

D.U.P. NO. 2023-22

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE THE DIRECTOR OF UNFAIR PRACTICES

In the Matter of

BERKELEY TOWNSHIP BOARD
OF EDUCATION,

Respondent,

-and-

Docket No. CO-2023-072

BERKELEY TOWNSHIP EDUCATION
ASSOCIATION,

Charging Party.

SYNOPSIS

The Director of Unfair Practices dismisses an unfair practice charge filed by the Berkeley Township Education Association against the Berkeley Township Board of Education. The charge alleges that the Board violated N.J.S.A. 34:13A-5.4a(1) and (5) when it eliminated medical insurance waiver payments without negotiating the change. The Director dismissed the charge because the insurance waiver payment provision in the parties' collective negotiations agreement is unambiguous, does not provide for medical insurance waiver payments, and was not the product of a mutual mistake.

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Appearances:

For the Respondent,
Lenox Law Firm, attorneys
(Patrick F. Carrigg, of counsel)

For the Charging Party,
Oxford Cohen, P.C., attorneys
(Randi Doner April, of counsel)

REFUSAL TO ISSUE COMPLAINT

On November 2, 2021 and November 3, 2021, the Berkeley Township Education Association (Association) filed an unfair practice charge and an amended charge, respectively, against the Berkeley Township Board of Education (Board). The charge alleges that the Board unilaterally eliminated medical insurance waiver payments without first negotiating the change, in violation of sections 5.4a(1) and (5)^{1/} of the New Jersey Employer-Employee

^{1/} These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with,
(continued...)"

Relations Act (Act), N.J.S.A. 34:13A-1, et seq.

On November 22, 2022 and January 27, 2023, the Board filed position statements with exhibits. The Board contends that the elimination of medical insurance waiver payments was specifically negotiated during the parties' last round of collective negotiations, and as a result, it is no longer obligated to provide said payments to unit members who waive medical insurance coverage.

On March 2, 2023, the Association filed a position statement. In its position statement, the Association argues that the Board's failure to provide medical insurance waiver payments constitutes a failure to negotiate over the terms and conditions of employment because the parties never intended to eliminate the waiver payments.

The Commission has authority to issue a complaint where it appears that the charging party's allegations, if true, may constitute unfair practices on the part of the respondent. N.J.S.A. 34:13A-5.4c; N.J.A.C. 19:14-2.1. The Commission has delegated that authority to me. Where the complaint issuance

1/ (...continued)
restraining or coercing employees in the exercise of the rights guaranteed to them by this act;" and "(5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

standard has not been met, I will decline to issue a complaint.

N.J.A.C. 19:14-2.3.

I find the following facts.

The Association represents certificated and non-certificated staff employed by the Board excluding certain titles specified in the parties' collective agreement. See 2021-2024 CNA, Art. 1 (Board's January 27, 2023 Position Statement, Ex. L). The Board and the Association are parties to a collective negotiations agreement (CNA) in effect from July 1, 2021 through June 30, 2024. The grievance procedure ends in binding arbitration.

On April 28, 2021, New Jersey Education Association (NJEA) UniServ Representative Wendy Sistarenik (Sistarenik) provided a proposed Memorandum of Agreement (MOA) on behalf of the Association to the Board's attorney, Patrick Carrigg, Esq. (Carrigg). See Board's January 27, 2023 Position Statement, Ex.

A. The proposed MOA provided, in pertinent part:

7. Modified Language: Article 7.D.3. and 7.D.7

3. Employees who voluntarily elect to waive coverage shall be entitled to receive 25% of the premium cost of the waived insurance, or 25% of the Board's contribution to the annual premium, whichever is less, subject to the provisions of P.L. 2010, c. 2, which apply to any employee health benefit waiver requests filed or approved after May 21, 2010, and cap the maximum amount of any payment for the waiver of health insurance coverage to 25% of the amount saved by the employer or \$5,000, whichever is less. The vision plan is not included in the waiver option. **Effective July 1, 2021, employees are only entitled to receive waiver payments for prescription and dental benefits as per the above calculation. If the District returns to a private carrier for medical insurance the Parties agree**

to reinstate the waiver for medical, prescription and dental benefits.

