

P.E.R.C. NO. 2024-3

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CITY OF PLAINFIELD,

Respondent,

-and-

Docket No. CO-2021-049

PLAINFIELD FIRE OFFICERS  
ASSOCIATION,

Charging Party.

SYNOPSIS

The Commission denies the appeal of the Plainfield Fire Officers Association from the Director of Unfair Practices' refusal to issue a Complaint on the Association's unfair practice charge alleging the City of Plainfield repudiated the parties' collective negotiations agreement (CNA) and refused to negotiate in good faith over retiree health insurance benefits. Prior to the filing of its charge, the Association and the City's PBA units challenged the City's decision to begin billing all non-exempt retirees for Chapter 78 contributions as being violative of their respective CNAs, and both disputes were fully adjudicated through binding arbitration. The Commission finds that in light of this record, the facts that the City prevailed in the Association's contractual grievance arbitration and did not prevail in the PBA's arbitration over the same issue, do not compel a conclusion that certain alleged statements of the City during negotiations with the Association were made in bad faith, or that the City repudiated its agreement with the Association. The Commission affirms the Director's decision that the Association's charge was untimely, and the Association may not use an unfair practice proceeding to re-litigate a matter that was already fully adjudicated in grievance arbitration.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Respondent,  
Hatfield Schwartz Law Group LLC, attorneys  
(Kathryn Hatfield, of counsel)

For the Charging Party,  
Law Offices of Craig S. Gumpel, LLC, attorneys  
(Craig S. Gumpel, of counsel)

DECISION

On May 8, 2023, the Plainfield Fire Officers Association (Association) filed an appeal from a decision of the Director of Unfair Practices (Director), D.U.P. No. 2023-23, 49 NJPER 546 (¶130 2023), refusing to issue a Complaint on an unfair practice charge (UPC) the Association filed against the City of Plainfield (City) on September 9, 2020. The UPC alleges the City violated sections 5.4a(5) and, derivatively, (a)(1)<sup>1/</sup> of the New Jersey

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<sup>1/</sup> These provisions prohibit public employers, their representatives or agents from coercing employees from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act ... (continued...)"

Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1 et seq., by repudiating the parties' collective negotiations agreement (CNA) and refusing to negotiate in good faith over retiree health insurance benefits.

The Association's September 9, 2020 UPC included a rider detailing its "Statement of Charge" and two exhibits attached thereto: Arbitrator Arnold H. Zudick's April 21, 2020 Opinion and Award in the matter of City of Plainfield and Plainfield Fire Officers Association, Docket No. AR-2019-648 (UPC, Exhibit A); and Arbitrator Gerard G. Restaino's April 29, 2020 Opinion and Award in the matter of City of Plainfield and PBA Local 19, PBA/SOA, Docket No. AR-2019-539 (UPC, Exhibit B).<sup>2/</sup>

In support of its appeal, the Association filed a brief, the certification of its counsel, Craig S. Gumpel, and three exhibits attached thereto which were not previously presented: an Order and Statement of Reasons issued by the Chancery Division of the

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1/ (...continued)  
[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."

2/ The Director's decision noted it was "unclear . . . whether either party filed an Order to Show Cause to confirm, modify or vacate" the Restaino award. (D.U.P. No. 2023-23, n.6.) We take administrative notice of an unpublished decision of the Superior Court, Appellate Division, issued on January 18, 2022, City of Plainfield v. PBA Local 19, PBA/SOA, 2022 N.J. Super. Unpub. LEXIS 60 (App. Div. Dkt No. A-4435-19), affirming the trial court's confirmation of this award.

Superior Court on July 15, 2020 (Docket No. UNN-C-51-20, Gumpel Cert., Exhibit 1) confirming Arbitrator Zudick's April 21 award (AR-2019-648); Arbitrator Restaino's March 6, 2023 Opinion and Award in the matter of City of Plainfield and FMBA Local 7, Docket No. AR-2019-653 (Gumpel Cert., Exhibit 2); and the Commission's May 28, 2020 scope of negotiations decision in the matter of City of Plainfield and Plainfield Fire Officers Association, P.E.R.C. No. 2020-57, 46 NJPER 593 (¶135 2020, Docket No. SN-2020-021) (Gumpel Cert., Exhibit 3).<sup>3/</sup> The City

