

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
WASHINGTON, D.C.**

**OAKLAND PHYSICIANS MEDICAL CENTER, LLC
d/b/a DOCTORS' HOSPITAL OF MICHIGAN**

Respondent

and

CASE 07-CA-120931

MICHIGAN ASSOCIATION OF POLICE (MAP)

Charging Union

**COUNSEL FOR THE GENERAL COUNSEL'S
ANSWERING BRIEF TO RESPONDENT'S EXCEPTIONS
TO THE ADMINISTRATIVE LAW JUDGE'S DECISION**

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Scott R. Preston, Counsel for the General Counsel, pursuant to Section 102.46 of the Board's Rules and Regulations, respectfully submits this Answering Brief to the Exceptions to the Administrative Law Judge's Decision filed by Respondent Oakland Physicians Medical Center, LLC, d/b/a Doctors' Hospital of Michigan.

I. INTRODUCTION

On August 15, 2014, Administrative Law Judge Christine E. Dibble (hereafter, ALJ) issued her Decision and recommended Order. She found that deferral of this matter would be inappropriate and that Oakland Physicians Medical Center, LLC, d/b/a Doctors' Hospital of Michigan (hereafter Respondent), violated Section 8(a)(1), (5) and 8(d) of the Act by unilaterally changing its health insurance plans without prior notice to, an opportunity to bargain with, and consent of the Charging Union. Respondent has raised six exceptions to the ALJ's Decision in this matter. The first five exceptions all address the ALJ's finding that deferral in this matter would be inappropriate. The last exception is to the ALJ's finding and conclusion that Respondent's actions violated the Act. However, Respondent's Brief in Support of Exceptions raises no arguments as to the ALJ's findings as to Respondent's actions in this matter; rather, it states that "[t]he only question involved with these exceptions is whether the allegations of the Complaint should be deferred to the parties' grievance/arbitration procedure. . . ." Respondent's arguments are not supported either by the record in this matter or the law, and the ALJ's Decision should be affirmed.

II. DISCUSSION

In its brief in support of its exceptions, Respondent points to the Board's holding in *United Aircraft Corp.*, 204 NLRB 837 (1971), that "[f]inal adjustment by a method agreed upon by the parties is hereby declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement." Respondent tries to apply this established case law to the instant matter. However, Respondent's arguments not only mischaracterize the facts in this case, but also are contrary to its own arguments at the hearing in this matter.

Before any witness was called at the hearing, Counsel for the General Counsel raised the issue of Respondent's noncompliance with a subpoena requiring production of documents showing Respondent's actions and communications in the termination of the prior health insurance plans and the January 1, 2014, start in coverage of the new health insurance plans. Respondent's attorney argued that such evidence was not necessary and stated:

the issue for Your Honor in this case is, did the -- and then we'll stipulate the Hospital made changes in the healthcare coverage that covered the employees at issue on January 1st, 2014. The issue is, had the parties reached consent to modify the contract they had in effect by 1/1/14? That's the issue. That is the issue. (Tr 14).¹

Respondent's position has always been that "[a]ny changes Respondent made to

¹ References to the record are hereinafter abbreviated as follows: Transcript - Tr (followed by page number); and General Counsel Exhibit - GC Ex (followed by exhibit number).

its collective bargaining agreement with the Charging Union were made with the Charging Union's consent.” (GC Ex 1(i)).

In arguing that an arbitrator could find that, under the terms of the collective-bargaining agreement, Respondent had the authority to unilaterally make the changes it made, Respondent is being disingenuous. Article 16.1 of the parties’ agreement states, in part, that “[t]he Hospital reserves the right to amend the plan design of health insurance benefits other than the premium co-share schedule listed below.” (GC Ex 7). Article 16.1 goes on to provide that full-time employees will be required to pay 10% of the insurance premium, and part-time employees who work 60 hours or more in a bi-weekly period and employees working less than 60 hours in such a period will pay 25% and 50% of the premium, respectfully. As to these provisions, ALJ Dibble found “the special expertise of an arbitrator is unnecessary to interpret the contract.” (ALJD 10-11). Respondent argues that an arbitrator may find that the language in Article 16.1 granting Respondent the right amend the plan design also grants it a right to unilaterally change the premium contribution percentages to be paid by employees. Such an argument defies rational thought. The clear explicit language of Article 16.1 excludes changes to employee premium contributions from Respondent’s right to make changes to plan designs. Respondent changed premium contribution percentages to 35% and 40 % and the ALJ is correct that “the contract language addressing premium co-share needs no interpretation.” (ALJD 10).

ALJ Dibble also noted that the parties’ collective-bargaining agreement provides that Respondent must give the Charging Union notice of any changes to plan

designs and that such notice was not provided until after implementation. She found that “the violation of the contract appears so obvious that there can be no contrary interpretation by an arbitrator” and that any “contract interpretation as it relates to health plan design is so intertwined with Respondent’s unilateral change in the employee’s premium contributions that they cannot be separated.” (ALJD 11).

Respondent disagrees with this finding. However, it does not point to any contractual language that an arbitrator could interpret in reaching a decision contrary to that of the ALJ. Instead, Respondent argues that the absence of language in the contract as to when notice is to be given may allow an arbitrator to decide that notice does not have to be given until after implementation. Such a decision would not be based on an arbitrator’s special expertise in interpreting contractual language and runs counter to the obvious obligations of these provisions, as the ALJ found.

The General Counsel’s main burden in this matter was to establish that the alleged contractual changes were made without the consent of the Charging Union in violation of Section 8(a)(5) and 8(d) of the Act. Arbitration is not suitable in cases such as this, where the issue to be decided is not a matter of contract interpretation but whether the parties agreed to modify terms of a collective-bargaining agreement.

Teamsters Union Local No. 85, 206 NLRB 500, 509 (1973); see also *Chapin Hill at Red Bank*, 359 NLRB No. 125 at 10 (June 3, 2013 (“[T]he Board has held that we will not defer when contract terms do not arguably authorize the action taken by Respondent, and where the matter does not fall within the context of contract interpretation.”)).

Deferral is an affirmative defense, and the moving party bears the burden of proof. *Rickel Home Centers*, 262 NLRB 731, 731 (1982). Respondent has not and cannot show that there are any contract interpretation issues in this matter that would call for an arbitrator's special expertise. Rather, as Respondent argued at the hearing, the issue in this case is whether Respondent obtained consent from the Charging Union to make the changes that the ALJ appropriately concluded to violate the Act. The ALJ correctly found and concluded that deferral would be improper in this matter and that Respondent violated Sections 8(a)(1), (5) and (d) of the Act.

III. CONCLUSION

For the reasons set forth above and in the Administrative Law Judge's Decision, it is urged that Respondent's exceptions be denied in their entirety. It is further requested that the Board affirm the ALJ's findings of fact, conclusions of law, and recommended Order.

Dated at Detroit, Michigan, this 26th day of September, 2014.

Respectfully submitted,

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