

COMMONWEALTH OF PENNSYLVANIA  
Pennsylvania Labor Relations Board

DOUGLASS TOWNSHIP POLICE OFFICERS :  
 :  
 v. : Case No. PF-C-04-213-E  
 :  
 DOUGLASS TOWNSHIP :

**FINAL ORDER**

On August 15, 2005, Douglass Township (Township) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) to the Proposed Decision and Order (PDO) issued July 26, 2005. In the PDO, the Hearing Examiner concluded that the Township committed unfair labor practices in violation of Section 6(1)(a) and (e) of the Pennsylvania Labor Relations Act (PLRA) by unilaterally changing the medical insurance plan for the bargaining unit of police employes without satisfying its collective bargaining obligation to the Douglass Township Police Officers (Union). On September 1, 2005, the Union timely filed a response to the Township's exceptions.

The Township and the Union were parties to a collective bargaining agreement (CBA) effective from January 1, 2002 until December 31, 2004. Paragraph 14 of the CBA provided the bargained for medical insurance benefits. In paragraph 14, the Township contracted to provide "Blue Cross/Blue Shield, Personal Choice 5 (\$5 office visit, zero deductible or co-pay in the network, \$5/\$10 prescription card) (PC-5 Plan)." (F.F. 3). Before the expiration of the CBA, the parties commenced bargaining a successor contract. During negotiations, the Township proposed changes in the medical insurance plan. Although the parties discussed possible alternatives in medical insurance coverage, they did not agree to any of the proposed changes. However, on December 6, 2004 the Township announced that it was changing medical insurance coverage to the Blue Cross/Blue Shield Flex Series Plan, effective January 15, 2005.<sup>1</sup> The Township contracted with Blue Cross/Blue Shield for the new Flex Plan on or about December 15, 2004, which became effective January 15, 2005. The new Flex Plan resulted in different coverage and increased costs for the unit members. On January 18, 2005, an arbitrator issued an interest award requiring the Township to provide the Blue Cross/Blue Shield PC-5 Plan, with modified co-pays for prescription drugs, in lieu of the Flex Plan implemented by the Township.

In its exceptions, the Township contends that the Examiner erred by: concluding that the Township engaged in unfair practices by unilaterally changing the medical insurance plan; failing to make findings of fact supporting the Township's claim that it possessed a managerial prerogative to change the manner in which health care is provided by the employer; and failing to make findings or provide analysis regarding possible impact on police employes as a result of the changes made to the health insurance plan.

The Hearing Examiner was required to set forth those facts that were necessary to support his decision. He was not required to summarize all the evidence presented, make findings that are unnecessary or make findings that would support another decision, even if there is substantial evidence to support such findings. Page's Department Store v. Velardi, 464 Pa. 276, 346 A.2d 556 (1975); Ford City Borough, 19 PPER ¶ 19117 (Final Order, 1988); AFSCME v. Dep't Public Welfare, 18 PPER ¶ 18028 (Final Order, 1986).

The Township claims that the Examiner erred in finding and concluding that the Township violated its collective bargaining obligation. The Board will find an employer in violation of Section 6(1)(a) and (e) of the PLRA if the employer unilaterally changes a matter over which its employes have the right to bargain, absent agreement from the Union or an interest arbitration award. Wilkes-Barre Police Benevolent Association v. City of Wilkes-Barre, 32 PPER ¶ 32137 (Final Order, 2001); Bethlehem Star Lodge No. 20,

<sup>1</sup> Finding of Fact No. 4 contains typographical errors mistakenly designating the effective date of the new Flex Plan as January 1, 2005. Neither party has addressed concerns regarding this error, however, the date is hereby corrected.

Fraternal Order of Police v. City of Bethlehem, 23 PPER ¶ 23058 (Final Order, 1992), aff'd sub nom, 621 A.2d 1184 (Pa. Cmwlth. 1993). A matter is bargainable under Act 111 and the PLRA if it bears a rational relationship to employees' duties or terms and conditions of employment that impact on employees' duties and it is not substantially outweighed by the employer's core managerial functions. Indiana Borough v. PLRB, 695 A.2d 470 (Pa. Cmwlth. 1997); Township of Upper Saucon v. PLRB, 620 A.2d 71 (Pa. Cmwlth. 1993).

