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“Equal To or Better Than” Is Not The Same As “Equivalent” In CBA Language

By Joshua S. Sklarin

In the matter of *Flemington-Raritan Regional Board of Education and Flemington-Raritan Regional Education Association* (decided October 21, 2009), the Public Employment Relations Commission (PERC) held that there is a significant difference, and thus a different applicable standard, when a collective bargaining agreement (“CBA”) states that a Board must provide a named plan or its “equivalent,” as opposed to an “equal to or better than” plan.

In this case, the Flemington-Raritan Board of Education (“Board”) and the Flemington-Raritan Education Association (“Association”) negotiated a CBA which included a provision on medical and prescription benefits that stated the Board would provide “Horizon Blue Card PPO Major Medical [and Prescription Drug Plan] or an equivalent insurance package mutually agreed upon” (emphasis added). During negotiations on that CBA, the Board had proposed switching health plans to an Oxford Liberty plan. The Association did not agree, and the proposal was dropped. Approximately seven months after negotiations had concluded, the Board unilaterally changed its insurance from Horizon to Oxford. The Association filed a grievance that led to Arbitration. The matter was arbitrated by Edmund Gerber.

The Board argued that the use of “equivalent” in the language of the contract was different from the use of “equal to or better than” in other CBAs. The Board cited the case of *Camden County College* (34 *NJPER* 89 (2008)), which stated that “The ‘equivalence’ standard as opposed to the... ‘equal to or better than’ standard[], allows some room for evaluating particular plan factors to determine whether contractual standards have been maintained.”

The Association argued that there was no difference between “equivalent” or “equal to or better than.” The Association claimed that even if there were a difference, that the Board and Association had a mutual understanding that the CBA language was meant to be interpreted as ‘equal to or better than.’ Among other factors, the Association pointed to the reduction in the size of the network as going against any claim that the plans were equal or equivalent.

The Arbitrator ruled that the language of the CBA (cont’d ➔)

is clear: the term “equivalent” was used and not “equal to or better than.” The Arbitrator found that there was a difference between the two phrases, and stated:

The Agreement says “equivalent” and that is what it means. If the Board changes insurance carriers, it is obligated to provide an equivalent level of health insurance under the new carriers...for the old and new plans to be equivalent they do not have to have the same “footprint;” they do not have to match item for item. But when the plans are compared overall, any shortcomings in the [Oxford Plan] must be counterbalanced by benefits and/or attributes not afforded in the Horizon plans.

However, after a review of the two plans, which included network size and specific benefits, the Arbitrator ruled:

[O]n balance, the sheer difference in size of the two networks is sufficient to establish that they are not equivalent. The issue cannot be decided solely on the basis of how

often out-of-network doctors are used. The size of the network can directly impact upon the availability of in-network providers in rural areas as well as the availability of providers with highly specialized areas of expertise. At least 140 employees had to either change their physicians or use their current doctors out-of-network.

Therefore the Arbitrator held that the Board violated the CBA. The Arbitrator stated that the Board must “make up the difference between the level of benefits it agreed to provide through the Horizon PPO and the level it actually provided by the Oxford Liberty Network.” The Board was ordered to reimburse all employees for out-of-pocket expenses that they have incurred or will incur as a result of the reduction of benefits.

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