STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
BEFORE THE RHODE ISLAND STATE LABOR RELATIONS BOARD

IN THE MATTER OF

RHODE ISLAND STATE LABOR RELATIONS BOARD

CASE NO: ULP-5406

-AND-

TOWN OF EAST GREENWICH

DECISION AND ORDER

TRAVEL OF CASE

The above-entitled matter comes before the Rhode Island State Labor Relations Board (hereinafter Board) on an Unfair Labor Practice Complaint (hereinafter Complaint) issued by the Board against the Town of East Greenwich (hereinafter Employer) based upon an Unfair Labor Practice Charge (hereinafter Charge) dated July 12, 1999 and filed on July 13, 1999 by the East Greenwich Local 472, International Brotherhood of Police Officers, (hereinafter Union)

The Charge alleged

> East Greenwich Local 472, IBPO alleges that the Town of East Greenwich violated the General Laws of Rhode Island, specifically R.I.G.L. 28-7-12 and 28-7-13 (6) and (10) in that the Town, on or about July 1, 1999, unilaterally changed the employees health care coverage for employees belonging to United Healthcare, without negotiating said change.

Following the filing of the Charge, an informal conference was held on August 27, 1999 between representatives of the Union and Respondent and an Agent of the Board. When the informal conference failed to resolve the Charge, the Board issued the instant Complaint on May 22, 2000. The Employer filed its answer to the Complaint on May 30, 2000, denying the allegations contained in paragraphs 3 and 4 of the Complaint A formal hearing on this matter was held on August 22, 2000

Upon conclusion of the hearing, both the Employer and the Union made oral argument on the merits of their cases; no written briefs were submitted. In arriving at the Decision and Order herein, the Board has reviewed and considered the testimony and evidence presented and arguments made by counsel for the parties

FACTUAL SUMMARY

The Union and the Town are parties to a collective bargaining agreement which requires the Town to provide a minimum level of health insurance coverage based upon express Cross & Blue Shield benefits. In addition to this Blue Cross plan, the Employer is also obligated by statute, R.I.G.L. 27-41-27, to offer a Health Maintenance Organization (hereinafter "HMO") plan to its employees as well. During fiscal year 1998-1999, the Employer offered two HMO plans; "Plan 615" from United Healthcare, and Blue Cross Health Mate.

On June 7, 1999, the Employer sent a memo from the Finance Office to all of its employees regarding "open enrollment" for health plans for the upcoming fiscal year (July 1, 1999-June 30, 2000). The memo outlined the major changes to the two HMO plans and instructed employees to get their forms in on time, if they desired to make a change during the open enrollment period. When the Union learned of the proposed changes, it sent a representative to a meeting with other labor organizations, United Healthcare representatives, and a representative from the Employer, to discuss the same. United Healthcare's position was that it was not willing to provide the old level of benefits in the upcoming fiscal year, unless and until the Town indicated that it was contractually bound to provide the same to its employees. Moreover, United made it clear that its willingness to continue benefits under that condition would be done purely as a business decision in regards to customer relations, not because United was contractually bound to do so. The Employer determined that, as long as it offered the standard Blue Cross plan referenced in the contract, then it was not contractually obligated to offer the "Plan 615".

POSITION OF THE PARTIES

The Union argues that the provision of health benefits is a mandatory subject for bargaining, and that the Employer was obligated to bargain with the Union over changes to the level of health care benefits offered by the Employer. The Union argues that the Employer unilaterally imposed the changes that United was imposing upon the Employer. The argues that the Employer was obligated to bargain with United, and then the Union, instead of just passing along the changes, which were imposed by United Healthcare. The recognizes and accepts an arbitrator's ruling that the Employer did not violate the *collective bargaining agreement* when the health care coverage provided by United Healthcare was altered

without negotiation with the Union However, the Union argues that the Employer did violate its *statutory duty* to engage in collective bargaining. The Union argues that the bargaining obligation arises not only under the State Labor Relations Act, R.I.G.L. 28-7- et seq., but also specifically under R .G.L. 27-41-27.

