P.E.R.C. NO. 2018-14

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RIDGEFIELD PARK BOARD OF EDUCATION,

Respondent,

-and-

Docket Nos. SN-2017-047
SN-2017-056[1/]

RIDGEFIELD PARK EDUCATION ASSOCIATION,

Petitioner.

SYNOPSIS

In this consolidated matter in which both the Association and Board filed scope of negotiations petitions concerning the identical negotiability issue, the Public Employment Relations Commission declines the Association's invitation to reverse its decision in Clementon Bd. of Ed. and Clementon Ed. Ass'n, P.E.R.C. No. 2016-10, 42 NJPER 117 (¶34 2015), appeal dismissed as moot, 43 NJPER 125 (¶38 2016), regarding when employee contributions toward their employer-provided health care once again becomes a mandatorily negotiable subject, and it agrees with the Board, as in Clementon, that Chapter 78 preempts negotiation of a multi-year collective negotiations agreement (CNA) that would reduce employee contribution rates to 1.5% of salary if employees have only reached the tier 4 level of contribution during the first year of that CNA. However, the Commission declines to restrain arbitration to the extent that the Association requested negotiations over the timing and amount of recoupment for underpaid employee health insurance contributions during the term of the successor agreement, and the Board declined such a request.

1/ SN-2017-047 was filed by the Ridgefield Park Education Association on June 2, 2017. SN-2017-056 was filed by the Ridgefield Park Board of Education on June 21, 2017. As the issues raised in both petitions involve the identical negotiability dispute, we have consolidated the petitions for decision.

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SN-2017-056[2/]

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Appearances:

For the Respondent, Porzio, Bromberg & Newman, attorneys (Kerri A. Wright, of counsel; Ms. Wright and David L. Disler on the brief)

For the Petitioner, Selikoff & Cohen, attorneys (Steven R. Cohen, of counsel; Mr. Cohen, Keith Waldman and Kathleen L. Kirvan, on the briefs)

DECISION

This dispute requires us to revisit our decision in Clementon Bd. of Ed. and Clementon Ed. Ass'n, P.E.R.C. No. 2016-10, 42 NJPER 117 (¶34 2015), appeal dism'd as moot, 43 NJPER 125 (¶38 2016), 2016 N.J. Super. Unpub. LEXIS 2163 (App. Div. Dkt. No. A-0372-15T1). Before reciting the context of the present controversy, we review our holding in Clementon, which the

2/ SN-2017-047 was filed by the Ridgefield Park Education Association on June 2, 2017. SN-2017-056 was filed by the Ridgefield Park Board of Education on June 21, 2017. As the issues raised in both petitions involve the identical negotiability dispute, we have consolidated the petitions for decision.

Appellate Division of the Superior Court ruled had become moot because the parties restructured the term of their successor collective negotiations agreement (CNA) that went into effect beginning July 1, 2014.

That action eliminated a conflict between the CNA and employee health insurance premium contributions mandated by P.L. 2011, c. 78. As enacted, that law required a four-year tiered implementation of health care contributions based on employees' earning levels. N.J.S.A. 52:14-17.28(c). For those employees represented by a majority representative, the trigger date for implementation of Chapter 78 was tied to the expiration of the CNA then in force. Hence, once a CNA expired after June 28, 2011, the four-year tiered implementation began. N.J.S.A. 18A:16-17.1 (a) and (c).

At the time the Commission issued Clementon, the Clementon Board and the Clementon Association were parties to a CNA, adopted after the effective date of Chapter 78, with a term of July 1, 2011 to June 30, 2014. That contract provided, "all staff members will contribute 1.5% of their salary towards health and prescription coverage...." When the petition was filed, the parties were engaged in successor negotiations for a three-year CNA to begin on July 1, 2014. Pursuant to P.L. 2011, c. 78, during the term of the 2011 to 2014 agreement, employees made contributions at the tier one, tier two, and tier three levels

for each successive year of that agreement. The parties followed the statutorily mandated contribution levels even though that agreement had language providing that employee health benefit contributions would be made at 1.5 percent of base salary.[3/]

Although negotiations had not been concluded over the agreement to succeed the one that had expired on June 30, 2014, the Clementon parties recognized that for the year beginning July 1, 2014, employees were statutorily required to make contributions at the tier four level.