See Board's January 27, 2023 Position Statement, Ex. B.

On May 3, 2021, the Board made a counterproposal to the Association's proposed MOA, which provided, in pertinent part:

7. Modified Language: Article 7.D.3. and 7.D.7

3. Employees who voluntarily elect to waive coverage shall be entitled to receive 25% of the premium cost of the waived insurance, or 25% of the Board's contribution to the annual premium, whichever is less, subject to the provisions of P.L. 2010, c. 2, which apply to any employee health benefit waiver requests filed or approved after May 21, 2010, and cap the maximum amount of any payment for the waiver of health insurance coverage to 25% of the amount saved by the employer or \$5,000, whichever is less. The vision plan is not included in the waiver option. ~~Effective July 1, 2021, employees are only entitled to receive waiver payments for prescription and dental benefits as per the above calculation. If the District returns to a private carrier for medical insurance the Parties agree to reinstate the waiver for medical, prescription and dental benefits.~~

See Association's Position Statement, unmarked exhibit.

On July 7, 2021, Carrigg sent an e-mail to Sistarenik, which read, "See attached. Please confirm this is our MOA reached at mediation. If satisfactory, I'll circulate for signatures using Adobe sign tomorrow." See Board's January 27, 2023 Position Statement, Ex. C. The attached MOA provided, in pertinent part:

7. Modified Language: Article 7.D.3. and 7.D.7

3. Employees who voluntarily elect to waive private insurance coverage shall be entitled to receive 25% of the premium cost of the waived insurance, or 25% of the Board's contribution to the annual premium, whichever is less, subject to the provisions of P.L. 2010, c. 2, which apply to any employee health benefit waiver

requests filed or approved after May 21, 2010, and cap the maximum amount of any payment for the waiver of private insurance coverage to 25% of the amount saved by the employer or \$2,500, whichever is less. The vision plan is not included in the waiver option. **Effective July 1, 2021, employees are only entitled to receive waiver payments for prescription and dental benefits as per the above calculation.**

See Board's January 27, 2023 Position Statement, Ex. D.

On July 8, 2021, Sistarenik responded, via e-mail, "Confirmed. This is what we agreed to." See Board's January 27, 2023 Position Statement, Ex. E.

On July 12, 2021, the parties' MOA was executed by Board and Association representatives. See Board's January 27, 2023 Position Statement, Ex. J. Paragraph 18 of the MOA states, "All issues not mentioned herein are withdrawn. All other language in the expired agreement unless amended herein shall continue in the new contract and remain [the] status quo." See Board's January 27, 2023 Position Statement, Ex. J.

On December 8, 2021, the parties executed their current CNA, which is effective July 1, 2021 through June 30, 2024. See Board's January 27, 2023 Position Statement, Ex. L. Article 7, entitled "Health Insurance," and Section D, entitled "Insurance Waiver Provision," provide in pertinent part:

3. Employees who voluntarily elect to waive coverage shall be entitled to receive 25% of the premium cost of the waived insurance, or 25% of the Board's contribution to the annual premium, whichever is less, subject to the provisions of P.L. 2010, c. 2, which apply to any employee health benefit waiver requests filed or approved after May 21, 2010, and cap the

maximum amount of any payment for the waiver of health insurance coverage to 25% of the amount saved by the employer or \$2,500, whichever is less. The vision plan is not included in the waiver option. **Effective July 1, 2021, employees are only entitled to receive waiver payments for prescription and dental benefits as per the above calculation.**

See Board's January 27, 2023 Position Statement, Ex. L.

On or about October 28, 2022, the Board informed the Association that it was changing its health insurance carrier from the School Employees' Health Benefits Program (SEHBP) to a private carrier and that the medical insurance waiver payment was eliminated. See Association's Amended Charge.

