COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

BUCKS COUNTY SECURITY GUARDS ASSOCIATION	:	
	:	
v.	:	Case No. PERA-C-06-518-E
	:	
BUCKS COUNTY	:	

FINAL ORDER

On April 19, 2007, Bucks County (County) filed timely exceptions with the Pennsylvania Labor Relations Board (Board) to the Proposed Decision and Order (PDO) issued by the Board's hearing examiner on April 4, 2007. In the PDO, the hearing examiner concluded that the County violated Section 1201(a)(1) and (5) of the Public Employe Relations Act (PERA) by unilaterally eliminating the Aetna Health Maintenance Organization (Aetna HMO) as a health care plan option for its security guards without prior bargaining with their exclusive bargaining representative, the Bucks County Security Guards Association (Association). Pursuant to an extension of time granted by the Secretary of the Board, the County filed a brief in support of its exceptions on May 24, 2007. The Association filed a response to the County's exceptions on June 11, 2007. After a thorough review of the record, the Board makes the following:

ADDITIONAL FINDINGS OF FACT

9. Before the County eliminated the Aetna HMO option for its security guards, the security guards had the option of receiving their health care benefits under the plans offered by Aetna HMO, Keystone HMO or Keystone Point of Service (Keystone POS). (N.T. 100, 104-105, 111)

10. When the County eliminated Aetna HMO as a health care plan option for the security guards, there were six or seven security guards enrolled in Aetna HMO. (N.T. 63, 101)

11. In or about August 2006, the County's director of human resources informed the unions that represent the County's employes that the County intended to eliminate Aetna HMO as a health care plan option. The County presented the unions with certain information regarding the change in the employes' health care options, including a comparison between certain benefits provided under Keystone HMO and those provided under Aetna HMO. The benefit comparison provided by the County highlighted the following differences between the two HMOs: Aetna HMO had a $5 copayment for routine eye exams with a network provider, whereas Keystone had no copayment; Keystone HMO had a $5 copayment for the first office visit for maternity care, whereas Aetna HMO had no copayment; Aetna HMO had a $10 copayment for the third through tenth visits for mental health outpatient care, whereas Keystone HMO had a $25 copayment for such visits; and Keystone HMO included a healthy lifestyles program, whereas Aetna HMO offered discounts via Global Fit Network health clubs. (N.T. 103-105; Employer Exhibit 3)

12. When the County eliminated the Aetna HMO option, security guards that were enrolled in Aetna were required to complete and submit forms selecting another health care provider. (N.T. 54)

13. John Paul is a security guard employed by the County. Paul switched from Aetna HMO to Keystone HMO when the County eliminated Aetna HMO as a health care plan option. Paul has a wife and daughter, and has family health care coverage. (N.T. 69-70, 76-78)

14. When Paul was enrolled in Aetna HMO, MRI tests were covered in full. After Paul switched to Keystone HMO due to the County's elimination of Aetna HMO as a health care plan option, his daughter had an MRI and he received a bill for over $400. (N.T. 72-73)

15. As of the hearing in this matter, County employes represented by the Pennsylvania Social Services Union (PSSU) still had the option of participating in Aetna HMO. (N.T. 114)

DISCUSSION

The essential facts of this case are as follows. On October 26, 2005, the Board certified the Association as the exclusive representative of a bargaining unit of security guards employed by the County (FF 1). At the time of the Association's certification, the security guards had the option of choosing between several health care plans, including an HMO operated by Aetna (FF 9). In October 2006, the County eliminated the security guards' option of selecting Aetna as their health care provider (FF 3). The County did not bargain with the Association before it made this unilateral change in the employes' health care benefits (FF 4).

When the County eliminated the Aetna HMO option for the security guards, there were six or seven security guards enrolled in Aetna (FF 10). Due to the County's unilateral action, those employes were required to complete and submit forms selecting another health care provider (Keystone HMO or Keystone POS). One security guard who was required to switch from Aetna to another provider and chose Keystone HMO was billed for over $400 for an MRI (FF 13-14). When this guard was covered by Aetna HMO, the cost of an MRI was fully covered (FF 14). The benefit comparison that the County provided to the employe representatives around the time of its unilateral action showed a number of differences between Aetna HMO and Keystone HMO, including the copayment for routine eye exams, the copayment for the first visit for maternity care, the copayment for certain visits for mental health outpatient care, and the means by which the plan encouraged plan participants to maintain good health (a healthy lifestyles program or health club discounts) (FF 11).

