



5. The parties received an interest arbitration award dated April 16, 2009 that stated, “[a]ll provisions of the collective bargaining agreement between the parties in effect from January 1, 2006 to December 31, 2008 that were not modified by this Award shall remain in effect for the duration of the term of this agreement.” The interest arbitration award term was for January 1, 2009 to December 31, 2011. The interest arbitration award did not modify Article XXII, Section 3 of the CBA. (N.T. 21, Answer and New Matter of Lancaster County, Union Exhibit 3.)

6. The County offers health insurance to all of its employes. (N.T. 90-91)

7. The County’s employes are composed of five groups. (N.T. 100-101)

8. These include non-bargaining unit employes, and four collective bargaining units: (1) County detectives; (2) Children and Youth employes; (3) Court-Appointed Professional Employes (“CAP Employes”) and (4) the prison bargaining unit employes. (N.T. 100-101)

9. The County offers health insurance to each group through Capital Blue Cross (“Capital”) which administers the plans offered by the County. (N.T. 48)

10. Prior to 2011, the County offered three different plans to its employes through Capital: PPO 1, PPO 2 and PPO 3. (N.T. 113-114)

11. The County ceased offering PPO 3 sometime between 2006 and 2010. (N.T. 114)

12. As of 2010, the County offered only PPO 1 and PPO 2 to its employes. (N.T. 91, 114)

13. Beginning with the benefit year 2011, the County ceased offering PPO 1 to the Detectives bargaining unit employes, the Children and Youth bargaining unit employes and all non-bargaining unit County employes. Instead these employes were offered PPO 2 only. CAP employes and the prison bargaining unit employes were the only two groups of County employes offered PPO1 in 2011. (N.T. 91)

14. On June 10, 2011, the Union Staff Representative, Steve Mullen, wrote to the County Deputy Director of Human Resources, Susan Dry, that the Union formally notified the County of its intention to negotiate a successor agreement for the prison unit. (N.T. 21, 30, Union Exhibits 3 and 6)

15. On June 24, 2011, an interest arbitration panel issued its award for the Court Appointed Professional (CAP) unit of employes. The award at Article 28, eliminated the PPO 1 Plan for this bargaining unit and made PPO 2 the only plan for 2012. (N.T. 23, Union Exhibit 4).

16. On or about October 25, 2011, the County informed the Union via telephone that it would no longer offer the PPO 1 option for health insurance. (N.T. 93-94, 114-117)

17. On November 7, 2011, the County’s labor relations attorney, Susan R. Friedman, sent an email to the Union’s negotiator, Steve Mullen, explaining that the County would not be extending the PPO 1 as an option because it was “no longer an option for the CAP bargaining unit, and as it had not been an option for any other County employees, it was no longer an available plan.” Attorney Friedman’s email then went on to quote Article XXII, Insurance and Retirement, Section 3 as a contractual justification for not extending the PPO 1 offer. (N.T. 36, 37, Union Exhibit 9)

18. The PPO 2 plan which has similar benefits but requires higher co-payments for office visits and emergency room visits. The PPO 2 also sets a \$250 deductible and a \$250 individual (\$500 per family) coinsurance maximum, subject to certain plan reimbursements. (N.T. 42, Union Exhibit 12)

## **DISCUSSION**

The Union has charged the County with committing unfair practices in violation of sections 1201(a)(1),(5) and (8) of PERA by unilaterally changing the health insurance available for members of the bargaining unit of corrections officers and maintenance workers at the Lancaster County prison. In the specification of charges the Union alleges that on or about October 25, 2011, in the middle of negotiations

for a successor collective bargaining agreement which was to expire on December 31, 2011, the County, informed the Union that it would no longer offer the PPO 1 option for health insurance, that it would force the employees to accept the PPO 2 option by November 16 or else lose their health insurance coverage. The Union alleges that 175 bargaining unit employees out of 184 are on the PPO 1 plan.

An employer violates Section 1201(a)(5) when it unilaterally changes wages, benefits or terms or conditions of employment. See **In Re Appeal of Cumberland Valley School District**, 483 Pa. 134, 394 A.2d 969 (1978). Health insurance is an employee benefit which, if changed unilaterally by the employer, could result in a finding that the employer engaged in a unilateral change and therefore a refusal to bargain. **Bucks County Security Guards Association v. Bucks County**, 38 PPER ¶ 99 (Final Order, 2007)

The County admits that it changed the offering of health insurance plans so that only the PPO 2 is available, but it disagrees with the Union's assertion that the PPO 2 is not comparable with the PPO1 plan. Furthermore, in its defense, the County argues that the collective bargaining agreement permits the County to only offer PPO 2.

