STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

SOUTH LAKE SCHOOLS,
Respondent-Public Employer,

Case No. C98 K-223

-and-

MEA/NEA LOCAL 1, SOUTH LAKE
EDUCATION ASSOCIATION,
Charging Party-Labor Organization.
_____/

APPEARANCES:

Pollard & Albertson, P.C., by William G. Albertson, Esq., for the Public Employer

White, Przybylowicz, Schneider & Baird, P.C., by Arthur R. Przybylowicz, Esq., for the Labor Organization

DECISION AND ORDER

On May 12, 1999, Administrative Law Judge Julia C. Stern issued her Decision and Recommended Order in the above case, finding that Respondent South Lake Schools did not unilaterally modify its collective bargaining agreement with Charging Party MEA/NEA Local 1, South Lake Education Association in violation of Section 10 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210; MSA 17.455(10). The ALJ's Decision and Recommended Order was served upon the interested parties in accordance with Section 16 of PERA, MCL 423.216; MSA 17.455(16). On June 3, 1999, Charging Party filed timely exceptions to the Decision and Recommended Order of the ALJ. Respondent filed a brief in support of the recommended order and in opposition to the Union's exceptions on June 15, 1999.

The facts in this case were set forth in detail in the ALJ's Decision and Recommended Order and need not be repeated here. On exception, Charging Party contends that the ALJ erred in concluding that the school district neither announced nor implemented a change in health insurance benefits for members of the bargaining unit. We disagree and find the Union's arguments with regard to this issue to be so lacking in merit as to warrant only a cursory discussion. It is true that Respondent unequivocally expressed its intent to purchase its health insurance coverage from the Michigan Employee Benefits Services (MEBS), rather than continuing to provide Charging Party's members with Michigan Education Special Services Administration (MESSA) Super Care I insurance. It is also true that the two Summary Plan Descriptions (SPD) distributed by the Employer reflected a maximum lifetime benefit of $5 million. However, those SPDs were labeled "sample" and

"draft" respectively, and both documents contained a notation specifying that "benefits may change depending on coverages negotiated." In fact, Respondent repeatedly emphasized to both its employees and the Union that the precise level of benefits under the new plan had not yet been established, and that it would work with Charging Party to ensure that benefits available under the plan administered by MEBS would be comparable with those in the existing plan. There is simply nothing in the record to suggest that the school district ever definitively announced or implemented an increase in the maximum lifetime benefit for members of Charging Party's bargaining unit. Accordingly, we find that Respondent did not violate its duty to bargain in good faith in this case. Given this conclusion, we need not consider whether the ALJ properly determined that the parties had a bona fide dispute concerning whether the MEBS plan was comparable to the existing plan.

ORDER

The unfair labor practice charge in this case is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

_____
Maris Stella Swift, Commission Chair

_____
Harry W. Bishop, Commission Member

_____
C. Barry Ott, Commission Member

Date: _____

STATE OF MICHIGAN
EMPLOYMENT RELATIONS COMMISSION
LABOR RELATIONS DIVISION

In the Matter of:

SOUTH LAKE SCHOOLS,
Respondent-Public Employer

Case No. C98 K-223

-and-

MEA/NEA LOCAL 1, SOUTH LAKE EDUCATION ASSN,
Charging Party-Labor Organization.
_____/

Pollard & Albertson, P.C., by William G. Albertson, Esq., for Respondent

White, Przybylowicz, Schneider & Baird, P.C., by Arthur R. Przybylowicz, Esq., for Charging Party

DECISION AND RECOMMENDED ORDER OF ADMINISTRATIVE LAW JUDGE

This case was heard at Detroit, Michigan on January 13, 1999, before Julia C. Stern, Administrative Law Judge for the Michigan Employment Relations Commission. This hearing was conducted pursuant to Sections 10 and 16 of the Public Employment Relations Act (PERA), 1965 PA 379, as amended, MCL 423.210 & 423.216, MSA 17.455(10) & 17.455(16). Based upon the entire record, including post-hearing briefs filed by the parties on February 17, 1999, I make the following findings of fact, conclusions of law, and recommended order.

