

P.E.R.C. NO. 95-19

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TOWNSHIP OF LACEY,

Respondent,

-and-

Docket No. CO-H-92-267

LACEY TOWNSHIP POLICEMEN'S
BENEVOLENT ASSOCIATION, LOCAL 238,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission finds that the Township of Lacey violated the New Jersey Employer-Employee Relations Act by unilaterally entering the State Disability Insurance Plan with its employee co-payment requirement. The Complaint was based on an unfair practice charge filed by Lacey Township Policemen's Benevolent Association, Local 238.

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Appearances:

For the Respondent, Citta & Holzapfel, attorneys
(Matthew Leahy, of counsel)

For the Charging Party, Klatsky & Klatsky
(Michael A. Bukosky, of counsel)

DECISION AND ORDER

On February 24, 1992, Lacey Township Policemen's Benevolent Association, Local 238 filed an unfair practice charge against the Township of Lacey. The charge alleges that the Township violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.4(a)(5), ^{1/} by unilaterally enrolling unit employees in the State Disability Insurance Plan and deducting employee contributions. These actions allegedly violated both the parties' collective negotiations agreement and their past practice.

^{1/} This subsection prohibits public employers, their representatives or agents from: "(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 April 6, 1993, a Complaint and Notice of Hearing issued. On April 7, Hearing Examiner Jonathon Roth conducted a hearing at which the parties stipulated the facts as set forth in the unfair practice charge. They also agreed that the entire record would be sent directly to us for decision, waiving their right to a hearing and a recommended decision from the Hearing Examiner. The parties filed briefs.

These are the verbatim allegations in the unfair practice charge:

On January 7, 1992, Lacey Township sent a letter to the Lacey Township PBA Local 238, explaining that the Township was considering enrollment in the State of New Jersey Disability Insurance Plan. The letter explained that the Township expected 50% co-payment would be \$76.50 per year. The letter concluded that the Township wished to know the PBA's response to this proposal by January 16, 1992. After receipt of this letter, the PBA and SOA requested more explicit information regarding this optional coverage. The Township never complied with that request. The deadline for the response was extended until February 7, 1992. On February 3, 1992, Paul Sullivan, PBA President, advised the Township that neither the PBA nor the SOA were interested in the proposed coverage.

Despite the PBA/SOA's rejection of the proposed coverage, the Township passed Resolution 92-54, which enrolled the entire town in the State Disability Insurance Plan. The Township also informed the PBA members that their portion of the co-payment of the premiums will be deducted from their paychecks.

In passing Resolution 92-54, Lacey Township unilaterally changed the terms and conditions of employment. Disability insurance was not previously provided for or negotiated for in the current Bargaining Agreement. This is an additional cost to the PBA members which they specifically rejected. In unilaterally enacting

this resolution, the Township is now deducting monies from the PBA salaries in complete violation of both the Contract and past practice. This action, in passing a resolution requiring deductions from payroll, is clearly an unfair labor practice as it modifies the terms and conditions of employment in direct contradiction with the employees' desires not to be enrolled in this particular program.

Based on the above, the PBA/SOA now demands that Resolution 92-54 either be rescinded in its entirety or that the Township of Lacey be required to pay 100% of the premiums for the PBA and SOA members.

A public employer may not unilaterally change mandatorily negotiable terms and conditions of employment. N.J.S.A. 34:13A-5.3. Temporary disability insurance coverage is mandatorily negotiable. UMDNJ, P.E.R.C. No. 84-155, 10 NJPER 443 (¶15198 1984); Watchung Bor. Bd. of Ed., P.E.R.C. No. 80-110, 6 NJPER 111 (¶11059 1980). Thus, the Township could not unilaterally change the nature of its employees' temporary disability coverage.

The Township initially solicited the PBA's input on its decision to change disability coverage. The PBA requested additional information. The Township never complied with that request. The PBA subsequently advised the Township that it was not interested in the proposed coverage. Nevertheless, the Township passed Resolution 92-54, enrolling the Township in the State Disability Insurance Plan. The Township informed PBA members that their portion of the co-payment of the premiums would be deducted from their paychecks. These actions changed terms and conditions of employment.

The Township's only defense is that N.J.S.A. 43:21-7.3(h) requires employee contributions and directs it to deduct such contributions from employee wages. The Township contends that this co-payment responsibility is set by statute, does not afford it any discretion regarding employee contributions, and is a defense to a claim that it committed an unfair practice.

Whether an employer that has properly joined the State Disability Plan must deduct employee contributions is a separate and different question from whether an employer may unilaterally enter the State Disability Plan and thus trigger the requirement for employee contributions. Under the facts of this case, the employer did not negotiate in good faith before acting unilaterally and the PBA did not consent to entering the State plan.^{2/} Accordingly, we order the employer to take whatever action is necessary to restore the status quo and to negotiate in good faith with the PBA before changing disability insurance coverage.

ORDER

The Township of Lacey is ordered to:

A. Cease and desist from refusing to negotiate in good faith with PBA Local 238 concerning terms and conditions of employment, particularly by unilaterally entering the State Disability Insurance Plan with its employee co-payment requirement.

^{2/} The PBA also alleges that the Township failed to comply with N.J.S.A. 43:21-35 which provides for elections among employees covered by private plans to determine whether they favor discontinuance of the private plan. We need not reach that question.

B. Take this action:

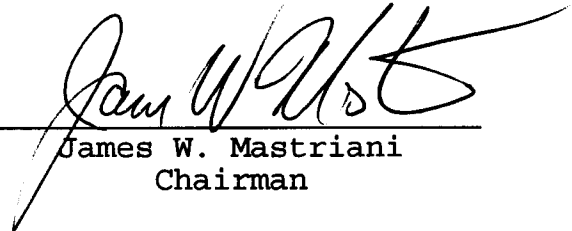
1. Restore the status quo and negotiate in good faith with the PBA before changing disability insurance coverage.

2. Post in all places where notices to employees are customarily posted, copies of the attached notice marked as Appendix "A." Copies of such notice shall, after being signed by the Respondent's authorized representative, be posted immediately and maintained by it for at least sixty (60) consecutive days.

Reasonable steps shall be taken to ensure that such notices are not altered, defaced or covered by other materials.

3. Notify the Chairman of the Commission within twenty (20) days of receipt what steps the Respondent has taken to comply with this order.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Bertolino, Goetting, Klagholz, Ricci, Smith and Wenzler voted in favor of this decision. None opposed.

DATED: September 29, 1994
Trenton, New Jersey
ISSUED: September 30, 1994



NOTICE TO EMPLOYEES



**PURSUANT TO
AN ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION
AND IN ORDER TO EFFECTUATE THE POLICIES OF THE
NEW JERSEY EMPLOYER-EMPLOYEE RELATIONS ACT,
AS AMENDED,**

We hereby notify our employees that:

WE WILL cease and desist from refusing to negotiate in good faith with PBA Local 238 concerning terms and conditions of employment, particularly by unilaterally entering the State Disability Insurance Plan with its employee co-payment requirement.

WE WILL restore the status quo and negotiate in good faith with the PBA before changing disability insurance coverage.

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TOWNSHIP OF LACEY
(Public Employer)

Date: _____

By: _____

This Notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced or covered by any other material.

If employees have any question concerning this Notice or compliance with its provisions, they may communicate directly with the Public Employment Relations Commission, 495 West State Street, CN 429, Trenton, NJ 08625-0429 (609) 984-7372

APPENDIX "A"