ANALYSIS

The communications between Sistarenik and Carrigg establish that the insurance waiver provision at issue was the product of back-and-forth negotiations between the Association and the Board. The Association initially proposed waiver payments for medical, dental, and prescription insurance. The Board responded by making a counterproposal. Then, the parties ultimately settled on the insurance waiver payments for dental and prescription benefits only. As the language in the fully executed Agreement clearly states in bold, "**Effective July 1, 2021, employees are only entitled to receive waiver payments for prescription and dental benefits as per the above calculation.**"

See Board's January 27, 2023 Position Statement, Ex. L (emphasis added).

Notwithstanding this clear and unambiguous agreed-upon language, the Association argues that the Board unilaterally eliminated the medical insurance waiver payments without negotiating the change because it was not the parties' intent to eliminate the medical waiver payment. See Association's Position Statement. Conversely, the Board contends that the elimination of the medical insurance waiver payment was specifically negotiated during the last round of collective negotiations. See Board's January 27, 2023 Position Statement at 1.

The Commission is reluctant to set aside an agreement which is clear on its face. Paterson Bd. of Ed., P.E.R.C. No. 90-42, 15 NJPER 688, 691 (¶20279 1989). "A party seeking such relief must establish by 'clear, satisfactory, specific and convincing evidence that the written agreement does not accurately reflect what the parties had intended.'" Id. (citing Hillside Bd. of Ed., P.E.R.C. No. 89-57, 15 NJPER 13, 14 (¶20004 1989)). Although the Commission has recognized that "[h]armonious labor relations would not be served by enforcing contract language that conflicts with both parties' intent," it has warned that a party may not be excused from the "unintended consequences of a negotiated agreement." Hillside Bd. of Ed., 15 NJPER at 14, n.4. Simply put, "[a] party cannot expect relief merely because it did not realize the consequences of its assent." Id.

Where, as here, the insurance waiver provision in the executed Agreement is clear on its face, the Association must demonstrate that the provision "represents a mutual mistake contrary to the intentions of both parties" in order to have the insurance waiver provision set aside. See Paterson Bd. of Ed., 15 NJPER at 691. "[T]he doctrine of mutual mistake applies when a mistake was mutual in that both parties were laboring under the same misapprehension as to a particular essential fact." Bonnco Petrol, Inc. v. Epstein, 115 N.J. 599, 608 (1989) (emphasis in original).

The Association has not pled or presented clear and convincing factual allegations that the agreed-upon language concerning insurance waiver payments does not accurately reflect what the parties had intended. In fact, the Association acknowledges in its position statement that the Board crossed out the insurance waiver payment each time the Association included the payment in its draft proposals. See Association Position Statement at 6. The Board's actions in crossing out the proposed medical insurance waiver language each time shows that the Board intended to eliminate the medical waiver payments. Accordingly, only the Association misapprehended the negotiated medical waiver provision, which is insufficient to set it aside. See Bonnco Petrol, Inc., 115 N.J. at 608.

The fact that the Association's unilateral mistake inured to the benefit of the Board does not entitle the Association to relief simply because it did not realize the consequences of its assent. See Paterson Bd. of Ed., 15 NJPER at 691. Further, to the extent that the Association is alleging the Board committed an unfair practice by unilaterally changing an established past practice (i.e., eliminating medical waiver payments), that claim lacks merit because an employer does not violate the Act by discontinuing a past practice granting more generous benefits and restoring the benefit level set by clear and unambiguous contract language. See Kittany Reg'l Bd. of Ed., P.E.R.C. No. 92-37, 17 NJPER 475, 475 (¶22230 1991).

Based upon the foregoing, the Commission's complaint standard has not been met and I decline to issue a complaint. The charge is therefore dismissed.

/s/Ryan M. Ottavio
Ryan M. Ottavio
Director of Unfair Practices

DATED: April 21, 2023
Trenton, New Jersey

This decision may be appealed to the Commission pursuant to N.J.A.C. 19:14-2.3.

Any appeal is due by May 1, 2023.