

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF ESSEX,

Respondent,

-and-

FOP LODGE 106, PBA LOCAL 382,
PBA LOCAL 183 and PBA LOCAL 183A

Charging Parties.

Docket Nos. CO-2017-096
CO-2017-105, CO-2017-113
CO-2017-125

SYNOPSIS

A Hearing examiner grants PBA Local 382's and FOP Lodge 106's motions for partial summary judgment, denies PBA Local 183's motion for summary judgment, and grants the County of Essex's cross-motion for summary judgment against PBA Local 183A. These consolidated charges jointly allege that the County, effective January 1, 2017, unilaterally changed the health insurance carrier for the County Officer Units from Aetna to the New Jersey State Health Benefits Program (SHBP) and that the carrier change resulted in a change in the County Officers Unit's collectively negotiated health insurance benefits, in violation of section 5.4a(5) and (1) of the New Jersey Employer-Employee Relations Act (Act). The Hearing Examiner makes the following conclusions: (1) The County violated section 5.4a(5) of the Act by unilaterally changing FOP Lodge 106 unit employees' health benefits when it changed insurance carriers from Aetna to SHBP on January 1, 2017; (2) The County violated section 5.4a(5) of the Act by unilaterally changing PBA Local 382 unit employees' health benefits when it changed insurance carriers from Aetna to SHBP on January 1, 2017; (3) The County did not violate section 5.4a(5) when it changed PBA Local 183A's insurance carrier on January 1, 2017; and (4) There is a genuine issue of material fact as to whether PBA Local 183 waived the right to negotiate the County's change in health insurance carriers on January 1, 2017.

A Hearing Examiner's Report and Recommended Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission, which reviews the Report and Recommended Decision, any exceptions thereto filed by the parties, and the record, and issues a decision that may adopt, reject or modify the Hearing Examiner's findings of fact and/or conclusions of law. If no exceptions are filed, the recommended decision shall become a final decision unless the Chair or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

H.E. NO. 2023-6

STATE OF NEW JERSEY
BEFORE A HEARING EXAMINER OF THE
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

COUNTY OF ESSEX,
Respondent,

-and-

Docket No. CO-2017-096

FOP LODGE 106,
Charging Party.

COUNTY OF ESSEX,
Respondent,

-and-

Docket No. CO-2017-105

PBA LOCAL 382
Charging Party,

COUNTY OF ESSEX,
Respondent,

-and-

Docket No. CO-2017-113

PBA LOCAL 183,
Charging Party.

COUNTY OF ESSEX,
Respondent,

-and-

Docket No. CO-2017-125

PBA Local 183A
Charging Party.

Appearances:

For the Respondent,
Genova Burns, LLC, attorneys
(Joseph M. Hannon, Esq. Of counsel)

For the Charging Parties'
Law Offices of Steven A. Varano, P.C. attorneys
Albert J. Seibert, Esq. of counsel)

C. Elston & Associates, LLC, attorneys
(Catherine M. Elston, Esq. of counsel)

Law Offices of Nicholas J. Palma, P.C. attorneys
(Valerie Palma DeLuisi, Esq. of Counsel)

**HEARING EXAMINER'S DECISION ON MOTION FOR PARTIAL SUMMARY
JUDGMENT AND CROSS-MOTION FOR SUMMARY JUDGMENT**

These consolidated unfair practice charges, filed by the majority representatives of collective negotiations units of sheriff's and corrections' officers (collectively referred to as "County Officer Units" or "Charging Parties")^{1/} employed by the County of Essex (County), allege the County violated section 5.4a(5) and (1) of the New Jersey Employer-Employee Relations Act (Act)^{2/}, N.J.S.A. 34:13A-1 et seq., by unilaterally changing the

1/ FOP Lodge 106, the exclusive majority representative of County corrections superior officers, filed its unfair practice charge, along with an application for interim relief, against the County on November 1, 2016. PBA Local 382, the exclusive majority representative of County corrections officers below the rank of sergeant, filed an unfair practice charge, along with an application for interim relief, against the County on November 10, 2016. PBA Local 183, the exclusive majority representative of rank-and-file County Sheriff's officers, filed an unfair practice charge, along with an application for interim relief, against the County on November 18, 2016. PBA Local 183A, the exclusive majority representative of County Sheriff's superior officers, filed an unfair practice charge, along with an application for interim relief, on December 9, 2016. By unpublished decisions issued in November 2016 and on February 1, 2017, the Commission Designee denied all four interim relief applications. FOP Lodge 106 also filed an (a)(3) retaliation claim that is not the subject of the parties' summary judgment motions.

2/ These provisions prohibit public employers, their
(continued...)

level of health insurance benefits provided to County Officer Unit employees. Specifically, the consolidated charges jointly allege the County, effective January 1, 2017, unilaterally changed the health insurance carrier for the County Officer Units from Aetna to the New Jersey State Health Benefits Program (SHBP) and that the carrier change resulted in a change in the County Officers Unit's collectively negotiated health insurance benefits.

On June 9, 2022, the Director of Unfair Practices issued a Complaint and Order consolidating the County Officer Units' unfair practice charges.^{3/} On June 20, 2022, the County filed an

2/ (...continued)
representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act"; and "(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, or refusing to process grievances presented by the majority representative."

3/ The charges were held in abeyance pending separate litigation pursued by the County Officer Units before the State Health Benefits Commission (SHBC), Public Employment Relations Commission (Commission) and Appellate Division. In one case, the County Officer Units challenged the January 1, 2017 switch in health insurance plans and lost that challenge before the SHBC and Appellate Division See Essex Cty. Sheriff's Officers PBA Local 183 v. Department of the Treasury, 2019 N.J. Super. Unpub. LEXIS 138 (2019) (App. Div. Dkt. A-1228-17T2). In another case, PBA Local 382 filed a grievance challenging the switch in insurance plans and the County filed a scope of negotiations petition on March 10, 2017, requesting a restraint of arbitration of PBA Local 382's grievance. The Commission denied the County's request
(continued...)

Answer admitting it changed County Officer Units' health insurance plan to the SHBP on January 1, 2017, but denying that it violated the Act.

On August 10, 2022, the Charging Parties jointly filed a Motion for Partial Summary Judgment. In its Notice of Motion, the Charging Parties seek a determination as to whether the Respondent violated sections 5.4a(5) and, derivatively, (a)(1) of the Act. The motion does **not** seek to "address a calculation of damages/arguments over possible remedies;" "nor does [it seek] to address Petitioner FOP Lodge 106's allegations of retaliation." (Charging Parties' Notice of Motion pg.2). The Notice of Motion, however, does not foreclose any make-whole remedy for a violation of the Act. Indeed, in their charges, all of the Charging Parties seek as a remedy a status quo order to maintain the level of health benefits enjoyed by unit employees prior to the January 1, 2017, change to the SHBP.

In support of its motion, the Charging Parties submitted a brief and:

1) A Statement of Undisputed Material Facts ("SUMF"), accompanied by exhibits;

3/ (...continued)
to restrain arbitration, and the Appellate Division affirmed the Commission's decision. See Essex Cty, P.E.R.C. No. 2020-40, 46 NJPER 359 (¶88 2020), aff'd by App. Div. on April 20, 2021 (App. Div. Dkt. A-3458-19).

2) A Certification of Counsel ("Counsel Cert.") in Support of Summary Judgment, accompanied by Exhibits;

3) A Certification of Robert Slater ("Slater Cert."), a detective at the County Sheriff's office and President of PBA Local 183;

4) A Certification of Paola Pose ("Pose Cert."), a detective in the County's Sheriff's Office and a PBA Local 183 State Delegate;

5) A Certification of Alvin Rodriguez ("Rodriguez Cert."), a corrections officer and member of PBA Local 382;

6) A Certification of Gregroy J. Palma ("Palma Cert."), a lieutenant in the County Sheriff's Office and a member of PBA Local 183A;

7) A Certification of Andrew Crooks ("Crooks Cert."), a sergeant with the County's Department of Corrections (DOC) at the time of the 2017 switch to SHBP, and a member of FOP Lodge 106;

8) A Certification of Desmond Grinnard ("Grinnard Cert."), a County DOC officer and a member of PBA Local 382;

9) A Certification of Kevin Howell ("Howell Cert."), a DOC officer and member of PBA Local 382;

10) A Certification of Kevin Skorupski ("Skorupski Cert."), a DOC officer and member of PBA Local 382;

11) A Certification of Matthew Walker ("Walker Cert."), a DOC officer and member of PBA Local 382;

12) A Certification of Roberto Alvarez ("Alvarez Cert."), a DOC officer and member of PBA Local 382;

13) A Certification of Joseph Pulitano, Jr. ("Pulitano Cert."), a DOC captain at the time of the 2017 SHBP switch and a part of FOP Lodge 106's unit;

14) A Certification of Anthony Cugliari, Jr. ("Cugliari Cert."), a DOC sergeant and member of FOP Lodge 106;

15) A Certification of Curtis W. Langley ("Langley Cert."), a DOC sergeant and member of FOP Lodge 106;

16) A Certification of Darwin M. Nicolas ("Nicolas Cert."), a DOC sergeant and member of FOP Lodge 106;

17) A Certification of Carmine Cardella ("Cardella Cert."), a DOC Lieutenant and member of FOP Lodge 106;

18) A Certification of Kevin Lyons ("Lyons Cert.")^{4/}, a retired law enforcement officer, commissioner for the Police Training Commission, co-chair of the New Jersey PBA Legislative Committee, lead administrator for the PBA Legal Protection Plan, and a member of the State Health Benefits Plan Design Committee (having served as co-chair of that committee in 2014-2015); and

19) A Certification of Amin Britt ("Britt Cert."), a DOC officer and Vice President of PBA Local 382.

^{4/} This certification was submitted in support of the Charging Parties' 2016 application for interim relief. To the extent the facts set forth in that certification are relevant to the disposition of the parties' summary judgment motions, I rely on them in making my decision.