In the PDO, the hearing examiner stated that an employer commits unfair practices under Section 1201(a)(1) and (5) of PERA if it unilaterally changes a mandatory subject of bargaining, citing Appeal of Cumberland Valley School District, 483 Pa. 134, 394 A.2d 946 (1978). The examiner further noted that upon application of the balancing test set forth in PLRB v. State College Area School District, 461 Pa. 494, 337 A.2d 262 (1975), the Board and the courts have consistently held that employe health care benefits are a mandatory subject of bargaining. See, e.g., Cumberland Valley, supra; Palmyra Area School District, 26 PPER ¶ 26087 (Final Order, 1995), aff'd, 27 PPER ¶ 27032 (Court of Common Pleas of Lebanon County, 1995); Kennett Consolidated School District, 18 PPER ¶ 18060 (Final Order, 1987), aff'd, 20 PPER ¶ 20088 (Court of Common Pleas of Chester County, 1989). Because the County did not bargain with the Association over elimination of the Aetna HMO option for the security guards, the examiner concluded that the County violated its duty to bargain under Section 1201(a)(1) and (5) of PERA.

In its exceptions, the County contends that the examiner erred in: (1) concluding that the County's decision to no longer offer what the employer alleges is the same health care plan through two separate insurance carriers (Aetna HMO and Keystone HMO) is a mandatory subject of bargaining; (2) concluding that the name of a health care carrier, as opposed to actual health care benefits, is a mandatory subject of bargaining; (3) failing to perform the balancing test required by State College, supra; (4) declining to rely on Connecticut Light and Power Co. v. NLRB, 476 F.2d 1079 (2d Cir. 1973); (5) relying on Palmyra, supra; and (6) concluding that there was a violation of Section 1201(a)(1) and (5) of PERA when the evidence of record shows that the change in insurance carriers had no impact on bargaining unit members.

County exceptions (1), (2) and (6) are based on its claim that there is no difference between the health care plans provided by Aetna HMO and Keystone HMO, and therefore the County's unilateral elimination of the Aetna HMO option had no impact on the security guards. However, the benefit comparison which the County itself provided to the employe representatives around the time of its unilateral action indicated that there were a number of differences between the plans provided by Aetna HMO and Keystone HMO. Those differences included the amount of the copayment for routine eye exams, the first visit for maternity care, and visits for mental health outpatient care, and the means by which the plan encouraged covered employes to maintain good health (a healthy lifestyles program or health club discounts). Also, after one security guard was required to switch from Aetna HMO to another provider and opted for Keystone HMO, he received a bill for over $400 for a procedure (an MRI) that had been fully covered by Aetna. Thus, the evidence of record demonstrates that there are differences in the health care plans

provided by Aetna and Keystone, such that elimination of the Aetna HMO health care option had an impact on the bargaining unit members.[1] Therefore, County exceptions (1), (2) and (6) are contrary to the evidence of record and must be dismissed.

Contrary to County exception (3), the hearing examiner was not required to apply the State College balancing test to the facts of this case. As the Board noted in Douglass Township, 36 PPER 160 (Final Order, 2005), "[t]he 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 . . . the Public Employe Relations Act (PERA) such that an employer's unilateral change to medical benefits constitutes an unfair labor practice under. . . PERA." 36 PPER at 472. See, e.g., Cumberland Valley, supra; Palmyra, supra; Kennett, supra. Moreover, in Douglass Township, the Board rejected the argument (advanced by the County here) that a hearing examiner may not rely on established precedent and must balance the respective interests of the employer and the employes in every case, stating as follows:

> "The Township also argues that the Examiner erred in failing to provide an impact analysis regarding the effect on the employes. 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 . . . merely to arrive at the same result as the established precedent.' Wilkes-Barre, 33 PPER at 192 (citing Teamsters Local 77 & 250 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."