The Town argues that its contract with the Union does not mandate any minimum level of benefits for the HMO plans, and that by offering the standard Blue Cross plan, it has complied with its duties under the contract. The Employer points to the recent arbitration award, issued on January 13, 2000 by Richard Boulander, Esquire, and an award issued on May 7, 1995 by Tim Bornstein, both of which were favorable to the Employer, as support for its position

DISCUSSION

The facts in this case are not in dispute; it is only the legal obligations that arise from those facts that create the controversy This Board does not sit to interpret the collective bargaining agreement of the parties and accepts the award that the arbitrator made The question is however, whether there is an obligation on the part of the Employer to bargain with the exclusive bargaining agent over the provision of health care benefits to members of the Union, which arises separate and apart from the collective bargaining agreement. In fact, Arbitrator Boulanger also recognized this issue on page 5 of his decision where he states

> "Pursuant to the terms and conditions of Article 22 Section 5, the Town was not obligated to bargain with the Union over the changes in United Healthcare Plan 615 coverage levels before its implementation of Plan #15 because the terms and conditions of Article 22 Section 5 do not address HMO coverage. Whether or not the Town was obligated to bargain with the Union concerning the HMO coverage modifications beginning July 1, 1999 based on a statutory and/or case law requirement is not presented in the joint statement of the dispute submitted by the parties to the arbitrator."

The Board believes that both R.I.G.L. 28-7- et seq. and 27-41-27 contain an affirmative obligation on the part of the Employer to bargain; with Title 28, chapter 7 providing a general bargaining obligation and with Title 27, chapter 41, providing a very specific bargaining obligation.

R.I.G.L. 27-41-27 provides in pertinent part:

(a) (2) If any of the employees of an employer or the state or political subdivision thereof described in subsection (a) (1) are represented by a collective bargaining representative or other employee representative designated or selected under the law, the offer of a membership in a licensed health maintenance organization (HMO), required by subsection (a) (1) to be made in a health benefits plan offered to those employees:

(i) Shall be first made to that collective bargaining representative or other employee representative; and

(ii) If that offer is accepted by that representative shall then be made to each employee.

The evidence, in this case, established that when the Employer received word from United Healthcare that it was going to change the coverage from Plan 615 to Plan 15, the Employer did not contact the Union before contacting and offering Plan 15 directly to the employees. (See testimony of William Higgins, who testified he became aware of the change via a notice he received with his paycheck.) (Also, See Union Exhibit #2.) The Union was never given the opportunity to review the various changes with the Employer prior to the Union being bypassed and having the offer made to the employees. Moreover, although there was no testimony on this issue, Union Exhibit #2 also establishes that the changes to the Blue Cross HealthMate HMO plan were not first presented to the collective bargaining representative before offering the same to the employees.

It may well be that, even if the Employer had discussed the changes being imposed upon it with the Union prior to contacting the individual employees, the changes would have been imposed unilaterally by the health care providers anyway. However, it may also well be that if the Employer was faced with steadfast opposition from the bargaining representative, and the Union and the Town worked together, perhaps they could have forestalled the changes as was done in 1998 In any event, the facts clearly establish that the Employer did not fulfill its obligation to first offer the changes to the exclusive bargaining agent, in violation of both R.I.G.L. 28-7-13 (6) and (10) and R.I.G.L. 27-41-27 (a) (2).

As a remedy, the Union seeks an order reverting the parties back to the status quo prior to the change, order the parties to fulfill their bargaining obligations, and proceed from that point on. The Board does not find this remedy to be appropriate under the specific circumstances presented in this case. The Board notes that the June 17th memo put the Union on notice regarding the Town's intentions to implement the new HMO plans on July 1, 1999. At that point, the plans were not yet implemented. Therefore, the Union then had an obligation to demand or request bargaining on this issue. Under normal circumstances and under the State Labor Relations Act, the Union, having failed to demand bargaining, would have waived its right to do so. However, R.I.G.L. 27-41-27, specifically modifies the Union's obligation to seek

bargaining, and imposes an affirmative duty on the Employer to first make the HMO offer to the Union, and only when it has secured the Union's approval, may it then offer the same to the employees.