On September 12, 2022, the County filed a Cross-Motion for Summary Judgment ("Cross-Motion") and a brief in opposition to the Charging Parties' Motion. In support of its Cross-Motion, the County submitted the following certifications with exhibits:^{5/}

1) A Certification of Joseph M. Hannon, Esq. ("Hannon Cert."), with exhibits, in Opposition to the Charging Parties' Motion and in Support of the County's Cross-Motion;

2) Certifications from Renee Vojtko, an insurance consultant of the County and a "representative from Conner, Strong and Buckelew", with respect to PBA Local 382 ("Vojtko 382 Cert."); PBA Local 183 ("Vojtko 183 Cert."); and FOP Lodge 106 ("Vojtko 106 Cert.");

3) Certifications of Courtney Gaccione, Esq., County Counsel, with respect to PBA Local 382 ("Gaccione 382 Cert."); FOP Lodge 106 ("Gaccione 106 Cert."); and PBA Local 183 ("Gaccione 183 Cert.");

^{5/} All of the County certifications (the sole exception being County attorney Joseph Hannon's certification, which lists as exhibits the County's other certifications) submitted by the County were in support of its scope of negotiations petition (Docket number SN-2017-033) and in opposition to the Charging Parties' 2016 applications for interim relief. The certifications were filed in November 2016 and in March 2017. To the extent the facts set forth in those certifications are relevant to the disposition of the parties' summary judgment motions, I rely on them in making my decision. The County did **not** submit certifications addressing the level of benefits for unit employees since March 2017.

4) A Certification of Robert Jackson ("Jackson Cert."), the County's Director of Human Resources and Deputy County Administrator; and

5) "Respondent's Responses to Petitioners [Charging Parties] Statement of Material Facts" ("SUMF Response").

On September 13, 2022, the Commission referred the Motion and Cross-Motion to me for decision. In response to the County's Cross-Motion and opposition papers, the Charging Parties' filed on September 30, 2022 a reply brief, a "Reply Statement of Facts," a "Counter-Statement of Facts," a Certification of Counsel, and a Supplemental Certification of Robert Slater ("Slater Supplemental Cert.").^{6/}

Summary judgment will be granted:

if it appears from the pleadings, together with the briefs, affidavits and other documents filed, there exists no genuine issue of material fact and the movant . . . is entitled to its requested relief as a matter of law. [N.J.A.C. 19:14-4.8(d)]

Brill v. Guardian Life Insurance Co. of America, 142 N.J. 520, 540 (1995) sets forth the standard to determine whether a "genuine issue" of material fact precludes summary judgment. The fact-finder must ". . . consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party are sufficient to permit a rational fact-

^{6/} The County was afforded an opportunity to file a response to the Charging Parties' reply, but declined to do so.

finder to resolve the alleged disputed issue in favor of the moving party.” Brill, 142 N.J. 420. If that issue can be resolved in only one way, it is not a genuine issue of material fact. A motion for summary judgment should be granted cautiously – the procedure may not be used as a substitute for a plenary hearing. Baer v. Sorbello, 177 N.J. Super. 182 (App. Div. 1981).

Based on the parties’ submissions and this standard of review, I make the following:

FINDINGS OF FACT

FOP Lodge 106's Unit, Agreement, and Level of Health Benefits

1. FOP Lodge 106 (FOP) is the exclusive majority representative of County DOC sergeants, lieutenants and captains. (SUMF, Para. 1 and Exhibit A; SUMF Response Para. 1).

2. FOP and the County are parties to a collective negotiations agreement (“FOP Agreement”) extending from January 1, 2011 through December 31, 2013, and further extended by Memorandum of Agreement running from January 1, 2014 through December 31, 2017. (Exhibit A to SUMF; SUMF Response, Para. 2).

3. Article 21 of the FOP Agreement, entitled “Health Insurance and Section 125 Cafeteria Plan,” provides, in pertinent part:

The existing Hospitalization, Medical-Surgical and Major Medical Insurance Benefits shall be paid for by the County except as set forth below. The County reserves the right to select the insurance carrier who

shall provide such benefits as long as the benefits **are not less than those now provided by the County.**

The County shall maintain the following:

(a) Pre-Admission Review, as set forth in Schedule A, attached hereto and made a part hereof;

(b) Second Surgical Opinions, as set forth in Schedule A, and made a part hereof; and

(c) Twenty (20%) Percent Co-Pay for Dependent Coverage only.

1) This coverage will apply to "New Hires" only. For the purpose of this provision, "New Hires" shall be defined as employees hired after December 31, 1993. Bargaining unit employees working for the County on or before December 31, 1993 will be considered "vested" in the current health care coverage, and will not be required to pay a twenty percent (20%) co-pay for dependent coverage even if anyone is laid off after December 31, 1993 and then rehired by the County.

[Exhibit A to SUMF; SUMF Response, Para. 3, emphasis added]

4. The FOP Agreement also sets forth a "Retention of Existing Benefits" clause, which provides:

"The rights, privileges and benefits which these employees have heretofore enjoyed and are enjoying via this Agreement shall be maintained and continued by the County during the term of this Agreement until the ratification/approval of a successor agreement, notwithstanding any statute, law, ordinance, precedent or ruling by a Court or State agency."

[Exhibit A to SUMF; SUMF Response, Para. 4]

5. On September 28, 2016, the County adopted "Resolution 31," which changed the health insurance carrier for all County Officer Unit employees, including FOP unit employees, from Aetna

to the SHBP. The effective date of the change to SHBP was January 1, 2017. (Exhibit E to SUMF; SUMF Response, Para. 8).

6. The change from Aetna to SHBP resulted in a change in the level of health benefits for County Officer Unit Employees, including FOP unit employees, over the last 6 years. The switch to SHBP resulted in a change in coverage in the following areas, as reflected in the County insurance consultant's side-by-side comparison of SHBP and Aetna benefits:

1) Under the Aetna "Point of Service" (POS) Choice Plan in 2016, employees received better coverage or more favorable benefits in "eight of twelve" areas of health insurance coverage than what was provided under SHBP, including but not limited to better coverage for "office visits, skilled nursing facilities, and routine eye exams";

2) Aetna provided a higher level of coverage (through POS Choice) for in-network dental services and physical exams than SHBP; and

3) Through Aetna, the County provided a Traditional Plan that offered a ". . . higher level of benefits for the following out-of-network [insurance]: deductibles, maximum out-of-pocket [costs], inpatient hospital, inpatient hospice, skilled nursing facility, routine physical exams, routine GYN [gynecological] exams, and Rx Copay Reimbursements. For in-network services, the County Plan has a higher level of benefits for Rx Co-payments."

[Counsel Cert., Exhibits H, I and J; SUMF Response, Para. 11, Lyons Cert., Paras. 13-16]^{7/}

^{7/} In Paragraph 11 of the County's SUMF Response, the County did not deny or dispute the Charging Parties' assertions that enrollment in SHBP resulted in these specific changes in coverage. Instead, the County's denial in Paragraph 11 was limited to only ". . . the conclusion that the side-by-side comparison [of Aetna and SHBP] established a significant reduction of benefits."

7. The change to SHBP also impacted FOP unit employees and their dependents in a variety of ways over the last 6 years. Since the January 1, 2017 transition to SHBP, FOP unit employees and their dependents with chronic health conditions have seen their out-of-pocket costs increase by \$6,000. Doctor's office and emergency room co-payments have doubled and tripled since the switch to SHBP: from \$5 per office visit under Aetna to \$10 under SHBP, and \$25 emergency room co-payments under Aetna versus \$75 emergency room co-payments under SHBP. (Pulitano Cert., Paras. 4-8). Other FOP officers experienced loss of coverage for prescriptions previously covered by Aetna and an increase in health insurance premium contributions totaling several thousand dollars over the last few years (both as active and retired employees). (Cugliari Cert., Paras. 3-4; Cardella Cert., Para. 2; Nicolas Cert., Para. 2, Crooks Cert., Paras. 7-11).^{8/}

8. The County acknowledges County Officer Unit employees, including FOP unit employees, incurred additional health or medical costs as a result of the switch from Aetna to SHBP, but

^{8/} Back in 2016, the County submitted certifications in opposition to the Charging Parties' interim relief applications *projecting* health insurance premium contribution reductions for County Officers Unit employees in 2017 under SHBP. But these certifications and the County's other submissions do not dispute County Officer Unit employees' certifications regarding *actual* premium contributions and other insurance costs incurred by County Officer Unit employees (*i.e.*, from March 2017 to the present).

asserts that those costs were offset by benefits and reductions in premium contributions under the SHBP.^{9/} As to the additional costs and coverage reductions, the County concedes the following changes in the level of benefits occurred as a result of the switch to SHBP (limited to projected changes in insurance costs for 2017):

1) Co-payments for emergency room visits went up from \$25-\$35 per visit under Aetna to \$75 per visit under SHBP;

2) Co-payments for doctor's office visits went up from \$5 per visit under Aetna to \$10 per visit under the SHBP;

3) Additional prescription drug costs for brand name prescriptions versus generic prescriptions (with the unit employee now responsible for the difference in costs for generic and brand name prescriptions under the SHPB; a cost previously covered by Aetna);

4) Pre-certification requirements for chiropractic care under SHPB that were not required under Aetna; and

5) Loss of the Traditional Plan available to FOP unit employees and other unit employees.

^{9/} Critically, however, the certifications submitted by Gaccione, Vojtko and Jackson all date back to November 2016 (when the County filed opposition to the Charging Parties' Interim Relief applications) or March 2017 (when the County filed a scope of negotiations petition). None of these certifications address or directly dispute changes in the level of health benefits *since* March 2017.

[Jackson Cert., Para. 13; Vojtko 183 Cert., Paras. 2,5,6, and 15; Vojtko 106 Cert., Para. 21, Vojtko 382 Cert., Paras. 21 and 22].

The County also does not dispute the County Officer Unit employee certifications attesting to additional insurance costs incurred by unit employees in 2018 to the present that would have been covered under the 2016 Aetna plans. (See Exhibit K to Counsel Cert.).

9. The County asserts the above-referenced costs, however, were "offset" by the following added benefits/coverage under the SHBP in 2017:

1) A reduction in health insurance premium contributions in 2017;

2) SHBP provided a "higher usual and customary allowance for out-of-network coverage" than Aetna;

3) SHBP provided lower "out-of-network deductibles" than the 2016 Aetna County POS plans (with SHBP deductible for single/family coverage being \$100/250 versus \$1000/\$2000);

4) Higher member co-insurance payments under Aetna as compared to SHBP (member co-insurance was 40% under Aetna, as compared to 20% under SHBP); and

5) Lower maximum out-of-pocket costs under the SHPB than the Aetna County POS plan for in-network coverage for medical and dental plans.