The Unfair Labor Practice Charge and Positions of the Parties:

Charging Party MEA/NEA Local 1, South Lake Education Association (SLEA) represents a bargaining unit of certified teachers employed by the South Lake Schools. Charging Party filed this unfair labor practice charge against Respondent on November 6,1998. The charge alleges that Respondent violated its duty to bargain in good faith under PERA by making a unilateral midterm modification in the parties' collective bargaining agreement amounting to a repudiation of this agreement. The agreement requires Respondent to provide Charging Party's members with "MESSA Super Care I Health Insurance (or comparable) . . . " During the term of this agreement, Respondent decided to change from the MESSA plan to another health care plan. According to the charge, when it decided to change plans Respondent violated PERA by unilaterally changing the maximum lifetime benefit provided to Charging Party's members. Respondent takes the position that the question of whether the two health plans are comparable is a bona fide contract interpretation dispute, and should be decided in the forum provided by the parties, i.e., the contractual grievance arbitration procedure.

Respondent also asserts that it never made the decision, or put into effect, a change in the maximum lifetime benefit.

Facts:

Respondent and Charging Party are parties to a collective bargaining agreement effective August 25, 1997 to August 30, 2000. Article XI of this agreement obligates Respondent to provide employees with "MESSA Super Care I Health Insurance(or comparable) . . . " This language has been in the parties' collective bargaining agreements for approximately eight to twelve years.

The parties began negotiating their 1997-2000 agreement in April 1997. During negotiations Respondent raised the possibility of changing health insurance carriers, but there was no serious discussion of the subject. The parties agreed in negotiations to an increase in the health insurance deductible and co-pays. However, the parties' final agreement carried over from the previous contract the insurance language set forth above.

In May 1998 Respondent called a meeting with Charging Party's president and its Uniserv director. At this meeting Respondent's personnel director said that Respondent had just received notice from the Michigan Education Special Services Administration (MESSA) that its insurance premiums were going to be significantly increased. The personnel director told Charging Party's representatives that Respondent intended to solicit bids to determine whether a more economical provider could be found. The personnel director asked the Uniserv director for written specifications of the benefits contained in the existing MESSA plan, so that Respondent could use them in soliciting bids. The Uniserv director sent Respondent this information on June 3. The specifications stated that the MESSA plan had a lifetime maximum benefit of $2 million. Respondent requested all potential bidders to provide quotes based on the benefits set out in these specifications. By early August, Respondent had received three proposals. Respondent rejected one proposal because its benefits did not match those of the existing MESSA plan. The two remaining bidders were the Michigan Employee Benefits Services (MEBS), and MESSA itself. The MEBS proposal appeared on its face to provide all the benefits of the MESSA plan at a lower cost. After receiving the bids, Respondent went through the MEBS proposal to determine whether the cost savings were real, and whether the benefits in fact equaled the existing coverage. At some point between August and October 1998, Respondent decided to purchase insurance from MEBS.

On October 6, 1998, Respondent's personnel director sent the following letter to its employees, including all members of Charging Party's bargaining unit:

> The District has undertaken an exhaustive and comprehensive review of our employee benefits and evaluated the potential savings gained by competitive bidding.
>
> The results of the comparison of the quotes received have identified a significant savings by adopting the South Lake Schools Health Care Plan and providing plan administration through the Michigan Employee Benefit Services (MEBS), Grand

Rapids, Michigan with underlying coverage through Blue Cross Blue Shield of Michigan. The South Lake Health Care Plan will be a high deductible plan with South Lake funding the deductible. January 1, 1999 will be the effective date of the new coverage. This date coincides with the increase in deductible corridors to $100 per individual and $200 per family.

- As a third party administrator, MEBS processes claims. MEBS pays claims to the limit of the plan as specified in the Summary Plan description.

- Submissions of covered claims for benefits will be promptly processed. Individuals covered by this plan have the right to question claim payments and request detailed explanation from the Plan Administrator and insurers.

Our concern, as we would assume yours as well, is comparability of coverage. We will request that our union representatives review the Summary Plan Description (SPD) and provide us with written notice of any changes that are needed to comply with our decision to provide comparable coverage to the coverage we have had previously.

The letter also announced that a series of three meetings would be held to allow employees to learn details of the plan and to answer their questions.

Employee meetings were held on October 28, November 4 and November 12. At all three meetings MEBS representatives told employees that the MEBS plan had a $5 million lifetime maximum benefit. At each of these meetings Respondent 's personnel director or its superintendent also told employees that the benefits were not finalized, and would not be until their unions provided feedback to assure that the new plan was comparable to the old insurance plans.