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<sup>3/</sup> An appeal from a refusal to issue a complaint "must be a self-contained document enabling the Commission to rule on the basis of its contents," and "may not allege any facts not previously presented, unless the facts alleged are newly discovered and could not with reasonable diligence have been discovered in time to be presented." N.J.A.C. 19:14-2.3(b). The Association asks that we take administrative notice of the court order and statement of reasons confirming the Zudick award, and notes that the Restaino award in the FMBA Local 7 matter was issued approximately two and one-half years after the Association filed its UPC. We may take notice of "administratively noticeable facts and of facts within the Commission's specialized knowledge." N.J.A.C. 19:14-6.6(a). The fact of the court's confirmation of Arbitrator Zudick's award was acknowledged by the Director in his decision. (D.U.P. No. 2023-23, at p. 5.) As such, we take administrative notice of the related Order and Statement of Reasons, which is also a public record. We also take administrative notice of the Restaino award regarding Local 7, as it is within the Commission's specialized knowledge and the Association relies upon it in its legal argument on appeal. (Association's Br., n.4.) Our scope decision, 46 NJPER 593, requires no unusual notice, as it is a published Commission decision which permitted arbitration of the underlying grievance before Arbitrator Zudick (AR-2019-648) that is a focus of this appeal, and the Association also relies upon it in its legal argument. (Id.) We further note that the City did not

(continued...)

filed a brief in opposition. The following facts appear, as incorporated from the Director's decision and as otherwise gleaned from the record or subject to administrative notice.

This dispute has its genesis in the City's decision (announced May 1, 2019 to Association unit members and other City employees, including police rank-and-file and superior officers respectively represented by the PBA and PBA/SOA) to begin, effective July 1, 2019, billing those retirees who did not have 20 years of pension credit by June 28, 2011 (i.e., non-exempt retirees) for health insurance contributions in accordance with the insurance contribution rates under P.L. 2011, c. 78 (Chapter 78).<sup>4/</sup> In all cases, the City did not previously charge non-

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3/ (...continued)  
object to the Association's exhibits on appeal.

4/ Enacted and effective June 28, 2011, Chapter 78 required public employees and retirees to contribute defined percentages of their health care benefit premiums based on annual income. P.L. 2011, c.78. The premium costs were phased in, payable in four tiers over four years, but the minimum amount payable by any employee could not be "less than the 1.5 percent of [the employee's] base salary." N.J.S.A. 40A:10-21.1(a). Exempt from Chapter 78's tiered contribution requirements were employees with 20 or more years of creditable service in a State or locally-administered retirement system as of June 28, 2011, but those retirees who became members of such a retirement system on or after May 21, 2010 remain subject to a minimum health care benefits coverage contribution of 1.5% of their monthly retirement allowance. N.J.S.A. 40A:10-21.1(b)(3); 40A:10-23(b). Chapter 78 requires that in the next CNA to be executed after full implementation of the tier-four premium share, parties "shall conduct negotiations . . . as if the full premium share was included in the prior  
(continued...)

exempt retirees for Chapter 78 contributions (including during negotiations for the relevant 2018-2021 CNAs). The City contended (in ensuing grievance arbitrations) that this was inadvertent; and explained that for this reason it did not impose retroactive Chapter 78 payments upon retirees affected by its May 1, 2019 announcement, and it commenced those retirees' deductions at a lower Chapter 78 tier (tier 2 instead of tier 4).

The Association, PBA and PBA/SOA each filed grievances challenging the City's May 21, 2019 decision to charge retirees health insurance contributions, and all three grievances went to arbitration. The three retirees at issue in the Association's grievance began employment before May 21, 2010, but had not completed 20 years of service by June 28, 2011.<sup>5/</sup> The PBA and PBA/SOA grievances were filed on behalf nine named grievants, all hired before May 21, 2010, but with less than 20 years of service as of June 28, 2011. As noted supra, Arbitrator Zudick presided over the Association's grievance, while Arbitrator Restaino presided over the consolidated grievances of the PBA units.

The grievance arbitrations produced awards with different results. Arbitrator Zudick found the health insurance contributions of the three retirees in dispute did not violate

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<sup>4/</sup> (...continued)  
contract." N.J.S.A. 40A:10-21.2.