[Jackson Cert., Paras. 6-8; Vojtko 183 Cert., Paras. 4-5; Vojtko 106 Cert., Paras.22, 24-25]

PBA Local 382's Unit, Agreement, and Level of Health Benefits

10. PBA Local 382 (Local 382) is the exclusive majority representative of County DOC officers below the rank of sergeant. (SUMF Response, Para.1; Counsel Cert., Exhibit B).

11. Local 382 and the County are parties to a collective negotiations agreement extending from January 1, 2014 through December 31, 2017 (Local 382 Agreement). (SUMF Response, Para. 2; Counsel Cert., Exhibit B).

12. Article 4 of the Local 382 Agreement, entitled "Retention of Existing Benefits", provides:

Except as otherwise provided herein, all rights, privileges, and benefits which County Correction Officers have heretofore enjoyed and are presently enjoying, shall be maintained and continued by the County during the term of this Agreement. However, all County personnel policies and personnel regulations in effect as of the date of this Agreement shall be applicable to all Correction Officers except as otherwise expressly provided herein.

[Counsel Cert., Exhibit B; SUMF Response, Para. 5]

13. Article 21, Section 1 of the Local 382 Agreement provides, in pertinent part:

1. The existing Hospitalization, Medical-Surgical and Major Medical Insurance benefits shall be paid for by the County except as set forth below. The County reserves the right

to select the insurance carrier who shall provide such benefits, **as long as the benefits are not less than those now provided by the County.**

The County shall maintain the following:

(a) Pre-Admission Review, as set forth in Schedule B, attached hereto and made a part hereof;

(b) Second Surgical Opinions, as set forth in Schedule B; and made a part hereof; and

(c) Twenty percent (20%) co-pay for Dependent coverage only.

[Counsel Cert., Exhibit B; SUMF Response, Para. 4, emphasis added]

Article 21, Sections 4 and 5 of the Local 382 Agreement goes on to provide for retiree health insurance coverage paid for by the County and notes that the County reserves the right to change insurance carriers or be self-insured "so long as it does not reduce existing benefits." (Counsel Cert., Exhibit B, SUMF Response, Para. 4)

14. In addition to the changes in coverage/benefits affecting all County Officer Units (see Finding of Fact 6, above), Local 382 unit employees were individually impacted since January 1, 2017, by the switch from Aetna to SHBP in the following ways:

- 1) Increase in health insurance contributions;
- 2) Increase in prescription drug costs;
- 3) Increase in hospital visit, doctor's office visits, and specialist visit co-payments;

- 4) Loss of dental insurance coverage;
- 5) Loss of coverage for dependent's birth control medication; and
- 6) Reduction in period available to obtain certain name brand or generic prescriptions (from 90 days under Aetna to 30 days under SHPB).

[Skorupski Cert., Paras. 4-10; Walker Cert., Paras. 3-8; Alvarez Cert., Paras. 4-8; Britt Cert., Paras. 4-9; Howell Cert., Paras. 4-9; Grinnard Cert., Paras. 4-9]

15. The County asserts the above-referenced costs, however, were "offset" by added benefits/coverage under the SHBP in 2017. (See Finding of Fact 9; Jackson Cert., Paras. 6-8; Vojtko 183 Cert., Paras. 4-5; Vojtko 106 Cert., Paras. 22, 24-25).

PBA Local 183 and 183A's Unit, Agreement, and Level of Health Benefits

16. PBA Local 183 (Local 183) is the exclusive majority representative for rank-and-file County Sheriff's officers. (SUMF Response, Para. 1).

17. PBA Local 183A^{10/} (Local 183A) is the exclusive majority representative of County Sheriff's superior officers. (SUMF Response, Para. 1).

^{10/} This unit was, at the time of the charge's filing, represented by FOP Lodge 138. During the pendency of these charges the majority representative changed to PBA Local 183A.

18. Local 183 and the County are parties to a Memorandum of Agreement (MOA) extending from January 1, 2014 through December 31, 2017. Local 183A is also party to a MOA with the County extending from January 1, 2014 through December 31, 2017. (Counsel Cert., Exhibits C and D; SUMF Response, Para.2).^{11/}

19. Sections 4 of Local 183's and Local 183A's MOAs govern health benefits and provide, in pertinent part: "Employees may select any health plan offered by the County. Employees hired after the full execution of this agreement shall not be eligible for Traditional coverage." Several unit members lost Traditional coverage as a result of the switch to SHBP, including Local 183 President Robert Slater.^{12/} (Slater Supplemental Cert., Para. 6; Vojtko 183 Cert., Para.2; Lyons Cert., Para. 10-12; Jackson Cert., Para. 13).^{13/}

20. Since January 1, 2017, the change from Aetna to the SHBP affected Local 183 and Local 183A's individual members health insurance coverage in a variety of ways.

^{11/} There is no indication in the record that these MOAs were reduced to collective negotiations agreements.

^{12/} Vojtko, however, projected that SHBP in-network coverage would afford Local 183 unit members ". . . better benefits with less out of pocket exposure than the Traditional Program." (Vojtko Cert., Para. 3).

^{13/} Local 183's MOA appears to have been signed on June 12, 2014. (Counsel Cert., Exhibit C). The signature page on Local 183A's MOA is undated and there are no facts in this record indicating when it was signed. (Counsel Cert., Exhibit D).

Gregory J. Palma, a lieutenant in the County's Sheriff's office and member of Local 183A, was prescribed a drug in 2009 by his primary care physician called "Dexilant." (Palma Cert., Paras. 1 and 2). Palma took this medication as prescribed ". . . every single day for approximately ten years", at no cost. (Palma Cert., Paras. 3-4). However in December 2019, nearly three full years after the switch to the SHBP, Palma's ". . . prescription which had been entirely free for approximately ten years suddenly cost \$354.29 for a one-month supply" due to a change in prescription coverage under the SHBP.^{14/} (Palma Cert., Para. 6). As a result of this increase in cost, Palma claims he had to switch to a less effective medication and incurred an additional \$65 out-of-pocket medication expenses. In Palma's words: "I used to pay nothing and feel well. Now I pay \$65 per month and don't feel nearly as well as I used to." (Palma Cert., Para. 11).

Robert Slater has served as a detective in the County's Sheriff's Department since 2000 and is President of Local 183. (Slater Cert., Paras. 1 and 2). At the time the County enrolled

^{14/} Paola Pose, a detective in the County's Sheriff's department and PBA Local 183 State Delegate, experienced a similar increase in prescription drug costs under the SHBP in 2019. (Pose Cert., Para. 4). Palma and Pose both certified that initially nothing changed with respect to the prices of their particular medicines, as they were still free throughout 2017, 2018 and most of 2019. (Palma Cert. Para. 5; Pose Cert. Para.3).

Local 183 unit employees into SHBP, Slater, along with other unit employees, were insured under Aetna's Traditional Plan.

Effective January 1, 2017, Slater lost Traditional coverage and as a result suffered a reduction in coverage, including:

- (1) Higher deductibles under SHBP out-of-network plan;
- (2) Higher out-of-pocket maximum under SHBP out-of-network plan;
- (3) Reduction in coverage for the first 120 days at a hospital;
- (4) Increase in emergency room co-payments;
- (5) Reduction in coverage for physical exams, lab work and x-rays; and
- (6) Change that disallowed submission of prescription co-payments for reimbursement under SHBP.

(Slater Cert., Paras. 9 and 14).

2016 Events Leading to 2017 SHBP Enrollment

21. In 2016, the County provided health insurance benefits to employees in the County's 26 collective negotiations units, including County Officer Units, through Aetna, a health insurance carrier. The County was under contract with Aetna at the time from January 1, 2016 through December 31, 2016. (Gaccione 106 Cert., Paras. 2 and 4).^{15/}

^{15/} The facts about the County's insurance renewal process and meetings with the County's collective negotiations

(continued...)

22. The County renews contracts with health insurance carriers on an annual basis. In assessing whether to renew a contract with a particular carrier, the County, through its insurance consultant—Conner, Strong and Buckelew (CSB)—is “. . . constantly reviewing renewal costs, premium rates, and competitor’s rates in establishing the most competitive rates it can achieve in the [health insurance] market.” Prior to the switch to SHBP in 2017, the County had “. . . experienced an average medical insurance increase of 9.32% over the past five years with Aetna.” (Gaccione 106 Cert., Paras. 2 and 3).

23. In 2016, the County anticipated a significant increase in renewal costs with Aetna for 2017 due to its “negative claims experience.” In anticipation of this increase, the CSB, on behalf of the County, began “soliciting [insurance] quotes from other carriers, including the State Health Benefits Program (“SHBP”).” The County also scheduled “Labor Roundtables,” which were meetings between “representatives of the County Administration, CSB and representatives of the twenty-six (26) bargaining units . . .” (Gaccione 106 Cert., Para. 4).^{16/}

^{15/} (...continued)
representatives, as summarized in the succeeding paragraphs, are reiterated in Vojtko’s and Gaccione’s other certifications as well.

^{16/} The parties offer divergent accounts or characterizations of what took place at these “Labor Roundtable” meetings. The County asserts the meetings provided a forum to “discuss any
(continued...)

24. The first Labor Roundtable meeting concerning health insurance coverage for County employees in 2017 took place on January 15, 2016. Present at that meeting were representatives of all 26 County negotiations units, including the County Officer Units. (Gaccione 106 Cert., Paras. 5 and 6).

25. At the January 15, 2016 Labor Roundtable meeting, a CSB consultant presented, on behalf of the County, a PowerPoint presentation on Aetna and the SHBP. At the meeting, CSB explained that Aetna's insurance premiums in 2016 increased by 11.3% from the previous year, representing approximately a \$10 million increase. The CSB consultant also informed the negotiations units' representatives that the County in 2016 was paying \$100 million in health insurance premiums for all County negotiation units, and projected that the cost of staying with Aetna as an insurance provider in 2017 would be \$19 million more based on the County's negative claims experience. (Gaccione 106 Cert., Paras. 7-9,11).