Sometime between October 6 and October 12, Respondent and Charging Party met at Charging Party's request. At this meeting Charging Party representatives expressed doubt that the MEBS plan was truly comparable to the existing plan, and they also complained that they had not been allowed input into the decision. Charging Party also asked for specific information on the MEBS plan.

On October 12, Respondent sent Charging Party a 32-page document entitled "summary plan description." The document had "Sample SPD" written in the top right corner of the first page, and under the title was this statement, "note: this is a sample summary plan description(SPD). Plan benefits may change depending on coverages negotiated." The benefits detailed in this document included a $5 million dollar lifetime maximum benefit. In the cover letter accompanying the document, Respondent asked Charging Party to review the document for comparability of coverage to the MESSA plan. If Charging Party found any items that needed to be clarified, addressed, or changed, Charging Party was to supply Respondent with detailed information from the existing MESSA

contracts, benefit riders, or SPD. Respondent's letter stated, "we will not accept suggested changes without complete documentation from existing plan materials, carrier contracts, letters of understanding, et al, etc."

On the day before it received this document, Charging Party filed a grievance asserting that Respondent had violated the "comparability" language in the contract. The parties met to discuss the grievance on November 5. At this meeting Charging Party pointed out that the plan document Respondent had given it was a sample document, and not the actual plan which MEBS had said it would design for Respondent individually. Charging Party asserted that it could not make a comparison between plans without looking at the actual plan. It also noted that Respondent had said that the actual plan would not be available until sometime in late November, after the employees were supposed to submit their MEBS forms. In addition, Charging Party argued that there was no guarantee of comparability in service between the two plans; that the contract language called for "insurance" and the MEBS plan was not "insurance" because it was in part a self-funded program; and that Respondent was unilaterally modifying the contract because the MEBS plan provided for a $5 million maximum lifetime limit instead of the $2 million maximum in the MESSA plan.

On November 6, Charging Party filed the instant charge.

Shortly after the last employee meeting on November 12, Respondent, at Charging Party's suggestion, sent copies of the MEBS plan document to all employees in the unit. The document was identical to the one provided to Charging Party, except that it said it was a "draft," rather than a "sample," document.

Sometime in late November 1998, Respondent told Charging Party that it was delaying implementation of the new plan from January 1 to February 1, 1999. Respondent also asked Charging Party if it would agree to a $5 million lifetime limit in the new plan. On December 17, Respondent sent Charging Party a proposed letter of agreement amending the contract to allow for the increased lifetime maximum benefit. By letter sent January 6, 1999, Charging Party rejected this offer, indicating that it opposed to any changes in the current insurance protection since "the total MEBS plan which the Board has approved has a multitude of unfavorable components."

On January 7, Respondent's personnel director sent MEBS a letter stating, in pertinent part:

> Please be advised that the representatives of the South Lake teachers have not responded to our offer to increase the lifetime benefit maximum from $2 million to $5 million. Thus, Blue Cross/Blue Shield shall only make the $2 million maximum available for our teachers.
>
> Therefore, effective February 1, 1999 and until further notice, I direct you to pay no claim on behalf of any teacher nor any of his/her dependents, if payment of that claim will create a benefit maximum in excess of two million dollars.

On January 11, 1999, Respondent executed a contract of insurance with MEBS. According to Respondent, pursuant to the personnel director's letter of January 7, this contract provides only a $2 million lifetime maximum benefit to employees represented by Charging Party. As of the date of the hearing, Charging Party's members had not been told what their lifetime maximum benefit was to be under the new plan.

Discussion and Conclusions of Law:

The Commission has held that it will not find a breach of the duty to bargain in good faith where the charging party merely asserts that there has been a breach of a collective bargaining agreement. In order to establish that PERA, and not merely the contract, has been violated, the charging party must show repudiation of the contract or the collective bargaining relationship. *Co of Oakland Sheriff's Dept*, 1983 MERC Lab Op 538. When the Commission refuses to find an unfair labor practice without a finding of repudiation, it is not "deferring" the unfair labor practice dispute to arbitration, but making a substantive finding that PERA has not been violated.[1] If there is a bona fide dispute between the parties over the interpretation of contract language, the Commission will not find repudiation. *Twp of Redford*, 1985 MERC Lab Op 1180; *Taylor Bd. of Ed.*, 1983 MERC Lab Op 77.