<sup>5/</sup> See, City of Plainfield, P.E.R.C. No. 2020-57, 46 NJPER 593, 596 (¶135 2020).

the Association's CNA. Arbitrator Restaino found that under the PBA units' CNAs, the nine retirees named in the joint grievance did not have to pay for health insurance in retirement, while retirees hired after May 21, 2010, must contribute a minimum of 1.5% of their monthly retirement allowance as required by N.J.S.A. 40A:10-23(b). The difference in outcomes appears to be due to differing arbitral interpretations of the parties' negotiations histories and contractual language.

The 2018-2021 CNAs of the Association, the PBA and the PBA/SOA<sup>6/</sup> each provide health insurance benefits to retirees at the City's "sole expense." In each agreement, the "sole expense" language was carried over from prior CNAs that predated Chapter 78, and it remained in the contracts after each unit had completed full implementation of the Chapter 78 tier-four

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<sup>6/</sup> The City and Association commenced negotiations for their 2018-2021 CNA on September 7, 2017. They executed a Memorandum of Agreement (MOA) covering the period on or about March 29, 2018, and they fully executed and ratified the 2018-2021 CNA on or about February 19, 2019. D.U.P. at 3-4. The Restaino award (AR-2019-539) contains references to negotiations during November 2017 for the 2018-2021 CNAs covering the PBA and PBA/SOA, and a reference to the parties' MOA "dated on or about August 27" (Id. at 5, 9, 10, 16, 24) but does not otherwise indicate a negotiations start and end date, or ratification dates. On August 8, 2023, at the Commission's request, the parties submitted copies of the 2018-2021 CNAs covering the police units. These indicate that the union representatives signed off on them on November 8, 2017, and they were fully executed when the City signed on February 5, 2018.

contributions.<sup>7/</sup> Specifically, Article 12.8B of the 2018-2021 CNA of the Association provides as follows:

B. The City agrees at its sole expense to continue the health insurance coverage for employees, spouse and eligible dependents for those employees who retire, as such retirement is defined by P.F.R.S. Said health insurance coverage shall be the same coverage as provided to City employees.

The Association's 2018-2021 CNA further provides, at Article 12.1, that the "City agrees to comply with Chapter 78 P.L. of 2011." This provision, or a version of it, first appeared in the Association's 2010-2012 CNA. But, unlike the predecessor agreements covering the Association, the 2014-2017 CNAs covering the PBA and PBA/SOA (the predecessors of the 2018-2021 CNAs) contained no language requiring Chapter 78 compliance. (Restaino Award, AR-2019-539, pp. 3-4, 27.)

During negotiations for the Association's 2018-2021 CNA, neither party made any direct proposal about the existing "sole expense" or the existing Chapter 78 language (Zudick Award, AR-2019-648, p.6), but the Association alleges in its UPC that at the parties' second negotiations session on October 4, 2017, it proposed the following new language for retirees: "Effective January 1, 2018 retiree health benefits at no cost to retiree for

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<sup>7/</sup> The record indicates that Association members completed tier-four contribution levels by July 1, 2015. (46 NJPER 593) The Restaino award (AR-2019-539) indicates that PBA and PBA/SOA unit members reached tier four either "in 2015" (Id. at 9), or "on or about July 2016." (Id. at 11.)



any member subject to contribution pursuant to c.78." The UPC further alleges that in response to this proposal, at the October 4 meeting, the City's representatives advised that no other City negotiations units, including the PBA and PBA/SOA, sought changes to Chapter 78 retiree contributions; and that the City's chief negotiator, Mark Ruderman, Esq., also advised that the City was presenting the "same deal" to the Association as was provided to the PBA and PBA/SOA, and that those units had already accepted this deal. In the 2018-2021 CNA as ratified in February 2019, the language of the Association's proposal was not included, and the provision stating that the "City agrees to comply with Chapter 78 P.L. of 2011" remained, unchanged.

During negotiations for the 2018-2019 CNAs covering the PBA and PBA/SOA units, again neither party made a proposal to modify the existing "sole expense" language, but the City proposed adding the following new language referencing Chapter 78, which did not previously appear in the existing health insurance provision covering those units: "The provisions of this Article are subject to Chapter 78, P.L. of 2011." (Restaino Award, AR-2019-539, p. 24.) However, by letter dated November 8, 2017 from Mr. Ruderman to the PBA's negotiator, James Mets, Esq., the City stated it had made changes pursuant to Mr. Mets' "phone call [to Mr. Ruderman] this morning," and that it had "struck out" its proposal that the "provisions of this Article are subject to

Chapter 78, public laws for 2011.” (Id. at 9.) The City’s proposed Chapter 78 language did not appear in the 2018-2019 CNAs covering the PBA and PBA/SOA, while the existing “sole expense” language remained, unchanged. (Id. at 3-4.)