The Clementon dispute arose because the Association argued that after the tier four level payments had been made, employee premium contributions for the remaining years of a successor CNA could revert to the 1.5 percent rate in accordance with the language set forth in the agreement. However, the Board argued that the 1.5 percent rate was preempted by N.J.S.A. 18A:16-17.2, providing:

> A public employer and employees who are in negotiations for the next collective negotiations agreement to be executed after the employees in that unit have reached full implementation of the premium share set forth in section 39 of P.L.2011, c.78 (C.52:14-17.28c) shall conduct negotiations concerning contributions for health care

3/ The 1.5 percent figure derives from P.L. 2010, c. 2, which was the first time negotiations over the level of health benefit contributions were preempted. Chapter 2 required all public employees to contribute 1.5 per cent of base salary towards health care. N.J.S.A. 18A:16-17.

> benefits as if the full premium share was included in the prior contract[.]
>
> . . . .
>
> After full implementation, those contribution levels shall become part of the parties' collective negotiations and shall then be subject to collective negotiations in a manner similar to other negotiable items between the parties.

Citing the first paragraph quoted above, the Board asserted that for succeeding years, the starting point for negotiations of the premium contribution rate would be tier four ("as if the full premium share was included in the prior contract"). Conversely, the Clementon Association asserted that the language in the second paragraph ("contribution levels shall become part of the parties' collective negotiations and shall then be subject to collective negotiations in a manner similar to other negotiable items") allowed the 1.5 percent contribution rate contained in the CNA to apply to any years after the year in which tier four had been reached, whether those years were part of a multi-year CNA that began with tier four contribution rates or were part of a successor CNA the term of which began after the tier four mandate had been satisfied.

Construing the statutory language and citing the preemption standard of Bethlehem Twp. Educ. Ass'n v. Bethlehem Twp. Bd. of Educ., 91 N.J. 38, 44 (1982), we observed:

> Reading the above quoted parts of the statute in pari materia, N.J.S.A. 18A:16-17.2

> expressly, specifically and comprehensively sets forth that health benefit contribution levels become negotiable in the "next collective negotiations agreement after . . . full implementation" of the four-tiered level of employee contributions is achieved.
>
> Therefore, depending on the length of the successor agreement that the Board and the Association agree to, Article XVII.A.1 may be preempted by N.J.S.A. 18A:16-17.2. For example, if the parties agree to a contract with a one-year term, Article XVII.A.1 would be preempted by N.J.S.A. 18A:16-17.2 from July 1, 2014 to June 30, 2015, the final year of employee contributions at Tier 4 levels. However, it would not be preempted in the "next" agreement when employee contribution levels become negotiable. Alternatively, if the parties agree to a multi-year successor agreement, the express language of N.J.S.A. 18A:16-17.2 would preempt Article XVII.A.1 for the first year of the successor agreement as well as any additional years in the agreement until the "next" agreement when employee contribution levels would become negotiable.
>
> [42 NJPER at 118 to 119, emphasis added.]

Our order in Clementon [42 NJPER at 119] provided:

> 1. The 1.5 percent premium contribution rate was preempted for year one of a successor agreement, and any subsequent years that are part of the same CNA.
>
> 2. The 1.5 percent premium contribution rate could not be deemed the status quo (i.e. the starting point) for negotiations once employee contribution levels become negotiable.

