

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Labor Relations Board

INDIANA AREA EDUCATION ASSOCIATION :
:
v. : Case No. PERA-C-07-312-W
:
INDIANA AREA SCHOOL DISTRICT :

PROPOSED DECISION AND ORDER

On June 16, 2007, the Indiana Area Education Association (Association or Complainant) filed a charge of unfair practices with the Pennsylvania Labor Relations Board (Board) alleging that the Indiana Area School District (District or Respondent) violated Sections 1201(a)(1) and (5) of the Public Employe Relations Act (PERA).

On August 9, 2007, the Secretary of the Board issued a Complaint and Notice of hearing in which the matter was assigned to a conciliator and September 25, 2007 in Johnstown was assigned as the time and place of hearing, if necessary.

The hearing was necessary and held as scheduled at which time all parties in interest were afforded a full opportunity to present testimony, cross-examine witnesses and introduce documentary evidence.

The hearing examiner, on the basis of the testimony presented at the hearing and from all other matters and documents of record, makes the following:

FINDINGS OF FACT

1. That the Indiana Area School District is a public employer within the meaning of Section 301(1) of the Act. (N.T. 8)
2. That the Indiana Area Education Association is an employe organization within the meaning of Section 301(3) of the Act. (N.T. 8)
3. That the District and the Association are parties to a collective bargaining agreement (CBA) covering the wages, hours and terms and conditions of employment for the professional employes of the District for the period of July 1, 2001 to June 30, 2007. (N.T. 9, Association Exhibit 1)
4. That the parties began negotiating a successor CBA on January 1, 2007, but were unable to reach agreement prior to the CBA's expiration date. (N.T. 9-10)
5. That upon the CBA's expiration, the parties agreed to continue to be bound by its provisions, including employer provided health care, found at Appendix "C" Hospitalization and Insurance Coverage. In relevant part, Appendix "C" states:

A. 1) Throughout the life of this agreement, the District will provide Hospitalization Surgical-Major Medical coverage including Catastrophic Major Medical coverage to \$1,000,000 per person per lifetime to employes equivalent to Blue Cross/Blue Shield, Plan 100, including cost containment and the drug maintenance program. The District will pay the full premium cost of said coverage for the individual employe, and ninety-five (95%) percent of the premium cost for any employe who is enrolled in the dependent(s) coverage.

2) Employes may voluntarily enter into the District's Point-of-Service program effective January 1, 1998, and each January 1 thereafter, during the term of this agreement. In order to enroll, the employe must submit a written request before December 1 of the year immediately preceding the request change. Once the employe enrolls in the Point-of-Service program on a voluntary basis, he/she may return to the Indemnity program on January 1 annually. The District shall pay one hundred (100%) percent of the premium costs for the Point-of-Service program. In the event an employe chooses an indemnity program, he/she shall be responsible for the agreed upon co-payments and Major Medical deductibles in effect at the time the change takes place.

3) For those employees who choose the Indemnity plan, effective January 1, 1998, the current Major Medical deductible shall be increased from \$100 to \$200 for the individuals, and from \$300 to \$400 for dependent coverage for the life of the agreement.

(N.T. 9, Association Exhibit 1, p. 48)

6. That the District's point of service plan (POS) was with Highmark Blue Cross/Blue Shield (Highmark). (N.T. 17)

7. That on or about December 12, 2006, the Association was informed by Don Gardner, the District's Business Manager, and Robin Hope, a health insurance consultant for the Racchini Group, that the Highmark POS Plan would no longer be available as of July 1, 2007 because Highmark was discontinuing the plan. (N.T. 17, 18-19)

8. That on July 3, 2007, Richard Kopco, Senior Client Manager of Highmark Blue Cross/Blue Shield, notified the District's Business Manager, Donald T. Gardner, Jr. that the District's Business Manager that "...your group's health care benefit plan was changed from the SelectBlue Point of Service (POS) plan to Highmark Blue Cross Blue Shield's PPO Blue Preferred Provider Organization (PPO) plan. (N.T. 27, 28, District Exhibit 1)

9. That Highmark covers 29 counties in western Pennsylvania as well as 21 counties in central Pennsylvania. The decision to eliminate the POS plan was a corporate decision that applied to Highmark's entire service area. (N.T. 30-31)

10. That in response to Highmark's decision to discontinue the plan, the District informed the Association that it would instead offer a Preferred Provider Plan (PPO) through Highmark. (N.T. 12, 27, 28, District Exhibit 1, Association Exhibit 3)