36 PPER at 472-473.

The facts of record in this case do not warrant departure from existing precedent, which uniformly holds that changes in employe health care benefits must be bargained. For the reasons already stated, the County's unilateral action clearly had an impact on the employes' interest in wages and working conditions. On the other hand, the County does not argue, and the record does not indicate, that elimination of the Aetna HMO option had any impact on the basic policy of County government as a whole. See State College, supra (Board must determine whether the impact of disputed item on employes' interest in wages, hours and terms and conditions of employment outweighs its probable effect on the basic policy of the system as a whole). Rather, the record indicates that the County expected to realize a cost savings by eliminating the Aetna HMO option for its employes (N.T. 103). Thus, even if the State College balancing test was applied in this case, the balance would tip in the employes' favor and require bargaining. See Kennett, supra,

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[1] Although Keystone HMO had a lower copayment than Aetna for one of the types of care, a unilateral change in a mandatory subject is an unfair practice even when it is allegedly beneficial for the employes. Millcreek Township School District v. PLRB, 631 A.2d 734 (Pa. Cmwlth. 1993), appeal denied, 537 Pa. 626, 641 A.2d 590 (1994). Moreover, because the County's elimination of the Aetna HMO option affected the employes' interest in wages and working conditions, the County's reliance on Frackville Borough Police Department, 701 A.2d 632 (Pa. Cmwlth. 1997) is misplaced. In Frackville, the Board found no duty to bargain over the choice of pension fund manager because there was no demonstrated impact on employe interests such as their pension benefits or the required rate of employe contribution.

citing PLRB v. Mars Area School District, 480 Pa. 295, 389 A.2d 1073 (1978)(where item has greater impact on terms and conditions of employment than on managerial policy, employer's economic concerns do not excuse its unilateral action).[2]

With regard to the County's remaining exceptions, the hearing examiner did not err in relying on Palmyra, supra, or in declining to rely on Connecticut Light and Power, supra. Palmyra involved a change from health insurance coverage with an established carrier to coverage through employer self-insurance. Although this case does not involve precisely the same scenario, both cases involve unilateral changes by employers in the general subject of employe health insurance. Therefore, the examiner did not err in relying on Palmyra to support his finding of a bargaining obligation on the part of the County. In Connecticut Light and Power, the court found that the employer replaced one health insurance plan with an identical plan, which is not the case here.[3]

One other matter requires comment. In its brief in support of exceptions, the County contends that an employe handbook promulgated long before the Association was certified to represent the security guards reserves the County's right to unilaterally designate the HMO carrier available to its employes. However, as the hearing examiner stated in the PDO at 3, "[o]nce the Board certifies an exclusive representative for a bargaining unit, an employer is obligated to bargain before it changes any of the terms and conditions of employment for the employes in the unit," citing Lawrence County Housing Authority, 5 PPER 39 (Final Order, 1974). Thus, through its prior unilateral issuance of an employe handbook, the County could not avoid its prospective obligation to negotiate changes in terms and conditions of employment with the Association.

After a thorough review of the exceptions and all matters of record, the Board finds that the hearing examiner did not err in concluding that the County violated Section 1201(a)(1) and (5) of PERA by unilaterally eliminating a health care plan option for its security guards. Thus, the County's exceptions shall be dismissed and the PDO will be sustained.

ORDER

In view of the foregoing and in order to effectuate the policies of the Public Employe Relations Act, the Board

HEREBY ORDERS AND DIRECTS

that the exceptions filed by the County to the April 4, 2007 Proposed Decision and Order are hereby dismissed, and 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 nineteenth day of June, 2007. 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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[2] To the extent that the County argues that it had an economic interest in reducing its health care coverage to one plan, as set forth in Finding of Fact 15, PSSU still had access to the Aetna coverage at the time of the hearing in this matter.

[3] Also, as the Board observed in Palmyra, supra, the court in Connecticut Light and Power "pointed out that its holding should not be construed to mean that in all cases the identity of a carrier be divorced from the employer's collective bargaining obligation." 26 PPER at 201. As the Board further observed in Palmyra, Connecticut Light and Power appears to be inconsistent with Pennsylvania case law such as Grandinetti v. Unemployment Compensation Board of Review, 486 A.2d 1040 (1985), in which "the Commonwealth Court held that the mere change of insurance carriers or delivery system constituted a disruption of the status quo without additional inquiry into the relative merits of the two plans." 26 PPER at 201.

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AFFIDAVIT OF COMPLIANCE

The County hereby certifies that it has ceased and desisted from its violations of sections 1201(a)(1) and 1201(a)(5) of the Act, that it has reinstated the Aetna HMO as a health care plan option for its security guards, that it has made its security guards whole for any losses sustained by them as the result of its elimination of the Aetna HMO as a health care plan option for them, that it has posted a copy of the proposed decision and order and final order as directed therein and that it has served a copy of this affidavit on the Association.

_____
Signature/Date

_____
Title

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

_____
Signature of Notary Public