16/ (...continued)

issues regarding the labor relationship" and characterizes the meetings as a "effective way to communicate on labor issues, most notably health insurance." (Gaccione 106 Cert., Para. 4). The Charging Parties maintain, however, that the Labor Roundtable meetings ". . . were not actually roundtable discussions," but instead consisted of PowerPoint presentations by CSB on the SHBP and Aetna, without dialogue or discussion soliciting the Charging Parties' consent to either carrier or plan. (Slater Supplemental Cert., Para. 5)

26. On March 13, 2016, the County conducted another Labor Roundtable meeting. Twenty-four (24) of the twenty-six (26) County negotiations units' represented were in attendance and "consented to exploring the possibility of switching carriers to the SHBP . . . ".^{17/} Another Labor Roundtable meeting was conducted on June 17, 2016, where "21 of the 26 bargaining units representatives were present." At both meetings, CSB representatives provided a PowerPoint presentation about the benefits of SHBP over Aetna and expected a premium renewal increase with Aetna due to the County's negative claims experience. The County had difficulty in securing financially viable, competitive quotes from other insurance carriers. The PowerPoint presentations at the meetings, notified the County's unit's representatives that to transition to the SHBP, the County Board of Commissioners would need to adopt a resolution by no later than October 1, 2016 to comply with requirements by the New Jersey Division of Pensions and Benefits for SHPB enrollment. (Gaccione 106 Cert., Paras. 14-20).

27. On September 8, 2016, the State Health Benefits Commission (SHBC) for the first time recommended the County's health insurance rates for 2017. Prior to that time, neither the County nor the County Officer Units were aware what the insurance

^{17/} It is unclear from the record which of the County's negotiations units did not attend the March 3 meeting.

premiums and/or premium contributions would be in 2017 under SHBP. The renewal rates were not formally published by SHBC until September 14, 2016. (Gaccione 106 Cert., Paras. 20 and 22).

28. The published SHBP renewal rates for 2017, compared to 2016 Aetna rates, reflected a decrease in costs for the County's actively enrolled employees by .1%, an 8.6% increase for early retirees, and a 4.6% increase for Medicare Retirees. (Gaccione 106 Cert., Para. 21).

29. By the time the County was notified of the SHBP renewal rates on September 8, 2016, the County received its "best and final offer" of a 10.8% increase in renewal rates with Aetna for 2017. County-wide, the "difference in moving from Aetna to the SHBP for 2017 would amount to a \$9,732,095 cost savings to the County."^{18/} (Gaccione 106 Cert., Paras. 23-24).

30. On September 9, 2016, the County met with CSB to discuss the SHBP rates and the County "determined it would explore a move to the SHBP." The County scheduled another Labor Roundtable meeting on September 13, 2016 to ". . . apprise the unions of the SHBP now published quotes and discuss the benefits that would be provided under the SHBP." Twenty-five (25) of the

^{18/} These costs savings were calculated by taking the difference between Aetna's projected costs for all County employees enrolled in a health insurance plan -\$107,120,542- and the 2017 cost for enrolling those same employees in SHBP for 2017-\$97,388,447. (Gaccione 106 Cert., Para. 24).

County's twenty-six (26) unit representatives attended the September 13 meeting, including representatives of the County Officer Units. (Gaccione 106 Cert., Paras. 26-27).

31. At the September 13 meeting, the CSB and County representatives ". . . presented an explanation about the significant cost increase from Aetna (\$10.8 million dollars) versus the cost savings that would result by moving to the SHBP." A "PowerPoint presentation was provided to the unions that guided the unions through the CSB's presentation of the proposed change to the SHBP." CSB representatives also informed unit representatives at the meeting that they ". . . could secure quotes from AmeriHealth and Horizon, but those efforts were fruitless as both providers quoted a higher increase for 2017 than Aetna and all other carriers declined to provide quotes." From this, the County concluded that "the SHPB was the only financially viable option for a switch in health insurance carriers to avoid the 10.8% Aetna increase, a change that needed to be adopted by County resolution and submitted to the New Jersey Division of Pensions and Benefits by October 1, 2016." (Gaccione 106 Cert., Paras. 28-31).

32. According to the County, ". . . all active and retired employees of a public entity must be enrolled in the SHBP." The County certifies that it is not permitted to "carve out" a "portion of its employee population and leave them out of SHBP."

The County describes this requirement as the "uniformity requirement" and asserts that the SHBP ". . . does not require that all employees consent to being moved into the SHBP."

(Gaccione 106 Cert., Para. 33).

33. After the renewal SHBP premium rates were published, the County reached out to the County Officer Units and other units to "consider" the transition to SHBP and "the cost savings that would result in their Chapter 78 contributions", as well as the "critical need to change carriers." In this effort to inform County Officer Units of the need to change to SHBP, the "County approached the unions as partners in making this transition to the SHBP and sought their agreement to do so, although their agreement was not required." (Gaccione 106 Cert., Para. 35).

34. Between the September 13, 2016 Labor Roundtable meeting and the County's September 28, 2016 adoption of a resolution to move County Officer Unit employees into the SHBP, the County held multiple "information sessions" with County Officer Units and their members. The meetings were "open to all employees" and were conducted on September 16, 19, 20, 21 and 22, 2016. In addition to these information sessions, the County, PBA Local 183, FOP Lodge 106 and PBA Local 183A held additional meetings with County representatives to discuss the SHBP.^{19/} The County

^{19/} While PBA Local 382 representatives did attend the County's Labor Roundtable Meetings during the earlier part of 2016,
(continued...)

provided County Officer Units with a deadline of September 23, 2016 to "review the change [to SHPB], consult with their membership and allow for a membership vote." (Gaccione 106 Cert., Paras. 37-40).

35. Following these meetings, PBA Local 183A agreed to enter into the SHBP.^{20/} PBA Local 382 and FOP Lodge 106 did not agree to the change to SHPB. (Gaccione Cert., Para. 41; Counsel Cert., Exhibit K).

36. On September 21, 2016, County representatives met with FOP Lodge 106 representatives to discuss the switch to SHBP. The FOP expressed "concerns/issues" about the move to SHBP. After the September 21 meeting, the FOP provided the County with an offer "outlining its terms to agree to the SHBP transition." The County characterizes the FOP's proposal as including terms "beyond the collective bargaining agreement and [salary] increases greater than what the County was in the process of presenting to twenty-four (24) other bargaining units in the County." (Gaccione 106 Cert., Para. 42).

19/ (...continued)
they did not meet with the County during these September meetings. (Gaccione 382 Cert., Paras. 6, 15 and 42).

20/ As will be discussed further in the "Analysis" section, PBA Local 183A did not present any certified facts or other probative evidence to dispute this fact certified by the County.

37. In response to the FOP's September 26 offer, on September 28, 2016, the County rejected the offer and provided FOP with "the same written offer that had been verbally made to twenty-four (24) other bargaining units." FOP rejected this offer and advised the County that it was "not agreeing to the move into SHBP." (Gaccione 106 Cert., Paras. 43 and 47).

38. In September 2016, Robin McGrath, esq., an attorney for the County, contacted PBA Local 382 President Brian Hanlon and requested from Hanlon a status update on Local 382's decision to vote for or against enrollment into SHBP. Hanlon responded by notifying McGrath that Local 382 was scheduled to meet and vote on the plan at a meeting on September 29, 2016. McGrath requested Hanlon reschedule the meeting for September 28, but Hanlon declined to do so and Local 382 did not vote to or agree to enrollment into SHBP prior to the County's adoption of the SHBP September 28 resolution. (Gaccione 382 Cert., Paras. 41, 43, 44 and 46; Counsel Cert., Exhibit K).

39. PBA Local 183 and the County disagree about whether Local 183 agreed to or consented to enrollment into SHBP.

The County certifies that Robert Slater, President of PBA Local 183, notified McGrath that Local 183 voted at a meeting on September 27, 2016 to enroll into SHBP. The County also certifies that Local 183 union leadership attended the Board's September 28 meeting and did not object to the County's adoption

of a resolution to switch to SHBP. (Gaccione 183 Cert., Paras. 9-11).

Local 183 certifies that its "yes" vote was "contingent upon PBA Local 183 reaching an agreement with the County" that addressed the impact on Local 183 unit members of the change. No such agreement, according to Local 183, was reached. Local 183 also certified that its unit of 350 members were given a total of 8 days to consider the SHBP premium contributions/costs to members as compared to Aetna, a time frame Local 183 certifies was "simply not enough to have a meaningful, informed vote on something this important." In addition, Local 183 certifies it met with the County Executive prior to adoption of the September 28 resolution to attempt to negotiate conditions for entering the SHBP and was told by the County Executive to "get the f-ck out" of his office. (Supplemental Slattery Cert., Paras. 15, 17, 20 and 22).

40. Two weeks after deciding to enroll County Officer Unit employees into SHBP, the County Counsel's office, on October 11, 2016, notified all 26 County units of the County's offer concerning the impact of SHBP. The County describes the terms of this offer as follows:

First, each unit could agree to extend their collective negotiations agreement for one, two or three years. Second, the increases on wages would be guaranteed at 2.20% for 2017, 2.25% for 2018 and 2.25% for 2019.

[Gaccione 106 Cert., Para. 45]

The offer communicated on October 11 to County units also included a letter from the County Counsel's office dated September 29, 2016. The letter provided, in pertinent part:

This letter shall serve as confirmation that in moving the County of Essex into the SHBP effective January 1, 2017, that the level of benefits provided under the SHBP for the year 2017 will not change during 2017. Further, when moving into the calendar year 2018, the County of Essex agrees that if there is a change in benefits provided by the SHBP that the parties mutually agree is not equal to or greater than those benefits provided under the SHBP during the 2017 calendar year, the County will negotiate in good faith benefits or compensation to be provided.

[Gaccione 106 Cert., Para. 45]

41. PBA Local 382 and FOP Lodge 106 did not agree to the County's October 11 offer, and the County Officer Units filed interim relief applications and the instant charges in November 2016 to enjoin the change to SHBP. (Gaccione 106 Cert., Paras. 47-52; Gaccione 382 Cert., Paras. 41-43).