The Clementon Association appealed our decision and order to the Appellate Division of the Superior Court. During the processing of the appeal, the parties reached agreement on the

terms of two successor CNAs. As recited in the opinion of the Appellate Division:

> [The Board and Association] entered into an agreement on October 1, 2015, providing for a one-year agreement effective from July 1, 2014, through June 30, 2015, and a three-year agreement effective from July 1, 2015, through June 30, 2018. Counsel confirmed to us at oral argument that during the one-year agreement covering 2014-15, Association workers are to pay the "fourth-tier" contribution levels mandated by Chapter 78, while in the separate three-year CNA, the members all pay at the lower "third-tier" rate of three-fourths of the designated contribution level set forth in N.J.S.A. 18A:16-17.1(a).
>
> [Slip op. at 9-10, 43 NJPER 125 at 127.]

Given that development, the Court dismissed the Association's appeal as moot and rejected the requests of participating friends of the court to decide the issues to provide guidance for other public employers and the representatives of their employees, preferring to await a live controversy. [Slip op. at 11-12, 43 NJPER at 128.]

We now focus on the present dispute, which is the first case since we decided Clementon that calls into question the accuracy of that decision. The Ridgefield Park Board of Education (Board) and the Ridgefield Park Education Association (Association) entered into a CNA having a term of July 1, 2011 through June 30, 2014. During the successive years of that CNA, employees represented by the Association made contributions at the tier

one, tier two, and tier three levels in accordance with the terms of Chapter 78.

On June 11, 2014, the Ridgefield Park parties executed a memorandum of agreement establishing the terms of a successor CNA with a duration of July 1, 2014 through June 30, 2018. According to the certification of Ray Skorpa, the NJEA UniServ Representative who assisted the Association for a number of years with contract negotiations, the parties decided to carry forward into the 2014-2018 CNA the following provision from the 2011-2014 CNA:

> Employees covered under this Article shall contribute the following percentage of their salary towards health insurance: 1.5% or the minimum set forth by statute, regulation or code. Contributions shall be made through payroll deduction.[4/]

Skorpa also certifies that both parties were aware of the requirements of Chapter 78 when they negotiated the 2014-2018 CNA. Despite the carry over of the above-quoted provision into the 2014-2018 CNA, employees contributed at the tier 4 level during the first year of that agreement.

The Commission issued its decision in Clementon in mid-August 2015. By letter dated December 15, 2016, the district superintendent notified employees that based upon that decision, employees should have been contributing toward their health care

4/ Both the 2011-2014 and the 2014-2018 CNA contain the quoted provision.

benefits throughout the 2015-2016 school year (the second year of the successor CNA) in accordance with Chapter 78, rather than contributing only 1.5 per cent of their salary, and that contributions were modified on January 6, 2016 to return to the tier 4 level. He further advised that rather than reduce any employee's salary to recoup the resultant underpayment, the district would instead freeze salaries starting in the 2017-2018 school year until the employee fulfilled his or her Chapter 78 requirement.

Preliminarily, we reject each party's procedural objection to the other party filing a scope of negotiations petition. While we have declined to issue advisory opinions, see, e.g., Parsippany-Troy Hills Bd. of Ed., P.E.R.C. No. 2014-75, 40 NJPER 519 (¶168-2014), the Association's petition does raise an actual, as opposed, to a potential, dispute even though it did not arise in the usual circumstances where there is disagreement over the negotiability of a proposal or over the arbitrability of a matter submitted to binding arbitration as outlined in N.J.A.C. 19:13-2.2. The Board was also entitled to file its petition, even though the Association had already filed one raising the negotiability identical issue. The Association's petition does not seek a restraint of arbitration, but the Board's does. Neither filing violated our rules.

We also reject the Association's complaint about the briefing schedule. Since it is uncommon for both the employer and majority representative to file separate petitions over the same dispute, we fashioned a streamlined briefing schedule that promoted administrative economy and gave neither party an advantage.

