

**United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL**

Advice Memorandum

DATE: August 21, 2000

TO : Rosemary Pye, Regional Director
Region 1

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

SUBJECT: Providence Journal Company
Case 1-CA-37763

This Section 8(a)(5) and (1) case was submitted for advice as to whether the Employer violated the Act when it unilaterally implemented its health insurance proposals.

We conclude, in agreement with the Region, and for the reasons discussed by the Region, that the Employer violated the Act by unilaterally implementing its health insurance proposals. The parties had not reached a good faith impasse because, among other things, the Employer had failed to give the Union, in a timely fashion, relevant information concerning its health insurance plans.

We find no merit in the Employer's defense that "economic exigencies" justified its implementation of a new health benefits package absent bargaining to impasse. The conditions which the Employer claims were "economic exigencies" simply were not. The Board has held that, absent a "financial emergency" or "major economic effect" on the enterprise, economic events such as loss of significant accounts or contracts, operation at a competitive disadvantage, or supply shortages do not justify unilateral action.¹ The Board has further held that, although lesser exigencies may justify single issue implementation after bargaining to impasse on that issue, such exigencies exist only where external events have compelled prompt action by the employer.²

Here, it would not have caused a financial emergency or major economic effect, as those terms have been defined

¹ Sartorius, Inc., 323 NLRB 1275, 1284 (1997); RBE Electronics, 320 NLRB 80, 81-82 (1995), Maple Grove Health Care Center, 330 NLRB No. 121 (March 3, 2000).

² RBE Electronics, 320 NLRB at 81-82.

by the Board, for the Employer to continue providing the Blue Cross plan at a higher cost. Therefore, the Employer was required to bargain to impasse before eliminating that plan. Moreover, the Employer knew several months before bargaining, and long before the changes would go into effect, that Blue Cross insurance premiums would be increased significantly, and thus this was not a situation where the Employer was compelled to take prompt action.³ Finally, the Employer implemented changes which clearly went beyond anything necessary to address the claimed exigency.

Therefore, the Region should issue complaint, absent settlement, alleging that the Employer violated Section 8(a)(5) and (1) of the Act when it implemented its health insurance proposal without having reached a good faith impasse.

B.J.K.

³ Even if the Employer can demonstrate the lesser exigency of having been compelled to take prompt action, that would only permit implementation without waiting for impasse on all of the issues in collective bargaining; the Employer still would have had to bargain to impasse on the health care issue before lawfully implementing the changes it made.