On April 21, 2020, Arbitrator Zudick issued an Opinion and Award on the Association’s grievance, finding that the City did not violate the CNA by charging the three retirees with Chapter 78 contributions towards their health benefit costs, but it gave those retirees inadequate notice of when such contributions would commence.<sup>8/</sup> In finding that the CNA permitted the City to charge such retirees for their health benefit contributions, the arbitrator applied N.J.S.A. 40A:10-21.2, which requires that following full implementation, the full Chapter 78 contribution level would be the status quo during the negotiations for the successor agreement. Arbitrator Zudick reasoned as follows, in pertinent part as follows:

[T]he status quo going into the negotiations for [the 2018-2021 CNA] was that the “sole expense” language . . . was inoperative because while health cost contributions became negotiable [after full implementation of Chapter 78], the obligation for un-exempt retirees to contribute to their health benefit cost in retirement was still in place by Statute.

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<sup>8/</sup> As a remedy for the notice violation, Arbitrator Zudick ordered that the City could not begin requiring such payments until January, 1, 2020, and that the grievants be reimbursed for contributions paid between July 1 and December 31, 2019.

Therefore, going into negotiations the only way [the "sole expense" language of] Article 12.8B . . . could become operative as that language had been prior to June 28, 2011 [(the effective date of Chapter 78)], was for the PFOA to successfully negotiate an end to any requirement that retirees contribute toward the cost of their health benefits. Although, to its credit, the PFOA certainly tried to achieve that goal, I find it did not successfully negotiate an end to the Chapter 78 requirement for retirees. Therefore, the "sole expense" language in Article 12.8B continues to remain inoperative.

[(Zudick Award, AR-2019-648, p.18.)]

Arbitrator Zudick's award was confirmed by the Superior Court of New Jersey, Chancery Division, on July 15, 2020. (Docket No. UNN-C-51-20.)

On April 29, 2020, eight days after Arbitrator Zudick's award came out, Arbitrator Restaino issued his Opinion and Award on the joint grievance of the PBA and PBA/SOA. Arbitrator Restaino found that PBA and PBA/SOA retirees hired before May 21, 2010 (including all nine named grievants) did not have to pay for health insurance in retirement. He further found that PBA and PBA/SOA retirees hired after May 21, 2010, must contribute a minimum of 1.5% of their monthly retirement allowance as required by N.J.S.A. 40A:10-23(b). In reaching that result, Arbitrator Restaino also applied N.J.S.A. 40A:10-21.2, finding the parties "had reached a Tier 4 schedule and that was the starting point for negotiations for the next agreement," and further reasoned, in pertinent part:

Mr. Ruderman's letter to Mr. Mets dated November 8, 2017, clearly establishes that a change proposed by the City concerning Article XI [seeking to insert "subject to Chapter 78" language into the existing clause providing retiree health benefits at the City's "sole expense"] was not agreed to by the Unions. . . . The City's argument that there were no negotiations [over whether the Chapter 78 status quo would remain in effect] are set aside by the fact pattern in evidence. . . .

NJPERC in determining the Scope of Negotiations Petition filed by the City [on the Association's grievance that resulted in the Zudick award] (Docket #:SN-2020-021) . . . determined that N.J.S.A. 40A:10-23(b) only applies to retirees who joined the retirement system on or after May 21, 2010. There is no question that all of the [PBA and PBA/SOA] grievants . . . were hired before May 21, 2010. . . .

Accordingly, any employee in the bargaining unit hired after May 21, 2010, and is enrolled in a pension/retirement system will make payments for health insurance. How much that individual will pay [beyond the minimum 1.5% required by N.J.S.A. 40A:10-23(b)] is subject to negotiations between the parties [for their successor agreements].

[(Restaino Award, AR-2019-539, pp. 23, 24,25.)]

Arbitrator Restaino's award was confirmed by the Law Division on August 10, 2020, as affirmed by the Appellate Division on January 18, 2022. See 2022 N.J. Super. Unpub. LEXIS 60 (App. Div. Dkt No. A-4435-19). The Association filed its UPC on September 9, 2020.