The Board and the courts have consistently held that medical benefits (i.e., plans, coverage, co-pays, contributions etc.) constitute a mandatory subject of bargaining under Act 111 and the Public Employee Relations Act (PERA) such that an employer's unilateral change to medical benefits constitutes an unfair labor practice under the PLRA and PERA. Appeal of Cumberland Valley Sch. Dist., 483 Pa. 134, 394 A.2d 946 (1978) (holding that medical and health benefits constitute wages and therefore terms and conditions of employment and that unilateral changes in medical benefits during contract hiatus constitutes an unfair practice); Middletown Township, 24 PPER ¶ 24167 (Final Order, 1993) (holding that medical benefits provided under an employer's workers compensation scheme are a mandatory subject of bargaining and even so-called "de minimus" unilateral changes thereto constitute an unfair labor practice); PSSU Local #668 v. Franklin county, 34 PPER 121 (Proposed Decision and Order, 2003) (concluding that unilateral changes to employees' health care contributions constitutes an unfair labor practice); Kennett Consolidated Sch. Dist. v. PLRB, 20 PPER ¶ 20088 (Court of Common Pleas of Chester County, 1989) (holding that an employer's unilateral change in certain treatment procedures under the medical plan constituted an unfair practice even though the extent of coverage and the amount of employee contribution remained the same); Palmyra Area Educ. Ass'n v. Palmyra Area Sch. Dist., 26 PPER ¶ 26087 (Final Order, 1995) aff'd, sub nom., 27 PPER ¶ 27032 (Court of Common Pleas of Lebanon County, 1995) (holding that a unilateral change in medical insurance carriers regulated by the Insurance Department to a self-insured system even where the coverage is purportedly equal to or greater than that provided by the prior plan constitutes an unfair practice regardless of the comparable merits of either plan because employees lose the certainty of the funding, claims administration and state regulation). FOP Delaware Lodge #27 v. Delaware County, 25 PPER ¶ 25,030 (Final Order, 1994) (concluding that medical and health insurance benefits are mandatory subjects of bargaining because they are rationally related to police officers' duties and constitute a form of compensation).

The Township unilaterally changed the status quo without satisfaction of its collective bargaining obligation to the Union regarding the medical plan, coverage, co-pays and self-insured reimbursements for co-pay differentials made effective during contract hiatus. In Wilkes-Barre, supra, the Board aptly opined the following:

An employer may not unilaterally implement changes and disrupt the status quo regarding mandatory subjects of bargaining. PLRB v. Williamsport Area Sch. Dist., 486 Pa. 375, 406 A.2d 329 (1979). An employer possesses a statutory duty to seek out the exclusive representative of its employees and bargain in good faith to resolution, agreement or concession prior to implementing changes in the status quo that affect mandatory subjects of bargaining at any time during an effective collective bargaining agreement, an effective interest arbitration award, following the expiration of an agreement, or during negotiations for a new agreement. Salisbury Township v. PLRB, 672 A.2d 385 (Pa. Cmwlth. 1996); International Association of Firefighters, Local No. 22, AFL-CIO v. City of Philadelphia, 28 PPER 28100 (Final Order, 1997), aff'd unreported, (1000 C.D. 1997, Pa. Cmwlth. 1998); Bethlehem Star Lodge No. 20, Fraternal Order of Police v. City of Bethlehem, 23 PPER 23058 (Final Order, 1992), aff'd sub nom, 621 A.2d 1184 (Pa. Cmwlth. 1993); Fraternal Order of Police, Washington Lodge No. 17 v. City of Easton, 22 PPER 22122 (Final Order, 1991). In City of Bethlehem, supra, the Board stated that "[t]here are only two ways an employer under Act 111 and the PLRA can implement a change in a mandatory subject of bargaining; by agreement with the bargaining representative or pursuant to the provisions of an interest arbitration award." Id. at 135. The Bethlehem Board also stated that, "absent an agreement with the bargaining representative of the employees, the employer's bargaining is not satisfied unless the issue under consideration is submitted to arbitration" and awarded. Id.

