes the "precertification" procedure, which is a lawful delegation of the employer's statutory mandate to select the treating physician (N.J.A.C. 11:6-2.1 repeats the "curative" intent of N.J.S.A. 34:15-15).

I also recommend that N.J.S.A. 34:15-19 preempts negotiations over distances travelled by injured employees to visit treating physicians. "Unreasonable" employer choices may be appealed under the statute (N.J.S.A. 34:15-49).[8/] That unit employees arguably travel longer distances now than in 1992-93 fails to prove a "change" under the Act. See, e.g., Wharton Bd. of Ed., P.E.R.C. No. 83-24, 8 NJPER 549 (¶13252 1982).

The City has explained rather than rebutted the facts alleged by the PBA. I agree that the changes -- different doctors and precertification, including prior approval of diagnostic tests -- would be unlawful, having occurred without negotiations, if they concerned health insurance benefits.

8/ In New Jersey, employees injured coming from or going to receive authorized medical treatment in connection with a compensable accident are covered under the workers compensation act. Camp v. Lockheed Electronics, Inc., 178 N.J. Super. 535, 543-544 (App. Div. 1981), cert. den. 87 N.J. 415 (1981). The holding illustrates the broad remedial authority of the statute.

I disagree with the PBA that workers compensation benefits follow the same legal purview as health insurance benefits, an item frequently negotiated or established by practice. Any alleged right by "established practice" in this case is rooted to the statutory mandate to provide the benefits, including the treating doctor(s) and by logical necessity, their locations.[9/] And unlike health insurance benefits, employees seeking medical care under workers compensation must inform their employers of injuries and may be compelled to accept a particular treatment.

The PBA has also failed to show that the City independently violated 5.4(a)(1) of the Act through the changes implemented by MasterCare. "An employer violates subsection 5.4(a)(1) if its action tends to interfere with an employee's statutory rights and lacks a legitimate and substantial business justification." N.J. Sports and Expo. Auth., P.E.R.C. No. 80-73, 5 NJPER 550 (¶10285

9/ Under similar facts, but a significantly different statutory scheme, the Pennsylvania Court of Common Pleas determined that a public employer was obligated to negotiate with the union before unilaterally implementing a "five physician rule" under the state workers compensation statute. The Court affirmed the Pennsylvania Labor Relations Board decision that the statute "permits" but did not "require" adoption of the rule. The Court noted that workers compensation benefits, unlike fringe benefits, are not "compensation for services rendered, and therefore, are not analagous to wages." The Court was nevertheless persuaded that the "procedures injured workers must follow to receive workmen's compensation benefits are conditions of employment and therefore [bargainable, despite mandated benefits]" Woodland Hills School Dist. v. PLRB and Woodland Hills Ed. Ass'n, 24 PPER ¶24001 (Dkt. No. SA300-91, 1992). Contra, Schnectady PBA v. N.Y.S. Public Employment Relations Board, 85 NY2d 480 (1995); Schnectady PBA and City of Schnectady, 28 PERB ¶3077 (1995).

1979); Rutgers Med. School, P.E.R.C. No. 87-87, 13 NJPER 115, 166 (¶18050 1987). The tendency of the employer's conduct, and not its result or motivation, is the threshold issue Commercial Tp. Bd. of Ed., P.E.R.C. No. 83-25, 8 NJPER 550 (¶13253 1982), aff'd 10 NJPER 78 (¶15043 App. Div. 1983).

I conclude from this record that the City's hiring of MasterCare and the changes resulting from the company's administration of workers compensation benefits is preempted by statute and did not interfere with any rights guaranteed by the Act.

RECOMMENDATION

I recommend that the Complaint be dismissed.

Jonathon Roth
Hearing Examiner

DATED: July 31, 1996
Trenton, New Jersey