The Board has no way of knowing whether or not even the combined efforts of the parities would have resulted in favorable concessions from the HMO organizations, but given the current state of health care in this State, the Board is skeptical Therefore, the Board is hesitant to order a remedy that returns the parties to the status quo. Moreover, there is the question as to what level of HMO benefits is mandated by the contract and the statute. Neither of those questions is before this Board nor could be answered by this Board. Therefore, this Board cannot unilaterally impose a minimum level of benefits in the context of such a proceeding It would seem that the Superior Court would more properly have jurisdiction under a complaint for declaratory judgment, but we shall leave the Union and the Employer to battle that issue another day

FINDINGS OF FACT

1) The Respondent is an "Employer" within the meaning of the Rhode Island State Labor Relations Act.
2) The Union is a labor organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining and of dealing with employers in grievances or other mutual aid or protection and, as such, is a "Labor Organization" within the meaning of the Rhode Island State Labor Relations Act.
3) The Union and the Town are parties to a collective bargaining agreement which requires the Town to provide a minimum level of health insurance coverage based upon express Blue Cross & Blue Shield benefits. In addition to this Blue Cross plan, the Employer is also obligated by statute, R.I.G.L. 27-41-27, to offer a Health Maintenance Organization (hereinafter "HMO") plan to its employees as well.
4) During fiscal year 1998-1999, the Employer offered two HMO plans; "Plan 615" from United Healthcare, and Blue Cross Health Mate.
5) On June 7, 1999, the Employer sent a memo from the Finance Office to all of its employees regarding "open enrollment" for health plans for the upcoming fiscal year (July , 1999-June 30, 2000) The memo outlined the major changes to the two HMO plans and instructed

employees to get their forms in on time, if they desired to make a change during the open enrollment period.

6) When the Union learned of the proposed changes, it sent a representative to a meeting with other labor organizations, United Healthcare representatives, and a representative from the Employer to discuss the same. United Healthcare's position was that it was not willing to provide the old level of benefits in the upcoming fiscal year, unless and until the Town indicated that it was contractually bound to provide the same to its employees. Moreover, United made it clear that its willingness to continue benefits under that condition would be done purely as a business decision in regards to customer relations, not because United was contractually bound to do so.

7) The Employer determined that, as long as it offered the standard Blue Cross plan referenced in the contract, then it was not contractually obligated to offer the "Plan 615".

8) When the Employer received word from United Healthcare that it was going to change the coverage from Plan 615 to Plan 15, the Employer did not contact the Union before contacting and offering Plan 15 directly to the employees.

9) The changes to the Blue Cross Health Mate HMO plan were not first presented to the collective bargaining representative before offering the same to the employees.

CONCLUSIONS OF LAW

1) The provision of health benefits is a term and condition of employment that is a mandatory subject for bargaining under R.I.G.L. 28-7-1 et seq.

2) R.I.G.L. 27-41-27 imposes an additional specific bargaining obligation upon Employers.

3) The Union has proven, by a preponderance of the evidence, that the Employer has committed a violation of R.I.G.L. 28-7-13 (6) and (10) by refusing and failing to negotiate with the exclusive bargaining agent, the provision of health care benefits under HMO plans prior to implementing the same and offering the same to Union members.

ORDER

1) The Employer is hereby ordered to cease and desist from offering HMO benefits to bargaining unit members without first bargaining with the exclusive bargaining agent and securing the bargaining agent's acceptance on the offering.

RHODE ISLAND STATE LABOR RELATIONS BOARD

Walter J. Lanni, Chairman

Frank J. Montanaro, Member

Joseph V. Mulvey, Member

Gerald S. Goldstein, Member (Dissent)

Ellen L. Jordan, Member (Dissent)

John R. Capobianco, Member

Elizabeth S. Dolan, Member (Dissent)

Entered as an Order of the
Rhode Island State Labor Relations Board

Dated: July 11, 2001

By: Joan N. Brousseau, Administrator