If an employer was contractually privileged to act as it did, then no such unfair practices may be found. **SEPTA**, 35 PPER 73 (Final Order 2004), citing **Pennsylvania State Troopers Association v. PLRB**, 761 A.2d 645 (Pa. Cmwlt. 2000). As the court explained in **Pennsylvania State Troopers Association**:

"The [Board] has recognized 'contractual privilege' as an affirmative defense to a charge of unfair labor practices alleging a refusal to bargain in good faith. The defense calls for the dismissal of such charges where the employer establishes a 'sound arguable basis' in the language of the parties' collective bargaining agreement, or other bargained-for agreement, for the claim that the [respondent]'s action was permissible under the agreement. See **Ellwood City Police Wage and Policy Unit v. Ellwood City Borough**, 29 PPER ¶ 29213 (Final Order 1998), **aff'd**, 736 A.2d 707 (Pa. Cmwlt. 1999); **Delaware County Lodge #27 of the Fraternal Order of Police on behalf of the Members of the Police Force of the Borough of Prospect Park v. Prospect Park Borough**, 27 PPER ¶ 27222 (Final Order 1996); **Jersey Shore Area Education Association v. Jersey Shore Area School District**, 18 PPER ¶ 18117 (Final Order 1987)(quoting **NCR Corp.**, 271 N.L.R.B. 1212 (1984) as saying that 'where an employer has a sound arguable basis for ascribing a particular meaning to his contract and his action is in accordance with the terms of the contract as he construes it, the National Labor Relations Board will not enter the dispute to serve the function of arbitrator in determining which party's interpretation is correct')."

761 A.2d at 651.

The County's contractual privilege argument has merit. The parties are currently bound by a collective bargaining agreement while a successor agreement is being negotiated. The collective bargaining agreement has language at Article XXII, Section 3 that allows the County to offer members of this bargaining unit the same health insurance offered to the non-unit County employees. In 2011, the non-unit employees only had PPO 2 as a choice of insurance. This fact gave the County the justification to argue that the collective bargaining agreement gave it the right to only offer the PPO 2 plan to the corrections officers unit. The 175 members of the unit who had been on the PPO 1 plan are understandably concerned at the prospect of having to pay higher co-payments, deductibles and other costs as a result of now being in the PPO 2 plan. However, the language in Article XXII, Section 3 of the collective bargaining agreement provides the County with a "sound arguable basis" for taking the action it did. Accordingly, the charge alleging a violation of section 1201(a)(5) will be dismissed.

The Union has also charged the County with violating section 1201(a)(1) of PERA, which makes prohibits public employers from "[i]nterfering, restraining or coercing employees in the exercise of the rights guaranteed in Article IV of this Act." An independent violation of Section 1201(a)(1) will be found if the actions of the employer, in light of the totality of the circumstances in which the particular act occurred, tend to be coercive regardless of whether employees have been shown to, in fact, have been coerced. **Northwestern School District**, 16 PPER ¶ 16092 (Final Order, 1985).

A significant part of the "totality of the circumstances" in the present case is the language in the collective bargaining agreement allowing the County to change the insurance plan for the bargaining unit if they have changed the plan for other County employees. The Union argues that the change in the plan made at the same time the parties were negotiating a successor collective bargaining agreement would tend to coerce a reasonable employees from exercising his or her rights under Article IV of PERA. However, when a collective bargaining agreement that was in force during this period allows the change in plans makes it difficult to conclude that a reasonable employe would be coerced by the County's decision. Accordingly, this part of the charge will also be dismissed.

Finally, the Union has also charged the County with violating section 1201(a)(8) of PERA, which prohibits public employers from "[r]efusing to comply with the provisions of an arbitration award deemed binding under section 903 of Article IX." In order to prove that the County violated this section of PERA, it would be necessary for the Union to first show that the Union prevailed at a grievance arbitration relevant to the subject at issue in this case. **PLRB v. Commonwealth of Pennsylvania**, 478 Pa. 582, 387 A. 2d 475 (1978). The record contains no evidence that the Union met this evidentiary threshold necessary to prove a violation of section 1201(a)(8) of PERA. Accordingly, this part of the charge will also be dismissed.

### **CONCLUSIONS**

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

1. Lancaster County is a public employer under section 301(1) of the PERA.
2. AFSCME District Council 89 is an employee organization within the meaning of Section 301(3) of PERA.
3. The Board has jurisdiction over the parties.
4. The County has not committed unfair practices under sections 1201(a)(1), (5) and (8) of PERA.

### **ORDER**

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

### **HEREBY ORDERS AND DIRECTS**

that the complaint is rescinded and the charge dismissed.

### **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 order shall be final.

SIGNED, DATED AND MAILED at Harrisburg, Pennsylvania, this twenty-eighth day of September, 2012.

PENNSYLVANIA LABOR RELATIONS BOARD

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Thomas P. Leonard, Hearing Examiner