11. That as described by Highmark's Kopco, the POS and PPO are both managed care plans. The group benefits are the same for each plan. One difference is that the POS had the primary care physician as the gatekeeper. Under the PPO, the employees did not have to select a primary care physician. Also, there was no change in providers. The POS was a regional network of Pennsylvania providers, while the PPO is a national network, but also includes the same providers that were in the regional network. (N.T. 37-38, District Exhibit 1)

12. That the Hospitalization Surgical-Major Medical Plan, also known as the indemnity plan, is still in effect and is available for employees. (N.T. 15)

DISCUSSION

The Association's charge of unfair practices alleges that the District unilaterally changed health care benefits in violation of its duty to bargain as set forth in Section 1201(a)(5) of PERA.

The facts are not in dispute. Pursuant to the collective bargaining agreement, the District provides health insurance to the employees in the collective bargaining unit. The employees are given the choice between a traditional indemnity plan and a managed care plan called a point of service (POS) plan. The POS plan was with Highmark Blue Cross/Blue Shield. During negotiations for a successor collective bargaining agreement, Highmark informed the District that as of July 1, 2007, it would no longer offer a POS plan as one of the health insurance options for employees in the bargaining unit. As a reaction to that announcement, the District offered the employees another managed care plan, a preferred provider plan (PPO) from Highmark. The District made this offer to employees without bargaining with the Association.

The Board has consistently supported the obligation of an employer to sustain the status quo during contract hiatus while the parties are engaged in negotiating a successor agreement. Appeal of Cumberland Valley School District, 483 Pa. 134, 394 A. 2d 946 (1978). Philadelphia Housing Authority v. Pennsylvania Labor Relations Board, 620 A.2d 594 (Pa. Cmwlth. 1993). This principle has been applied to health care benefits provided pursuant to the CBA. Appeal of Cumberland Valley, *supra*.

However, where an employer is unable to maintain the status quo due to a third party eliminating the particular health insurance product, the defense of impossibility

of performance applies. In Luzerne County, 34 PPER ¶ 97 (Proposed Decision and Order, 2003), the union charged that the county unilaterally changed the health care options available to the employees because it stopped offering a major medical option. The County raised the impossibility of performance defense and produced evidence that it stopped offering major medical because Blue Cross would no longer underwrite this option. This examiner agreed with the County, stating,

The County carried its burden of proving that its performance of an obligation to provide such coverage under the contract was rendered impossible because of the actions of Blue Cross, a third party. Under Pennsylvania law, impossibility of performance that will terminate an obligation under a contract "means not only strict impossibility but impracticability because of extreme and unreasonable difficulty, expense, or loss involved." West v. Peoples First Nat'l Bank and Trust Co., 378 Pa. 275, 282, 106 A.2d 427, 432 (1954). In the present case, the County made a firm decision to cease providing Major Medical coverage for County employees.

34 PPER ¶ 97 at 298.

In this case, the District was put in a similar dilemma when it was confronted with a discontinuance notice from Highmark Blue Cross/Blue Shield for the POS Plan. The insurer made a corporate decision to stop providing the POS plan for the entire region it serves. Under Luzerne County, supra, where the independent decision of a third party makes it impossible for the health care plan to be offered, the public employer cannot be found to have committed an unfair practice by no longer offering the plan and offering a plan it believed to be comparable. For the reasons set forth in Luzerne County, supra, the District here was faced with the impossibility of performance and will not be found to have violated its duty to bargain when it notified the Association that it substituted a comparable managed care plan for the plan that was no longer offered.

CONCLUSIONS

The hearing examiner, therefore, after due consideration of the foregoing and the record as a whole, concludes and finds:

1. That the Indiana Area School District is a public employer within the meaning of Section 301(1) of the Act.
2. That the Indiana Area Education Association is an employe organization within the meaning of Section 301(3) of the Act.
3. That the Board has jurisdiction over the parties hereto.
4. That the Indiana Area School District has not committed unfair practices in violation of Sections 1201(a)(1) and (5) of PERA.

ORDER

In view of the foregoing and in order to effectuate the policies of the Act, the hearing examiner

HEREBY ORDERS AND DIRECTS

that the charge of unfair practices is dismissed and the complaint rescinded.

IT IS HEREBY FURTHER ORDERED AND DIRECTED

that in the absence of any exceptions filed with the Board pursuant to 34 Pa. Code § 95.98(a) within twenty days of the date hereof, this decision and order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this ninth day of September, 2008.

PENNSYLVANIA LABOR RELATIONS BOARD

THOMAS P. LEONARD, Hearing Examiner