In D.U.P. No. 2023-23, the Director refused to issue a

Complaint on the Association's UPC, finding the charge was untimely since it was filed outside of the Act's six-month statute of limitations for unfair practice charges under N.J.S.A. 34:13A-5.4c. In pertinent part, the Director found:

The charge here challenging this health benefits change was not filed until September 9, 2020 -- sixteen (16) months after the Association was notified of the health benefits change and fourteen (14) months after the health insurance contributions/changes went into effect. While the Association decided to pursue a grievance in lieu of an unfair practice charge challenging the health insurance change, there are no alleged facts indicating the Association was prevented from filing its charge during or prior to filing a grievance.

[49 NJPER 546, 548-49.]

The Director also found that based on Commission and New Jersey Supreme Court precedent interpreting Chapter 78, the retirees must pay Chapter 78 contributions until the parties agree to modify or change those contributions; and that the Association cannot substitute unfair practice jurisdiction with the parties' collectively negotiated grievance procedure. Specifically, the Director found:

Here, the Association is seeking to re-litigate its claim that the City breached the Agreement under the guise of an unfair practice charge. The breach of contract claim was fully adjudicated, however, by Arbitrator Zudick and the arbitrator's decision was confirmed by the Superior Court of New Jersey. As such, I decline to exercise our unfair practice jurisdiction over a contractual claim that was fully

adjudicated in accordance with the parties' collectively negotiated grievance procedures. N.J.S.A. 34:13A-5.3; State of New Jersey (Human Services)[, P.E.R.C. No. 84-148, 10 NJPER 419 (¶15191 1984)].

[Id. at 549-50.]

The Director also found that the Commission lacks jurisdiction over retirees under the Act and cannot exercise unfair practice jurisdiction over claims that an employer unilaterally changed or refused to negotiate over changes to retiree health benefits.

The Association asserts that the Director incorrectly determined the basis for the commencement of the six-month statute of limitations for filing a charge. The Association contends it first learned it did not receive the "same deal" as the PBA-SOA when Arbitrator Restaino in the PBA/SOA grievance arbitration awarded the PBA/SOA retiree health benefits "at the City's expense," and that the Association relied to its detriment on representations made by the City during negotiations. The Association also argues that the Director mischaracterized the legal and factual issues by noting its CNA provision at Article 12.1, by which the "City agrees to comply with Chapter 78 P.L. of 2011." The Association, citing our scope decision at 46 NJPER 593, argues that Article 12.1 is irrelevant as it is not applicable to retired members, only active members. It also asserts the Director erred in his other findings.

The City asserts it was incumbent on the Association to file

its charge between the point when the City issued its May 1, 2019 letter and, at the latest, when the PBA/SOA filed a demand for arbitration, and not wait 16 months. The Association knew when the letter was issued, the City argues, and it also knew there was a chance that an arbitrator could find that the City breached the contract. The City otherwise defends the Director's decision and reiterates that the Superior Court affirmed Arbitrator Zudick's finding that the parties did not negotiate changes to the Chapter 78 status quo. The City also maintains it could not have engaged in bad faith bargaining by not extending to the Association the same benefit that, the Association alleges, it granted to the PBA/SOA, because: (a) the City at all times opposed the PBA/SOA's demands to provide free health benefits to certain retirees, and it is only because an arbitrator (Restaino) awarded this benefit that it is obligated to provide it; and (b) there was no finding the City was obligated to provide the Association with the same benefit as the PBA/SOA. The City also equates the Association's UPC as an attempt to secure in its CNA an illegal parity clause that ties Association members' terms and conditions of employment to those negotiated by another union.

The Commission has authority to issue a complaint where it appears that a charging party's allegations, if true, may constitute an unfair practice within the meaning of the Act.

N.J.S.A. 34:13A-5.4c; N.J.A.C. 19:14-2.1. Where the complaint

issuance standard has not been met, the issuance of a complaint may be declined. N.J.A.C. 19:14-2.3; CWA Local 1040, D.U.P. No. 2011-9, 38 NJPER 93 (¶20 2011), aff'd, P.E.R.C. No. 2012-55, 38 NJPER 356 (¶120 2012).

After a careful review of the parties' submissions, we affirm the Director's refusal to issue a Complaint, as we agree that under the facts presented, the Association's UPC was untimely and that the Association may not use an unfair practice proceeding to re-litigate a matter that was fully adjudicated in grievance arbitration.

