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NJEA defeats Christie in Medicare Advantage case

Court rejects governor's political manipulation

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On Monday, September 26, Superior Court Judge Mary Jacobson dismissed with prejudice the state's lawsuit seeking to compel NJEA representatives to attend a meeting of the SEHBC where the state intended to force an illegal vote to move all Medicare-eligible retirees in the SEHBP to a Medicare Advantage plan.

NJEA won a decisive victory yesterday over Gov. Christie and the State of New Jersey in the fight to protect the medical benefits of NJEA's Medicare-eligible retirees. In a **ruling** issued late Monday afternoon, Judge Mary Jacobson dismissed with prejudice a lawsuit brought by the state that sought to compel NJEA's representatives on the School Employees' Health Benefits Commission (SEHBC) to attend a commission meeting where the state was threatening to take an illegal vote to change the medical benefits of a majority of retirees. The state was seeking to exploit an imbalance on the commission, which resulted from the death of a labor representative last year and Gov. Christie's failure to fill the seat with another labor representative.

The state filed the lawsuit earlier this month, after NJEA's representatives did not attend two meetings called by the state in August. The state intended to use those meetings to take a vote to force all Medicare-eligible retirees into a Medicare Advantage plan. Retirees in the School Employees' Health Benefits Plan (SEHBP) currently have the option of a traditional Medicare supplement or a Medicare Advantage plan. Approximately 90 percent of retirees choose the traditional Medicare supplement plan, which the state wishes to eliminate in favor of mandatory participation in a Medicare Advantage plan.

NJEA's representatives objected because such a change in benefits can, by law, only be approved by the Plan Design Committee (PDC) of the School Employees' Health Benefits Plan (SEHBP.) Though the commission lacks the authority to make such a change, the state wanted to compel NJEA's representatives to attend a meeting where such a vote could be taken. The judge initially declined at the state's request and the parties instead agreed to an information-only meeting where the proposed Medicare Advantage plan was discussed at a commission open public meeting. Based on information provided by the state at that meeting, the NJEA representatives continued to maintain that the SEHBC cannot legally take away an existing plan and force all Medicare-eligible retirees into a Medicare Advantage plan as this constitutes a plan design change, and therefore subject to review by the PDC.

The state attempted earlier this year to get the same change approved by the PDC, which is comprised of equal numbers of representatives chosen by labor and by management and currently has all seats filled. The PDC did not reach consensus on that change at the time. After the state canceled a PDC meeting scheduled for this summer, the committee is not scheduled to meet again until next month.

In August and again this month, the state sought to end-run the PDC by having the SEHBC vote on the plan change instead, a vote that NJEA's representatives believe would be illegal because the commission lacks jurisdiction to vote on plan design changes. The state's reason for seeking to hold the vote in the commission is transparent: the SEHBC is supposed to have four labor and four management representatives, but Gov. Christie has refused to appoint a fourth labor representative following the death of a commission member last year. As a result, the state currently holds a 4-3 majority. In response to this imbalance and to the lawsuit, NJEA successfully argued that any order mandating their attendance at the commission meeting would result in an unlawful vote on the termination of the traditional Medicare health plan and introduction of a Medicare Advantage plan. For NJEA members, the dismissal of the lawsuit means that NJEA retirees are not vulnerable to having their benefits forcibly changed by the commission.

In her ruling from the bench, Judge Jacobson roundly rejected the state's arguments and made a point of validating NJEA's concerns about the attempted manipulation of the commission by the state. She agreed that NJEA had a legitimate cause for concern about how the Division of Pensions had manipulated the meeting schedule. She also agreed that NJEA's representatives on the commission had reason to be concerned that attending a meeting where they believed an illegal vote was likely to be taken would be a violation of their fiduciary duty.

NJEA president Wendell Steinhauer hailed the victory and called on Gov. Christie to do his job and fill the vacant seat on the SEHBC. "Today's ruling is a victory for NJEA's retired members, who have a right to the benefits they have earned and are promised under the law," Steinhauer said. "By rejecting the state's attempt to illegally force a vote while labor does not have its full legal representation on the SEHBC, Judge Jacobson made a clear statement that Gov. Christie's political manipulation is inappropriate and will not be sanctioned by the court."

Steinhauer called on Christie to fulfill his obligation to fill the vacancy on the SEHBC so the commission can do its work. "Gov. Christie has all the names and information he needs to fill the seat. He can put this issue to rest by filling the seat

immediately so the commission can do its work and function as it is supposed to under the law. He doesn't have to wait until tomorrow to do his job. Any further delay in the commission's work is entirely Gov. Christie's responsibility."

Steinhauer also stated that NJEA stands ready to continue fighting in court should the state again attempt to force an illegal vote by the SEHBC. "The law is clear and we will not allow Gov. Christie or anyone else to break the law to infringe on our members' rights. Gov. Christie is not above the law."



TAKE ACTION

NJEA urges members to continue to **contact Gov. Christie** to demand that he do his job and appoint a labor representative to fill the current vacancy on the SEHBC.

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