Wilkes-Barre, 32 PPER at 337. Accordingly, after reviewing the record and the PDO, the Board concludes that the Hearing Examiner indeed made those findings that were necessary to support his conclusions, that he did not omit any necessary findings. Although the Township's proposed findings may support its theory of the case, they are unnecessary to support the Examiner's conclusions. The Township's theory of this case simply ignores the weight of well-established precedent.

The Township also argues that the Examiner erred in failing to provide an impact analysis regarding the effect on the employees. This contention is also without merit given the abundance of precedent, both cited and uncited, requiring employers to bargain any changes in medical or health benefits, coverage or procedure. In Wilkes-Barre Police Benevolent Association v. City of Wilkes-Barre, 33 PPER ¶ 33087 (Final Order, 2002), the Board opined that it "properly relies on precedent to determine whether a matter constitutes a mandatory subject rather than reinventing the wheel by applying the rational relationship test merely to arrive at the same result as the established precedent." Wilkes-Barre, 33 PPER at 192 (citing Teamsters Local 77 & 50 v. PLRB, 786 A.2d 299 (Pa. Cmwlth. 2001)(holding that the Board need not apply the balancing test to determine whether a matter constitutes a mandatory subject of bargaining or a managerial prerogative where the matter has already been determined by decisional law)); Kennett, supra (holding that impact analysis or balancing test need not be applied to determine whether a matter is a mandatory subject of bargaining where precedent has already established a matter in question as such and where the employer is motivated by economic concerns). Of course where a party introduces new or different facts that may alter the weight the matter at issue bears on the interests of the parties, additional analysis may be warranted. The burden is on the party requesting departure from established precedent to demonstrate on the record facts warranting such departure.

The Township failed to meet its burden of demonstrating on the record sufficient facts that would warrant a departure from the abundance of decisional law governing the disposition of this case. The Examiner, therefore, was under no obligation to "reinvent the wheel" by again analyzing the separate impact of the Township's unilateral change where the Board has already declared the issue to be a mandatory subject of bargaining with statutory impact on officers' compensation and terms and conditions of employment. The impact has been determined as a matter of law that unilateral change to a self-insured system of medical coverage, as here, regardless of coverage, constitutes an unfair labor practice because employees lose the protection of state regulation by the insurance department and the expertise of a medical insurance carrier. Palmyra, supra. Also, as the Examiner noted in Finding of Fact No. 4, the Township's change in medical plans "resulted in different coverages and increased costs for the unit members" (F.F 4). Although the Township's self-insured program purportedly reimbursed unit members for the difference in costs, the employees were required to pay significantly higher co-pays (especially for emergency room visits) with their own money diminishing their income and they suffered reductions in coverage. Unilateral changes in costs, contributions, co-pays, coverage, procedures, plans, agencies or changes to self insured programs have all been determined to constitute mandatory subjects of bargaining. Accordingly, the Examiner did not err in omitting a separate analysis of employe impact in this case.

The Township next argues that, through the self-insurance plan of reimbursing employees for differences in co-pay outlays between the Flex Plan and the PC-5 Plan required by the arbitration award, it is providing the same benefits as required by the arbitration award and there can be no unfair labor practice. However, the Township's argument fails for two reasons. First, as previously determined, unilaterally changing to self-insuring medical benefits, or an aspect thereof, is an unfair labor practice. Also, in the charge, the Union expressly alleged that the Township, on or about December 6, 2004, unilaterally changed the employees' medial insurance plan during an effective collective bargaining agreement and without agreement from the Union. After the expiration of the CBA on December 31, 2004, absent an agreement from the Union, the Township was obligated to maintain the status quo without changing medical benefits. Cumberland Valley, supra. In sustaining the charge, the Examiner concluded that the Township unilaterally changed terms and conditions of employment, specifically the medical benefits, as they existed in December 2004 and which the Township had an obligation to maintain, absent agreement from the Union. As the Palmyra Court opined, a