ANALYSIS

The Charging Parties contend that the County violated section 5.4a(5) of the Act by unilaterally changing County Officer Unit employees' health benefits when it changed insurance carriers from Aetna to SHBP on January 1, 2017.^{21/} The County

^{21/} The Charging Parties also contend that, in the Commission's decision on the County's scope of negotiations petition
(continued...)

disagrees, and advances two principal defenses against these charges:

(1) The SHBP, "as a whole,"^{22/} provided better health benefits and coverage than Aetna which "offset" any changes to health benefits resulting from the carrier switch; and

(2) The County negotiated in good faith with the Charging Parties prior to changing carriers.

For the reasons that follow, I conclude:

(1) The County violated section 5.4a(5) of the Act by unilaterally changing FOP Lodge 106 unit employees' health benefits when it changed insurance carriers from Aetna to SHBP on January 1, 2017;

(2) The County violated section 5.4a(5) of the Act by unilaterally changing PBA Local 382 unit employees' health benefits when it changed insurance carriers from Aetna to SHBP on January 1, 2017;

(3) The County did **not** violate section 5.4a(5) when it changed PBA Local 183A's insurance carrier on January 1, 2017; and

21/ (...continued)
(docket SN-2017-033), the Commission found the County in fact changed County Officer Unit employees health benefits. The County disagrees. Since I find, based on the summary judgment record here, that health benefits for County Officer Unit employees were in fact changed, I need not address whether the Commission's scope of negotiations determination addressed that question.

22/ County Brief, p. 8

(4) There is a genuine issue of material fact as to whether PBA Local 183 waived the right to negotiate the County's change in health insurance carriers on January 1, 2017.

I, therefore, **GRANT** PBA Local 382's and FOP Lodge 106's motions for partial summary judgment; **DENY** PBA Local 183's and the County's motion and cross-motion for summary judgment; and **GRANT** the County's cross-motion for summary judgment against PBA Local 183A.

The Negotiability of Health Insurance Benefits

Health insurance benefits are mandatorily negotiable. Essex Cty, P.E.R.C. No. 2020-40, 46 NJPER 359 (¶88 2020). An employer cannot unilaterally change the level of health benefits for unit employees. Union Tp., P.E.R.C. No. 2002-55, 28 NJPER 198 (¶33070 2002). An employer's unilateral reduction of health benefits is "akin to an employer's decision to reduce wages unilaterally" and is a violation of Section 5.4a(5) of the Act. City of South Amboy, P.E.R.C. No. 85-16, 10 NJPER 511, 512 (¶15234 1984).

An employer has a managerial prerogative to change health insurance carriers provided the change in carrier does not result in a change in the negotiated level of health benefits. City of Newark, P.E.R.C. No. 82-5, 7 NJPER 439 (¶12195 1981); Newton Bd. of Ed., P.E.R.C. No. 2021-47, 47 NJPER 522, 523 (¶121 2021) ("The Commission has consistently held that an employer's choice of health insurance carriers is not mandatorily negotiable so long

as the negotiated level of benefits is not changed.”). This is true even where the change in carriers may result in greater benefits for unit employees. Borough of Metuchen, P.E.R.C. No. 84-91, 10 NJPER 127 (¶15065 1984), Union Tp., 28 NJPER at 200 (“That other employees may experience greater coverage [after a change in carrier] does not change the fact that the employer changed benefits”); Pennsauken Tp., H.E. No. 87-61, 13 NJPER 389, 398 (¶18156 1987), adopted at P.E.R.C. No. 88-53, 14 NJPER 61 (¶19020 1987) (“Charging Parties are not required to prove actual loss to establish a 5.4a(5) violation; they need only prove that the new [insurance] plans are different from the old plans”). Thus, in this particular context under existing caselaw, the employer’s managerial prerogative exists on a conditional basis.

In Metuchen, the Commission held the Borough of Metuchen (Borough) violated section 5.4a(5) of the Act by unilaterally changing the level of health benefits for PBA Local 60 (PBA) unit employees when it changed insurance carriers from Blue Cross Blue Shield (BCBS) to Connecticut General. 10 NJPER at 129. The Borough admitted to changing carriers, but argued that Connecticut General would save the Borough “approximately \$12,000 per year” due to lower premiums and was “comparable to or better than the prior plan on a ‘total benefits analysis.’” 10 NJPER at 128. The Borough also contended that the additional benefits

provided under Connecticut General should "offset" any costs associated with Connecticut General. 10 NJPER at 128-29.

The Commission rejected the Borough's arguments. Id. While acknowledging that the "Connecticut General plan provides benefits in excess of those provided by Blue Shield", the Commission noted that the level of benefits between the two plans are different and that the "better plan, from an employee's view, would necessarily be dependent upon the services he requires." 10 NJPER at 128. The Commission also rejected the Borough's argument that the plans were "substantially equivalent" and therefore not in violation of section 5.4a(5), emphasizing the "plain fact is that the level of insurance benefits under the new plan was different from, and in certain important respects lower than that previously provided." In other words, a unilateral change in carrier and benefits, for better or worse, violated section 5.4a(5) because it was done without the unit's consent. 10 NJPER at 128-129; Pennsauken Tp., 13 NJPER at 398.

The Commission also declined the Borough's request to "offset" any increased benefits resulting from the carrier change. 10 NJPER at 129. Quoting NLRB v. Keystone Consolidated Industries, 653 F.2d 304, 107 LRRM 3143 (7th Cir. 1981), the Commission set forth the following rationale for this position:

When the employer unilaterally changed insurance plans, its action resulted in some favorable and some unfavorable changes to the employees. The Board's policy in cases of combined favorable and

unfavorable unilateral changes is to order a return to the status quo ante with regard to the unfavorable changes, but to not penalize employees by ordering revocation [*13] of the favorable changes. . . . We endorse the Board's policy. In effect, the favorable change becomes the established condition of employment. An employer can change this condition only as it can change any condition - by giving notice of the proposed change and by successfully bargaining with the union to secure the union's approval.

The Board's policy is entirely consistent with the purposes of the Act. The refusal to revoke favorable changes simply ensures that, under whatever formula the Company implements to restore the employees' health benefits, the Company cannot use the Board's order as a license to abolish or alter any of the favorable changes resulting from its unlawful conduct without fulfilling its statutory duty to bargain. That some employees ultimately may receive greater benefits than they would have received if the Company had not acted illegally is not, therefore, the result of any defect in the Board's order. Rather, any potential for greater benefits is due entirely to the Company's unfair labor practice. Thus, the Board is not impermissibly dictating terms of the parties' contract. It is merely ordering its traditional remedy of a return to the status quo ante, [*14] combined with its traditional refusal to penalize employees by revoking benefits conferred as a result of an unfair labor practice.

[10 NJPER at 129, quoting 107 LRRM at pp. 3146-47]

However, the Commission noted that this determination "does not mean that the benefits under the old plan is not to be considered." 10 NJPER at 129. As the Commission explained:

To determine the amount of reimbursement required, the Borough is entitled to a deduction from the amount that the new plan provides. Thus, if a member would have received \$300 under the new

plan, but \$500 under the old plan, he is entitled to \$200 from the Borough.

[10 NJPER at 129]

The Duty to Negotiate and Waiver

Another critical issue in this case is whether the County refused to negotiate in good faith with the County Officer Units prior to changing the units' insurance carriers. Secondly, a related issue is whether the County Officer Units waived the right to negotiate the carrier change.

Duty to Negotiate

An employer's duty to negotiate over changes in working conditions encompasses two obligations: (1) the obligation to meet and confer with a majority representative about mandatory subjects of negotiations, and (2) the obligation to negotiate in good faith during those meetings and discussions. NLRB v. Katz, 369 U.S. 736 (1962); Ocean Cty. College, P.E.R.C. No. 84-99, 10 NJPER 172 (¶15084 1984).

The Commission standard for determining whether a party has refused to negotiate in good faith is as follows:

It is necessary to subjectively analyze the totality of the parties' conduct in order to determine whether an illegal refusal to negotiate may have occurred. . . . A determination that a party has refused to negotiate in good faith will depend upon an analysis of the overall conduct and/or attitude of the party charged. The object of this analysis is to determine the intent of the respondent, i.e., whether the respondent brought to the negotiating table an open mind

and a sincere desire to reach an agreement, as opposed to a predetermined intention to go through the motions, seeking to avoid, rather than reach, an agreement.

[State of New Jersey, 1 NJPER 39, 40 (1975) aff'd, 141 N.J. Super. 470 (App. Div. 1976)]

In applying this standard, the Commission has elaborated on what constitutes "good faith negotiations" and what actions by an employer are indicia of "bad faith" negotiations. See Hamilton Tp. Bd. of Ed., P.E.R.C. No. 87-18, 12 NJPER 737 (¶17276 1986), aff'd NJPER Supp.2d 185 (¶163 App. Div. 1987), certif. denied 111 N.J. 600 (1988); Pennsauken Tp., H.E. No. 93-9, 19 NJPER 24 (¶24011 1992), adopted, P.E.R.C. No. 93-62, 19 NJPER 114 (¶24054 1993); Piscataway Tp., P.E.R.C. No. 2005-55, 31 NJPER 102 (¶44 2005), recon. den. P.E.R.C. No. 2005-79, 31 NJPER 176 (¶71 2005). "Negotiations require dialogue between two parties with an intent to achieve common agreement rather than an employee organization presenting its view and the employer considering it and later announcing its decision." Piscataway Tp., 31 NJPER at 103. "Discussions" or "information sessions" about a proposed change without a meaningful dialogue and/or exchange of proposals about a proposed change to negotiable terms and conditions of employment does not satisfy the Act's duty to negotiate in good faith. Id., Pennsauken Tp., 14 NJPER at 62; Hamilton Tp. Bd. of Ed., 12 NJPER at 739.