In the instant case, the contract required Respondent to provide either MESSA Super Care I health insurance or "comparable." Charging Party filed a grievance alleging that the MEBS coverage was not, in several respects, "comparable" to the MESSA plan. There is no dispute that the maximum lifetime benefit contained in the MEBS draft summary plan was not the same as the maximum lifetime benefit in MESSA Super Care I. However, "comparable" does not necessarily mean "identical." I find that there was a bona fide dispute between the parties about the meaning of the term "comparable," in the contract. I conclude that because the parties had a bona fide dispute over the meaning of this contract language, there was no unfair labor practice committed in this case.

Charging Party argues that the only distinction between this case and *St. Clair ISD v Ed Assn/MEA*, 458 Mich 540 (1998), is that in *St. Clair* it was the union, not the employer, that increased the lifetime maximum health insurance benefit. However, in *St.Clair*, the applicable contract language stated that "the District agrees to provide MESSA Super Med II for 1988-89 and MESSA Super Care II for 1989-90 and 1990-91," and there was no dispute over the meaning of this language.

I also agree with Respondent that it did not, in fact, change the maximum lifetime health insurance benefit for Charging Party's members. I find that Respondent neither announced nor implemented a change in health insurance benefits for Charging Party's members. Sometime between August and October 6, 1998, Respondent decided to purchase insurance from MEBS, rather than continuing to purchase it from MESSA. In response to Respondent's request for bids, MEBS provided Respondent with a summary plan description. However, Respondent did not decide to purchase the benefits set out in that summary plan description at the time it decided to purchase insurance from MEBS.

---

[1] In *Detroit Fire Fighters, Local 344 v Detroit*, 408 Mich 663 (1980), the Court held that the Commission had no authority to defer resolution of unfair labor practice disputes to arbitration.

The record also establishes that between October 1998 and January 1999, when Respondent signed the contract with MEBS, Respondent consistently told its employees and Charging Party that it would negotiate with MEBS any changes to the summary plan description necessary to make the benefits in the MEBS plan comparable to the employees' existing benefits. In Respondent's October 6, 1998, letter, Respondent told its employees that it would make "changes (in the MEBS summary plan description) that are needed to comply with our decision to provide comparable coverage to the coverage we have had previously." Employees were informed by a MEBS representative, at the series of employee meetings, that the MEBS plan contained a $5 million lifetime maximum benefit. However, they were also told by Respondent at these meetings that the benefits they would receive were not finalized, and would not be until their unions provided feedback to insure that the new plan was comparable to the old plans. On October 12, Respondent sent Charging Party a copy of the MEBS summary plan description. This copy was labeled "sample," and stated on its cover that "plan benefits may change depending on coverages negotiated." In fact, in a meeting held on November 5 to discuss Charging Party's grievance, Charging Party complained that it could not be asked to compare benefits since it had not been given a copy of the finalized plan. Similarly, copies of the summary plan description sent to employees were labeled "draft," and contained the same statement about benefit changes. Between November and January Respondent attempted without success to get Charging Party to agree to the change in the lifetime maximum benefit, and postponed the implementation date of the new plan while it did so. Finally, on January 7, 1999, Respondent directed MEBS not to pay claims for Charging Party's members or their dependents that exceeded a lifetime maximum of $2 million until further notice. As a consequence, when the MEBS plan took effect on February 1, 1999, Charging Party's members had a $2 million maximum lifetime benefit cap. At the time of the hearing in January 1999, employees had not been told that they were not going to receive the higher cap. However, all of Respondent's previous communications with employees stated that the actual benefits had not yet been determined, and there is no evidence that Charging Party's members were ever affirmatively told that they would receive the higher cap.

To summarize, I find that Respondent did not repudiate its contract with Charging Party because the parties had a bona fide dispute over whether the proposed new plan, including the increased lifetime maximum benefit, was "comparable" to the existing MESSA plan. I also find that Respondent did not in fact change the maximum lifetime health insurance benefit available to members of Charging Party's bargaining unit. Either of these findings would serve as a sufficient basis of concluding that Respondent did not violate the Act in this case. For these reasons, I recommend that the Commission find that Respondent did not violate its duty to bargain in good faith, and I recommend that it adopt the following order.

Recommended Order

The charge in this case is hereby dismissed in its entirety.

MICHIGAN EMPLOYMENT RELATIONS COMMISSION

Julia C. Stern
Administrative Law Judge

Dated: _____