Our Act mandates, in pertinent part, that "[g]rievance . . . procedures established by agreement between the public employer and the representative organization shall be utilized for any dispute covered by the terms of such agreement." N.J.S.A. 34:13A-5.3. As we stated in a case cited by the Director:

We have repeatedly held that deferral to a negotiated grievance procedure culminating in binding arbitration is generally appropriate when a charge essentially alleges a violation of subsection 5.4(a)(5) interrelated with a breach of contract claim. That policy ensures that the parties' grievance procedures will be used, as section 5.3 commands, for any dispute covered by the terms of such agreement.

\* \* \*

We believe that parties . . . should not be entitled to substitute this Commission for a grievance procedure which they have specifically agreed upon as the appropriate method for resolving a particular contractual dispute. Thus, refusal to allow unfair practice litigation over mere breach of



contract claims will, consistent with the policies of the Act and specifically 5.3, promote both the use of negotiated grievance procedures and negotiations over grievance procedures designed to end contract disagreements without recourse to formal proceedings.

[State of New Jersey (Human Services),  
P.E.R.C. No. 84-148, 10 NJPER 419, 420, 422  
(¶15191 1984).]

Here, even after the City withdrew its proposal to expressly include Chapter 78 language in the 2018-2021 CNAs covering the PBA units, the City acted consistently with a belief that Chapter 78 remained the status quo for all units, as evidenced by its May 1, 2019 decision to begin billing all non-exempt retirees for Chapter 78 contributions. The City also consistently opposed all contractual grievances challenging that decision, including those of the PBA units.

In light of this record, the facts that the City prevailed in the Association's contractual grievance arbitration over retiree health benefits, and did not prevail in the PBA's contractual grievance arbitration over the same issue, do not compel a conclusion that the City's alleged statements during negotiations with the Association were made in bad faith, or that the City repudiated its agreement with the Association. Again, in State of New Jersey (Human Services), we stated:

[A]llegations setting forth at most a mere breach of contract do not warrant the exercise of the Commission's unfair practice jurisdiction. An employer which negotiates

terms and conditions of employment as set forth in a collective negotiations agreement, which agrees to specific grievance procedures for the resolution of contractual disputes, and which is willing to abide by those negotiated procedures, does not "refuse to negotiate in good faith" simply because its interpretation of an unclear contract clause may ultimately prove to be mistaken.

[10 NJPER 419, 422 (¶15191 1984).]

Here, both the Association and the PBA units challenged the City's May 1, 2019 decision to begin billing all non-exempt retirees for Chapter 78 contributions as being violative of their respective CNAs, and both disputes were fully adjudicated through binding arbitration, pursuant to the parties' negotiated grievance procedures.

As such, we reject the Association's premise that its September 9, 2020 UPC is timely because it was filed within six months of Arbitrator Restaino's April 29, 2020 award in the PBA/SOA matter. We find that the outcome of the Restaino award, and the information it contains about the negotiations history for the 2018-2021 CNAs covering the PBA units, does not support the issuance of a Complaint on the Association's charge that the City's alleged statements to the Association during the October 2017 negotiations session were made in bad faith.

Finally, the Association's argument about the irrelevancy of Article 12.1, based upon its applicability to active employees and not retirees, does not provide a basis to reverse the

Director's refusal to issue a Complaint. Arbitrator Zudick premised his award not on the existence of Article 12.1, but on the Association's unsuccessful attempt to secure in negotiations new language regarding Chapter 78 that was specifically applicable to retirees and that would, had it been adopted, have altered the existing Chapter 78 status quo.<sup>9/</sup>

We uphold the Director's refusal to issue a Complaint because the Association's UPC was untimely and improperly sought to re-litigate through unfair practice proceedings an issue already fully adjudicated in grievance arbitration. We are also not persuaded by the Association's other arguments on appeal.

ORDER

The Director's refusal to issue a Complaint on the Plainfield Fire Officers Association's unfair practice charge is affirmed. The Charge is dismissed.

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<sup>9/</sup> In contrast, Arbitrator Restaino's subsequent award regarding FMBA Local 7 (AR-2019-653) found that the parties in that dispute negotiated no changes to existing "sole expense" language in the prior contract, which remained unchanged in the 2018-2021 CNA, and further found that the City agreed to a Local 7 proposal that "[a]ll the provisions of the contract remain unchanged."

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Ford, Higgins, Papero and Voos voted in favor of this decision. None opposed.

ISSUED: August 24, 2023

Trenton, New Jersey