In Hamilton Tp. Bd. of Ed., the Commission held that the board of education (board) refused to negotiate in good faith with an administrators and supervisors association (association) over additional compensation for a teaching assignment given to a curriculum assistant. 12 NJPER at 739. The Commission “. . . recognized that an employer or employee representative may take a hard line in negotiations so long as it does so with a sincere intent to reach agreement instead of a pre-determined intention to avoid agreement.” Id. But on the record, the Commission found that the board’s representatives did not “negotiate with an open mind until impasse” was reached with the association, and identified the following actions by the employer as indicia of bad faith bargaining:

(1) The board’s representatives took the position during “negotiations” that “. . . it had a right to make this assignment and that no compensation, either extra sick day benefits, vacation day benefits or salary remuneration would be considered;”

(2) The meeting with the association to discuss compensation was “a discussion of possible things [the association] wanted and the reasons why the administration did not feel it was appropriate; and

(3) The board’s representatives “made no counter-proposals and instead reiterated its initial position that the curriculum assistant’s administrative duties had been reduced”

[12 NJPER at 739]

Waiver

A majority representative may waive the right to negotiate over a mandatorily negotiable subject. UMDNJ, P.E.R.C. No. 2010-12, 35 NJPER 330, 332 (¶113 2009). However, a waiver of the statutory right to negotiate must be "clear and unmistakable." Red Bank Ed. Ass'n v. Red Bank Bd. of Ed., 78 N.J. 122, 140 (1978). Waiver may be found where a mandatory subject of negotiations has been fully discussed and explored in negotiations, and where the union has consciously yielded its position. Bridgeton Bd. of Ed., P.E.R.C. No. 2011-64, 37 NJPER 72 (¶27 2011) (majority representative waived the right to negotiate over concurrent use of sick leave with FMLA leave when the public employer proposed to negotiate over the issue at four separate negotiations sessions and the majority representative expressly refused to negotiate the subject). A waiver may also be found where an employer acted consistent with a past practice the union did not object to or request negotiations over. UMDNJ ibid. However, a waiver ends when the union's acquiescence ends, i.e., when the union demands negotiations over the employer's practice. UMDNJ Ibid.

With these standards in mind, we turn to an analysis of the facts in each charge.

Analysis of Charges

While the County and Charging Parties disagree about the nature and extent of the change in the level of health benefits for County Officer Unit employees, there is "unquestionably a change in the level of benefits." Pennsauken, 14 NJPER at 62. For each County Officer Unit, that change in the level of benefits was a repudiation of the terms of the parties' collectively negotiated level of health benefits. And the change, as implemented with respect to Local 382's and the FOP's unit^{23/}, was not preceded by good faith negotiations nor a clear waiver of the parties' contractual right to preserve their level of health benefits when a carrier change was made.

FOP Lodge 106

When the County changed FOP unit employees insurance carrier to SHBP on September 28, 2016, it violated section 5.4a(5) of the Act because the change in carrier resulted in a change in FOP unit employees' contractual level of health benefits in contravention of Articles 4 ("retention of existing benefits") and 21 ("health insurance") of the FOP Agreement. Metuchen; South Amboy. The County acknowledges that the switch to SHBP resulted in the following changes in the level of benefits for

^{23/} As will be discussed further, *infra*, I find that PBA Local 183A waived the right to negotiate over the change to SHBP and that there is a genuine issue of material fact as to whether PBA Local 183 waived that right.

all County Officer Unit employees, including FOP unit employees^{24/}:

(1) An increase in co-payments for emergency room visits from \$25-35 to \$75;

(2) An increase in co-payments for doctor's office visits from \$5 per visit to \$10 per visit;

(3) An increase in costs for prescriptions that required members to pay the difference in cost between generic and brand name prescriptions;

(4) The imposition of a "pre-certification" requirement for chiropractic care; and

(5) The loss of the Traditional insurance plan.

The County also does not dispute several changes to the level of benefits for certain FOP unit employees since 2017, including loss of coverage for certain medications and an increase in health insurance premium contributions over the last few years among active and retired unit employees.^{25/}

These changes in benefits were prohibited by the clear terms of two provisions in the FOP's Agreement. The first, governing health insurance, expressly provides in pertinent part that the "County reserves the right to select the insurance carrier who

^{24/} See Finding of Fact 8, *supra*;

^{25/} See Finding of Fact 7; Cugliari Cert., Paras. 3-4; Cardella Cert., Para. 2; Nicolas Cert., Para. 2, Crooks Cert., Paras. 7-11.

shall provide such benefits **as long as the benefits are not less than those now provided by the County.**" This language is tantamount to a "equal to or better than"^{26/} contractual clause governing when carrier changes are permitted, and we have found repeatedly that any change in the level of benefits would contravene the parties' agreement on benefits and violate Section 5.4a(5) of the Act. Metuchen; South Amboy; Pennsauken Tp.,¹⁴ NJPER 61; Union Tp., 28 NJPER 198.

Second, the FOP Agreement prohibited any changes to "existing benefits" enjoyed by FOP unit employees at the time the FOP Agreement was executed by the parties. Specifically, Article 4 of the FOP Agreement provides:

The rights, privileges and benefits which these employees have heretofore enjoyed and are enjoying via this Agreement **shall be maintained and continued by the County during the term of this Agreement until the ratification and approval of a successor agreement**, notwithstanding any statute, law, ordinance, precedent or ruling by a court or state agency.^{27/}

^{26/} The County acknowledges as much in its September 29, 2016 letter to the County Officer Units, where it assures the units that 2018 SHBP benefits should be "equal to or greater than" the SHBP benefits provided in 2017. (Gaccione 106 Cert., Para. 45).

^{27/} "During the term of this Agreement" has been construed by the Commission to extend *beyond* the expiration date of an agreement until a successor agreement is ratified by the parties. See State of New Jersey (CWA), P.E.R.C. No. 87-21, 12 NJPER 744 (¶17279 1986).

Our Supreme Court has held that a single change in co-payments from \$5 to \$10 can reasonably be viewed as a violation of this type of "Retention of benefits" clause. Borough of East Rutherford v. East Rutherford PBA Local 275, 213 N.J. 190, 203-204 (2013).

Nor do I find that the "meetings" or "information sessions" the County conducted with the FOP and other County Officer Units satisfied the Commission's standards for good faith negotiations. The Labor Roundtable Meetings consisted of PowerPoint presentations on the relative costs and benefits of the SHBP and Aetna. While informative, there is nothing in the record to indicate there was a meaningful dialogue or exchange of proposals between the FOP, County Officer Units and the County about alternative insurance plans or compensation packages that could address changes in coverage under SHBP. These information sessions, alone, could not satisfy the County's duty to negotiate a change in benefits. Pennsuaken Tp.,¹⁴ NJPER 61. And while the County asserts it was attempting at these meetings to secure the units' consent to the SHBP, the County also certified it did not need their consent. In explaining this approach, the County certifies: "the County approached the unions as partners in making this transition to the SHBP and sought their agreement to do so, **although their agreement was not required.**" (Gaccione 106 Cert., Para. 35). This approach is not consistent with an "open

mind and sincere desire" to reach agreement. State of New Jersey, 1 NJPER 39, 40 (1975) aff'd, 141 N.J. Super. 470 (App. Div. 1976).

The County's response to FOP's proposal concerning SHBP also represented a refusal to negotiate in good faith. In mid-September 2016, FOP first learned of the SHBP's renewal/premium rates and at that point could assess whether the savings in premium contributions outweigh the costs of changing coverage to SHBP for its members. The County gave FOP, along with the other County Officer Units, until September 23, 2016, to decide whether to enroll into SHBP—a mere 7-10 days from learning about SHBP premium rates and contributions. On September 21, 2016 the County met with FOP where FOP expressed concerns and objections to SHBP, while also outlining a proposal addressing the impact of SHBP on FOP unit employees to the County. The County's response was to reject that proposal on the grounds that it was "beyond" what the County proposed to 24 other negotiations units and that the FOP could either take what was offered to the other units or not. When FOP declined and notified the County it was not agreeing to the switch to SHBP, the County went ahead with adopting the SHBP for FOP unit employees without FOP's consent on September 28, 2016.

This approach by the County was a "take it or leave it" attitude towards FOP's proposal that was not commensurate with

good faith negotiations. "Negotiations require dialogue between two parties with an intent to achieve common agreement rather than an employee organization presenting its view and the employer considering it and later announcing its decision." Piscataway Tp., 31 NJPER at 103. Here, rather than engage in dialogue with the FOP after learning of their September 21 proposal and SHPB 2017 premiums, the County considered and rejected the FOP's proposal and then, just seven days later, over FOP's objection, made its decision to enroll FOP unit employees into SHBP.

Moreover, while the County insisted that FOP accept what other units accepted in exchange for moving into the SHBP, the FOP is not bound by what other units negotiated. To hold otherwise would promote the negotiations of a parity agreement with other County units, which is prohibited by our Act. City of Plainfield, P.E.R.C. No. 78-87, 4 NJPER 255 (¶4130 1978). The County did not fulfill its duty to negotiate the change in health benefits for FOP unit employees.^{28/}

^{28/} The October 11, 2016 offer by the County to negotiate salary increases with the County Officer Units *after* changing their insurance carrier to SHBP on September 28 also did not satisfy the County's duty to negotiate in good faith. See Clifton Bd. of Ed., P.E.R.C. No. 80-104, 6 NJPER 103 (¶11053 1980) (Employer's offer to negotiate a unilateral scheduling change for custodians *after* the scheduling change was implemented did not satisfy employer's negotiations obligation under the Act).

I acknowledge the exceedingly difficult situation the County faced in making the decision to change its insurance carrier to SHBP, both fiscally and practically. The County, like the County Officer Units, did not learn of the SHBP premium rates for 2017 until mid-September 2016. Faced with a projected \$10.8 million increase in premiums with Aetna for 2017, and knowing that a switch to SHBP could save County taxpayers approximately \$9.7 million, the County needed to make a quick decision to enroll into SHBP all 26 of its units by October 1, 2016^{29/} or lose the chance at achieving those savings. Added to the mix of challenging circumstances, the County needed to secure all 26 units' consent to enrollment into SHBP, and had apparently secured the consent of at least 22 other units to SHBP, since the County could not, under the SHBP, "carve out" the County Officer Units as an exception to the uniformity requirement. Also outside of its control, was the negative claims experience that contributed to the steep cost increase with Aetna and the unwillingness of other carriers to even provide quotes.

Notwithstanding these legitimate concerns and significant constraints, the Commission has explained that the SHBP's uniformity requirement and/or the need to save taxpayer dollars does not relieve an employer from its duty to negotiate

^{29/} As indicated previously, this October 1 deadline was set by the Division of Pensions and Benefits as a condition for enrolling in SHBP for 2017.

mandatorily negotiable terms and conditions of employment. In addressing SHBP's uniformity requirement and the County's purported need to enroll all County Officer Units into SHBP, the Commission wrote:

[N]o statute or regulation requires that a local employer participate in the SHBP. Local employers can withdraw from the SHBP at any time consistent with their obligations under existing collective negotiations agreements.

