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TWO ALERTS

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SEHBP Amendments Would Increase Districts' Health Benefits Costs

By Joshua S. Sklarin

The School Employees Health Benefits Commission (the "Commission") met on October 28, 2009, where a consideration of a number of union-supported amendments to the School Employees Health Benefits Plan ("SEHBP") was to occur. While the discussion did not ensue, these amendments remain on the Commission's agenda.

At present, there is a vacancy in one of the five "non-union" slots on the Commission. This position became vacant when Jane Oates left in April of this year to work for the Obama Administration. Moreover, because Richard Quinn, President for PSE&G, has missed several key votes, some recent important votes have been made with only three "non-union" members present. As it happens, these votes have come down in favor of the union by 4-3 margins. One such vote occurred on September 23, 2009. The Commission voted 4-3 to approve New Jersey Education Association-proposed changes that essentially eliminate the SEHBP's ability to increase out-of-pocket limits and co-payments for the prescription drug program of retirees. The new proposed formula ties these increases to the lower of the consumer escalator or 60% of the consumer price index. With inflation at record lows, this formula effectively precludes any increase in retiree co-pays, regardless of whether the costs of the drugs increase. Although the New Jersey School Board Association (the "NJSBA") voted against the amendment because it is expected to increase the cost of the program by \$13 million dollars at year four, it nevertheless was passed by the Commission.

Other relevant union-backed proposals include the following:

- (1) the requirement of districts that still offer traditional coverage to supplement the SEHBP coverage for the remainder of the Collective Bargaining Agreement;
- (2) the requirement of the Commission to establish a reentry charge for Districts that left the plan;
- (3) the termination from membership of any employer who is 31 days late in payment;
- (4) the limitation of employers to modify the waiver-of-coverage provisions to once a year on January 1; and

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- (5) the elimination of employers' ability to delay premium payments for 30 or 60 days.

These changes would have a significant impact on the health benefits costs currently borne by districts that participate in SEHBP. They would come in addition to the 20%-plus increase in premiums announced by Governor Corzine in May of this year. The NJSBA has urged its members to express their concerns by contacting Cynthia Jahn, of the NJSBA, who serves on the Commission.

Appeals Judge Permits Access to Plaintiff's Medical Records

By Denise Del Priore

The United States District Court of New Jersey recently upheld a Magistrate Judge's order permitting members of the Voorhees Board of Education ("Board") access to a plaintiff's medical records. The records contained details of his care and treatment for various psychiatric and psychological disorders.

In *Levine v. Voorhees Board of Education*, the Magistrate Judge determined that because the plaintiff in the case placed his psychiatric condition at issue, his medical records were discoverable. The Judge granted the Board permission to show its expert's report to their nine Board members, in order to allow them to prepare for trial and/or to consider settlement discussions. Due to the confidential nature of the plaintiff's medical records, however, the Judge issued an order requiring that the records be protected pursuant to the terms of a Confidentiality Order. The Judge also ruled that before reviewing the report, each Board member would be required to sign a

written agreement to be bound by the Confidentiality Order. On appeal, the plaintiff asserted that allowing disclosure of his medical records to the individual Board members was unwarranted, unnecessary, and premature. The plaintiff argued that the report had not, as of that time, been written so its contents were unknowable. Moreover, once the report was written it would be too late to "take back" any highly sensitive information. Further, the plaintiff argued that his medical and psychiatric history was entitled to the highest degree of protection, to ensure that the information was disseminated on a strictly "need to know" basis. The plaintiff argued that allowing all of the nine Board members to view his records increased the chances of a potential leak exponentially.

The District Court upheld the Order of the Magistrate Judge, stating that the Judge clearly considered the plaintiff's need for confidentiality and balanced that with the Board's need to review the expert's report in order to assist the in trial preparation and/or settlement negotiations. Further, the court held that the Magistrate Judge was cognizant of the need for confidentiality and thus ruled that the Board members could review the expert's report on the plaintiff only after first signing an agreement to be bound by the Confidentiality Order. Therefore, the court upheld the Judge's decision to allow the Board access to the plaintiff's medical records.

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