Turning to the merits, the Association's petition asserts that the Clementon decision and the Board's actions, including increased payroll deductions to recoup the difference between contributions made at the 1.5 percent and tier four levels, have provided an unwarranted economic windfall to the Board and undermined the specific understandings that resulted in the parties' 2014-2018 CNA.[5/] It asserts that the Commission's Clementon analysis was erroneous.

The Board argues that the Commission's Clementon analysis is correct. It notes the similarities between Clementon and the present case, including the fact that the tier four levels were reached in the first year of a CNA. In Clementon, it notes, the parties eschewed a multi-year successor agreement so that the tier four level would be satisfied in a one-year contract, but here, the tier four level was reached in the first year of a

5/ The certification filed by the Association presents no facts to support the Association's suggestion in it brief that it made concessions to secure the Board's agreement to reduce the contribution level for the 2014-2018 CNA.

multi-year agreement. Citing the passage from Clementon in which we differentiated between reaching tier four in a one-year agreement and reaching the top contribution level in the first year of a multi-year CNA, the Board argues that the 2014-2018 CNA with the Association bars contributions at rates lower than tier four because it is the same agreement in which tier four was reached, not the next agreement after the one in which tier four was satisfied. The Board also contends that the parties' negotiations for the 2014-2018 CNA did not satisfy N.J.S.A. 18A:16-17.2's requirement that negotiations for the next CNA after employees have reached full implementation be conducted "as if the full premium share was included in the prior contract."

After considering the arguments of the parties and the provisions of Chapter 78 pertaining to employee health care contributions, we conclude that our analysis as set forth in Clementon is correct and applies to this dispute.[6/] The parties' 2014-2018 CNA is not the "next collective negotiations agreement after . . . full implementation of the contribution levels" within the meaning of N.J.S.A. 18A:16-17.2. As the tier four contribution level was reached in the first year of the parties' 2014-2018 CNA, the "next collective negotiations" agreement within the meaning of that statute will be the agreement that

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6/ Our research has found no judicial decision issued after Clementon that construes the pertinent portions of P.L. 2011, c. 78.

succeeds the 2014-2018 CNA. Nothing in Chapter 78 pertaining to employee health care contributions suggests an alternative construction, and any other interpretation fails to give meaning to the specific terms set forth in N.J.S.A. 18A:16-17.2. Accordingly, we grant the Board's request for a restraint of binding arbitration based upon the preemptive nature of the statute.

The Association has also challenged the Board's unilateral freezing of employees' salaries to recoup contributions that the Board asserts should have been made at the tier four level rather than based upon 1.5 percent of salary. We have held that even when an employer has a contractual right to recoup overpayments, it may still have had a duty to negotiate over the timing and amount of paycheck deductions. See Borough of Dunellen, P.E.R.C. NO. 97-30, 22 NJPER 370 (¶27194 1996). Here, however, the right to recoupment stems from the statutory preemption. Therefore, in order to trigger an obligation on the Board's part to negotiate over the recoupment amount and timing, the Association should have requested negotiations. Since the record is unclear on whether or not it did, we decline to restrain arbitration over the issue of the timing and amount of recoupment to the extent that such a demand was made and declined.

ORDER

A. The health insurance premium contribution rate for the July 1, 2014 to June 30, 2018 collective negotiations agreement between the Board and the Association is controlled by the pertinent provisions of P.L. 2011, c. 78 as interpreted by the Commission in Clementon Bd. of Ed. and Clementon Ed. Ass'n, P.E.R.C. No. 2016-10, 42 NJPER 117 (¶34 2015).

B. The Board's request for a restraint of binding arbitration is granted except to the extent that the Association requested to negotiate over the timing and amount of recoupment of underpaid employee health insurance premium contributions for the 2014-2018 CNA. If, however, the Association did not make such a demand, the Board shall meet and negotiate with the Association over those issues upon request.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Jones and Voos voted in favor of this decision. None opposed. Commissioners Boudreau and Eskilson were not present.

ISSUED: October 26, 2017

Trenton, New Jersey