Here, once the County and PBA agreed on a level of health benefits, the County had discretion to choose which health insurance carrier (whether private or the SHBP) to contract with to provide those benefits, **so long as the chosen provider offered plans consistent with the negotiated level of benefits.** The County was not mandated to join the SHBP, but voluntarily chose to change health insurance carriers and consequently potentially violate the CNA's health benefits provisions. The County concedes that it unilaterally changed carriers for some negotiations units, such as the PBA, that did not consent to the change. Therefore, if the arbitrator determines that the transition to the SHBP also resulted in changes to the level of health benefits that the County agreed to in its CNA with the PBA, the County cannot use the SHBP's uniformity rules as a shield to claim immunity from an arbitrator's remedy

[Essex County, 46 NJPER at 362 (emphasis added, internal citations omitted)]

And while the objective of saving taxpayer dollars by reducing health insurance costs is laudable, the Act requires the County accomplish those goals through the collective negotiations process with the County Officer Units. Middletown Tp., P.E.R.C.

No. 98-77, 24 NJPER 28 (¶29016 1997), aff'd 334 N.J. Super. 512, 515 (App. Div. 1999), aff'd 166 N.J. 112 (2000).^{30/}

For these reasons, I conclude the County violated section 5.4a(5) of the Act by unilaterally changing FOP unit employees' health benefits when it changed their insurance carrier from Aetna to SHBP.

PBA Local 382

Like the FOP, PBA Local 382 also did not consent to a change to the SHBP, suffered a loss in benefits as a result of the carrier switch since 2017, and enjoyed similar contractual protections against changes to their unit's level of health benefits.

Similar to the FOP Agreement, Local 382's Agreement set forth both a "retention of existing benefits" clause and a "health insurance" clause that prohibited changes in insurance carriers that resulted in changes to health benefits. Article 4 of Local 382's Agreement provides, in pertinent part that ". . . all rights, privileges and benefits which County Correction Officers have heretofore enjoyed and are presently enjoying,

^{30/} The New Jersey Supreme Court has emphasized this point time and again: the achievement of budgetary efficiency or taxpayer savings does not relieve an employer from the duty to negotiate mandatorily negotiable terms and conditions of employment. See the discussion in State of New Jersey (Corrections), H.E. No. 2020-2, 46 NJPER 195, 213-214 (¶49 2019), adopted P.E.R.C. No. 2020-49, 46 NJPER 509 (¶113 2020).

shall be maintained and continued by the County during the term of this Agreement.”^{31/} “During the term of this agreement” has been construed by the Commission to extend beyond the expiration date of an agreement until a successor agreement is ratified by the parties. State of New Jersey (CWA), P.E.R.C. No. 87-21, 12 NJPER 744 (¶17279 1986). On health benefits, Local 382's Agreement provides, in pertinent part, that the “County reserves the right to select the insurance carrier who shall provide such benefits, **as long as the benefits are not less than those now provided by the County.**” In addition, Local 382 members suffered changes to their contractual level of health benefits as a result of the change to SHBP as a carrier.^{32/} As with the FOP, these unilateral changes in health benefits violated Local 382's Agreement and section 5.4a(5) of the Act. Metuchen; South Amboy.

Moreover, the County did not fulfill its duty to negotiate in good faith with Local 382 prior to the change to SHBP. In September 2016, McGrath, on behalf of the County, contacted Local 382 President Hanlon for a “status update” on whether Local 382 voted “for or against” enrolling in SHBP.^{33/} Hanlon responded by notifying McGrath that Local 382 was scheduled to meet and vote for or against the SHBP on September 29, 2016. McGrath then

^{31/} Finding of Fact 12, *supra*.

^{32/} Finding of Fact 14, *supra*.

^{33/} Finding of Fact 38, *supra*.

requested Hanlon reschedule the Local 382 meeting for September 28.^{34/} When Hanlon declined to do so, the County proceeded with adopting the SHBP *before* Local 382 could decide whether to approve the plan. In essence, the County was proceeding with its plan to switch to SHBP with or without Local 382's consent. That is not consonant with the good faith dialogue and exchange of proposals characteristic of good faith negotiations.^{35/}

Piscataway Tp., Hamilton Tp. Bd. of Ed.

For these reasons, I conclude the County violated section 5.4a(5) of the Act by unilaterally changing PBA Local 382's unit employees' health benefits when it changed their insurance carrier from Aetna to SHBP.

PBA Local 183A

Like the other County Officer Units, PBA Local 183A's contractual level of health benefits changed as a result of the switch to SHBP.^{36/} Several Local 183A unit employees lost Traditional Coverage under the SHBP that resulted in increased

^{34/} Finding of Fact 38, *supra*.

^{35/} As is true with the other County Officer Units, the County's October 11, 2016 offer to negotiate salary increases with PBA Local 382 *after* changing their insurance carrier to SHBP on September 28 did not satisfy the County's duty to negotiate in good faith. See Clifton Bd. of Ed., P.E.R.C. No. 80-104, 6 NJPER 103 (¶11053 1980) (Employer's offer to negotiate a unilateral scheduling change for custodians after the scheduling change was implemented did not satisfy employer's negotiations obligation under the Act).

^{36/} Findings of Fact 19 and 20, *supra*.

deductibles, co-payments and reductions in coverage for certain prescriptions and for physical exams, lab work, x-rays and duration of hospital stays.^{37/} The loss of an available insurance plan as a consequence of a unilateral change in carriers that alters unit employees' level of benefits is a violation of section 5.4a(5) of the Act. Metuchen; Union Tp., Bridgeton Bd. of Ed., I.R. No. 2006-8, 31 NJPER 315 (¶123 2005). However, since PBA Local 183A has not presented a certification or other probative evidence disputing the County's certifications attesting to Local 183A's agreement and consent to the SHBP change prior to the County's adoption of the September 28 SHBP resolution, I am compelled under our summary judgment standards to grant the County's summary judgment and dismiss Local 183A's complaint.

While a party is not required to file an affidavit or certification in support of summary judgment, where a ". . . party opposing the motion [for summary judgment] does not submit any affidavits or documentation contradicting the moving party's affidavits and documents, then the moving party's facts may be considered as true, and there would necessarily be no material factual issue to adjudicate unless, per chance, it was raised in the movant's pleadings." CWA Local 1037 (Schuster), H.E. No. 86-10, 11 NJPER 621, 622 (¶16217 1985), adopted P.E.R.C. No. 86-78,

^{37/} Findings of Fact 19 and 20, *supra*.

12 NJPER 91 (¶17032 1985); City of Hoboken, H.E. No. 95-17, 21 NJPER 107 (¶26065 1995), adopted P.E.R.C. No. 95-91, 21 NJPER 184 (¶26117 1995); Nutley Tp., H.E. No. 99-18, 25 NJPER 199 (¶30092 1999) (final agency decision); N.J.A.C. 1:1-12.5(b) ("When a motion for summary decision is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined by an evidentiary proceeding.") As the New Jersey Supreme Court explained in Judson v. Peoples Bank and Trust Co., 17 N.J. 67, 75 (1954):

[I]f the opposing party offers no affidavits or matter in opposition, or only facts which are immaterial or of an insubstantial nature . . . he will not be heard to complain if the court grants summary judgment, taking as true the statement of uncontradicted facts and the papers relied upon by the moving party, such papers themselves not otherwise showing the existence of an issue of material fact.

[17 N.J. at 75]

Given these standards and since the Local 183A has not provided affidavits, certifications or other documents that either (1) asserted that Local 183A objected to the switch to SHBP, or (2) disputed the County's certified facts that Local 183A consented and agreed to the change to SHBP,^{38/} I am compelled to accept the

^{38/} Local 183A submitted a single certification from Lieutenant Gregory Palma, a member of Local 183A, attesting to a change in prescription drug coverage resulting from the switch to SHBP. However, Local 183A did **not** submit any certification from a Local 183A officer or representative with personal

(continued...)

County's certified facts as true.^{39/} Accepting these facts as true, I am also compelled to find that Local 183A waived by consent and agreement the right to negotiate over the change to SHBP under our well-settled Commission precedent on waiver. UMDNJ, P.E.R.C. No. 2010-12, 35 NJPER 330, 332 (¶113 2009); Bridgeton Bd. of Ed., P.E.R.C. No. 2011-64, 37 NJPER 72 (¶27 2011).

For these reasons, I conclude that the County did **not** violate section 5.4a(5) of the Act by changing PBA Local 183A's insurance carrier to SHBP.

PBA Local 183

With respect to PBA Local 183's charge, there is no dispute that Local 183's contractual level of health benefits changed to some degree after the County switched to SHBP.^{40/} However, the record here demonstrates that there is a genuine issue of

^{38/} (...continued)

knowledge of the *unit's* position on whether it agreed or objected to the change to SHPB. While Slattery's supplemental certification references a meeting with the County Executive about SHBP and indicates the Local 183A President (then FOP Lodge 138) was present at this meeting, there are no certified facts indicating what Local 183A's position was about SHBP and whether that position was expressed or not at the meeting. And as Slattery aptly points out, "I had no authority to speak for another union [Local 183A], much less an FOP union [now PBA] when I am a part of the PBA." (Supplemental Slattery Cert., Para. 21).

^{39/} Finding of Fact 35, *supra*; Gaccione 106 Cert., Para. 41; Gaccione 382 Cert., Para. 41).

^{40/} Findings of Fact 19 and 20.

material fact as to whether Local 183 consented or waived its right to negotiate the switch to SHBP. Given this issue of material fact, I am compelled under our summary judgment standards to deny both the County's and Local 183's summary judgment motions.

The County and Local 183 disagree about whether Local 183's consent to switching to SHBP was conditional or not. The County maintains Local 183 assented to the change to SHBP with no "strings" or conditions attached to their agreement.^{41/} Local 183 disagrees, asserting its agreement to SHBP was contingent upon a separate agreement to address the impact of SHBP on Local 183 unit employees, and that this "conditional agreement" was discussed in telephone conversations with County attorney McGrath.^{42/} Additionally, there are questions of fact concerning the circumstances surrounding Local 183's purported assent to the SHBP and what, if any, terms were proposed by Local 183 as a condition precedent to enrolling in SHBP.