unilateral change in medical plans constitutes an unfair labor practice "whether it occurred during the term of an existing agreement[,] . . . following expiration of an agreement, or during the course of negotiations intended to produce a new agreement." Palmyra, 27 PPER at 69. Therefore, the subsequent interest arbitration award, dated January 18, 2005, is simply not a relevant consideration in concluding that the Township engaged in unfair labor practices in December of 2004. Accordingly, the Township's compliance with the arbitration award would be the subject of a separate charge. In this regard, the Examiner aptly noted the following when the Union attempted to raise compliance with the arbitration award:

In its post hearing brief the Union, for the first time, asserts that the Township again violated the Act when it refused to implement the interest arbitration award issued on January 18, 2005. That award granted the Union a more favorable medical insurance plan than the one unilaterally implemented by the Township. This allegation could not have been included in the charge filed by the Union because the charge was filed a month before the award issued. Nevertheless, to have that issue decided, the Union should have filed a new charge or amended this charge to include the allegation that the Township's failure to abide by the tenets of the interest arbitration award violated the Act.

(PDO at 3).

In a similarly unrelated claim, the Township also contends that the neutral interest arbitrator has limited authority to issue awards affecting health benefits. The arbitrator, argues the Township, although permitted to award benefits, is without authority to determine how the benefits should be provided. However, the arbitrator's authority and the medical plan, coverage, benefits, co-pays, contributions or procedures that he awarded are simply not at issue in this case. In sustaining the charge, the Examiner concluded that, in December 2004, the Township unilaterally changed a mandatory subject of bargaining effective during contract hiatus, in January 2005, in violation of the status quo. In the charge, the Union did not allege that the Township was not complying with the subsequent arbitration award and the Examiner expressly declined to consider the arbitration award for that reason.

After a thorough review of the exceptions and all matters of record, the Board, therefore, concludes that the Township committed unfair labor practices in violation of Section 6(1)(a) and (e) of the PLRA and Act 111 and shall sustain the Proposed Decision and Order of the Hearing Examiner.

#### **ORDER**

In view of the foregoing and in order to effectuate the policies of the Pennsylvania Labor Relations Act and Act 111 of 1968, the Board

#### **HEREBY ORDERS AND DIRECTS**

that the exceptions filed to the Proposed Decision and Order in the above-captioned matter be and the same are hereby dismissed and that the Proposed Decision and Order is hereby made absolute and final.

SEALED, DATED and MAILED pursuant to Conference Call Meeting of the Pennsylvania Labor Relations Board, L. Dennis Martire, Chairman, Anne E. Covey, Member, and James M. Darby, Member, this fifteenth day of November, 2005. The Board hereby authorizes the Secretary of the Board, pursuant to 34 Pa. Code 95.81(a), to issue and serve upon the parties hereto the within Order.

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**AFFIDAVIT OF COMPLIANCE**

Douglass Township hereby certifies that it has ceased and desisted from its violation of Section 6(1)(a) and (e) of the PLRA and Act 111; that it has returned bargaining unit members to coverage under the medical insurance plan as described in the parties' former contract as evidenced in Union Exhibit 1; that it has immediately reimbursed bargaining unit members for any amount previously paid by them for differences in coverage; that if refused re-admission to the medical insurance plan evidenced in Union Exhibit 1, it is responsible for making all differential payments directly to third party providers; that it has posted the Final Order and the Proposed Decision and Order as directed therein, and that it has served a copy of this affidavit on the Union at its principal place of business.

\_\_\_\_\_  
Signature/Date

\_\_\_\_\_  
Title

SWORN AND SUBSCRIBED TO before me  
the day and year first aforesaid.

\_\_\_\_\_  
Signature of Notary Public