A motion for summary judgment should be granted cautiously - the procedure may not be used as a substitute for a plenary hearing. Baer v. Sorbello, 177 N.J. Super. 182 (App. Div. 1981). Given the divergent accounts by the County and Local 183 about the nature and context for agreeing to SHBP, a plenary hearing is

^{41/} Finding of Fact 39, *supra*.

^{42/} Finding of Fact 39, *supra*.

necessary to make credibility determinations concerning these competing accounts. For these reasons, I conclude there is a genuine issue of material fact concerning whether Local 183 waived the right to negotiate the change in health benefits attendant to enrolling in SHBP.

County's Arguments

Lastly, I will address the County's arguments.^{43/}

The County argues throughout its brief that there is a material issue of fact as to whether there was a change in the level of health benefits for County Officer Unit employees because, "on balance" or "as a whole", the SHBP was better than Aetna.^{44/} But nowhere in the County Officer Units' collective negotiations agreements does the language "on balance" or "as a whole" appear in defining the level of health benefits for County Officer Unit employees. A virtually identical argument by an employer in Pennsauken Tp., P.E.R.C. No. 88-53, 14 NJPER 61 (¶19020 1987), was rejected by the Commission.

In Pennsauken, the Township of Pennsauken argued that while "certain [health] benefits have been diminished" by a unilateral

^{43/} In Point II of its brief, the County maintains that the Commission's decision on its scope of negotiations petition (P.E.R.C. No. 2020-40) does **not** find there was change in health benefits. As discussed in footnote 21, *supra*, it is unnecessary to address this argument since the summary judgment record here clearly establishes a change in health benefits.

^{44/} County Brief, pp. 6, 8, 9, and 11.

health insurance plan change, "other benefits have been increased" and "the new plan, 'on balance' has provided the same or better benefits." 14 NJPER at 62. The Commission rejected this argument and explained:

We do not accept this defense under this case's circumstances. Waivers are not to be read expansively and we will not do so here. The contract does not clearly give to the Township an "on balance" option. "On balance" is simply not in the contract. Nor was there any negotiations history supporting this interpretation. An employer may not unilaterally determine which plan is better "on balance." Bor. of Metuchen, P.E.R.C. No. 84-91, 10 NJPER 127, 129 (¶15065 1984). Although a negotiations agreement may give an employer that right, this one does not.

[14 NJPER at 62]

Here, like the agreement in Pennsauken, the language "on balance" or "as a whole" is nowhere in the County Officers Agreements concerning health insurance and permissible changes in insurance carriers. While such language could have been negotiated in the parties' agreements, it was not here.

The same rationale applies to the County's interpretation of the "maintenance of benefits" language for new hires. According to the County, the PBA Local 382 and FOP Lodge 106 agreements "only" require the County to "maintain" the "Pre-admission review", "second surgical opinions" and "20% co-pay for dependent coverage" benefits, and no other benefits when switching

carriers.^{45/} But the word "only" appears nowhere in the health insurance articles of either agreement, and those specific benefits are expressly limited in application to "new hires" (as of January 1, 1994) and do not speak to whether *other* health benefits can be changed. Where a contract is "clear, then it must be enforced as written" and we "cannot make contracts for parties," but only enforce "the contracts with which the parties themselves have made." In re Atlantic County, 230 N.J. 237, 254 (2017). The County and County Officer Units could have negotiated contract language that permitted any change in insurance carrier as long it maintained "only" those three specific benefits regarding pre-admission review, second surgical opinions, and co-pay dependent coverage. It did not do so here. Atlantic County, 230 N.J. at 255-56; Pennsauken, 14 NJPER at 62.

The County also argues that the County Officer Units' factual claims about "increases in co-pays and differences in benefit summaries" fails to "acknowledge that these increases are largely offset by" reduced premium contributions, reduced deductibles and "significantly reduced out of pocket maximum" costs.^{46/} This argument too, however, was squarely rejected by the Commission in Metuchen. 10 NJPER at 129. Under existing caselaw, the fact that some benefits improved as a result of a

^{45/} County Brief, p. 8.

^{46/} County Brief, p. 9.

change in carrier is not dispositive. What is dispositive is that there was a unilateral change in the level of benefits without the unit's consent. Id.

Finally, the County maintains that even if the change to SHBP resulted in a change in the level of health benefits for unit employees, the County negotiated in good faith with the County Officer Units prior to that change. Throughout its brief the County asserts it was "transparent," that it provided the County Officer Units with "information" about Aetna and SHBP at multiple meetings, and continuously throughout 2016 kept the County Officer Units "apprised" and "informed" about the County's health benefits situation.^{47/} But information sessions are not negotiations sessions. Pennsauken, 14 NJPER at 62. Negotiations requires meaningful dialogue and exchange of proposals, along with an open mind and sincere desire to reach an agreement, which the record here does not bear out. Piscataway Tp.; Hamilton Tp. Bd. of Ed.^{48/}

^{47/} County Brief, pp. 11-14.

^{48/} The County also argues on page 14 of its Brief that the "Uniformity Requirement" under the SHBP must be taken into account. But as discussed previously, the SHBP uniformity requirement does not insulate the County from its obligation to honor the collectively negotiated level of health benefits for County Officer Unit employees. Essex County, 46 NJPER at 362.

REMEDY

I am recommending the same remedy the Commission has repeatedly ordered for a unilateral change in health benefits: an order to reimburse unit employees for any costs or losses incurred as a result of the change in health insurance carriers and/or level of health benefits. And in each of these cases, the Commission has declined to provide a specific calculation of damages for the change in health insurance carriers/benefits. Metuchen, 10 NJPER at 129 (Commission orders the Borough of Metuchen to "reimburse any PBA member for any financial loss actually incurred due to the change in health insurance from Blue Shield Major Medical to Connecticut General"); Borough of Closter, P.E.R.C. No. 86-95, 12 NJPER 202 (¶17078 1986) (Commission orders the Borough of Closter to "immediately reimburse PBA unit members for any losses incurred . . ." as a result of a change in the level of health benefits); Pennsauken Tp., P.E.R.C. No. 88-53, 14 NJPER 61 (¶19020 1987) (Commission orders the Township of Pennsauken to "reinstate the insurance plan benefits that existed prior to the Township's unilateral change in health insurance plans" and "immediately reimburse FOP and SOA unit members for any losses incurred due to the change in health insurance carriers."); Union Tp., I.R. No. 2002-7, 28 NJPER 86 (¶33031 2001), recon. den. P.E.R.C. No. 2002-55, 28 NJPER 198 (¶33070 2002) (Commission Designee orders, in pertinent

part, that the Township of Union must “establish an interim program that guarantees that employees have funds available to them to pay any up-front costs of medical care and any additional costs of medical treatment that would have been covered under the Horizon [original] plan during the pendency of this litigation”); Franklin Tp., P.E.R.C. No. 2006-103, 32 NJPER 135 (¶102 2006), granting recon. I.R. No. 2006-19, 32 NJPER 135 (¶62 2006) (Commission orders the Township to “restore the status quo by establishing a fund to reimburse unit employees for any expenses under the medical plan established in March 2006 that were covered by the medical plan in existence before that date.”)

RECOMMENDED ORDER

The County of Essex is ordered to:

A. Cease and desist from:

1. Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act, particularly by unilaterally changing the contractual level of health benefits of PBA Local 382 and FOP Lodge 106 unit employees by changing their health insurance carriers from Aetna to the New Jersey State Health Benefits Program, effective January 1, 2017;

2. Refusing to negotiate in good faith with the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in

that unit, specifically by unilaterally changing the contractual level of health benefits of PBA Local 382 and FOP Lodge 106 unit employees by changing their health insurance carriers from Aetna to the New Jersey State Health Benefits Program, effective January 1, 2017.

B. Take the following affirmative action:

1. Immediately reimburse all PBA Local 382 and FOP Lodge 106 unit employees (active or retired) for any costs or losses incurred since January 1, 2017 as a result of Essex County's change in health insurance carriers from Aetna to the New Jersey State Health Benefits Program on January 1, 2017

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 be 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 Chair of the Commission within twenty (20) days of receipt of this decision what steps the Respondent has taken to comply with this order.

4. I also recommend that the Commission **DISMISS** the Complaint based on the unfair practice charge filed by PBA Local 183A: and

5. **DENY** PBA Local 183's and Essex County's
Motions and Cross-Motions for Summary Judgement.

/s/ Christina Gubitosa
Christina Gubitosa
Hearing Examiner

DATED: March 20, 2023
Trenton, New Jersey

Pursuant to N.J.A.C. 19:14-7.1, this case is deemed transferred to the Commission. Exceptions to this report and recommended decision may be filed with the Commission in accordance with N.J.A.C. 19:14-7.3. If no exceptions are filed, this recommended decision will become a final decision unless the Chair or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further. N.J.A.C. 19:14-8.1(b).

Any exceptions are due by March 30, 2023.



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 interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this Act, particularly by unilaterally changing the contractual level of health benefits of PBA Local 382 and FOP Lodge 106 unit employees by changing their health insurance carriers from Aetna to the New Jersey State Health Benefits Program, effective January 1, 2017;

WE WILL cease and desist from refusing to negotiate in good faith with the majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, specifically by unilaterally changing the contractual level of health benefits of PBA Local 382 and FOP Lodge 106 unit employees by changing their health insurance carriers from Aetna to the New Jersey State Health Benefits Program, effective January 1, 2017.

WE WILL immediately reimburse all PBA Local 382 and FOP Lodge 106 unit employees (active or retired) for any costs or losses incurred since January 1, 2017 as a result of Essex County's change in health insurance carriers from Aetna to the New Jersey State Health Benefits Program on January 1, 2017.

WE WILL 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 be 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.

WE WILL notify the Chair of the Commission within twenty (20) days of receipt of this decision what steps the Respondent has taken to comply with this order.

CO-2017-096
CO-2017-105
CO-2017-113
CO-2017-125

County of Essex

Docket No.

(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, PO Box 429, Trenton, NJ 08625-0429 (609) 292-9830