

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RIDGEFIELD PARK BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-2018-099

RIDGEFIELD PARK ADMINISTRATORS ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission sustains the Director of Unfair Practices refusal to issue a complaint and dismisses the Association's unfair practice charge. The Association's charge alleges that the Board violated N.J.S.A. 34:13A-5.4a(1), (3) and (5) by unilaterally increasing unit employees' contributions towards health insurance premiums. The Commission concludes that the Director was correct in finding that, after full implementation of P.L. 2011, c. 78 (Chapter 78), Tier Four became part of the parties' CNA and the status quo for future negotiations until the parties agree in a CNA to change the Tier Four rate. The Commission agrees with the Director's finding that that parties' CNA is a fully integrated agreement, which provides that all negotiated terms be reduced to writing and for that writing to be the complete and final agreement between the parties. The parties' CNA is silent on a reduction to the contribution rate. The Commission finds that the Director was correct in excluding extrinsic parol evidence to modify the terms of the parties' CNA. The Commission finds, as did the Director, that the parties reached full implementation at Tier Four upon the expiration of their 2012-2015 CNA, and thus, Tier Four was the contribution rate upon entering their 2015-2018 CNA.

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,
Porzio, Bromberg & Newman, P.C., attorneys,
(Kerri A. Wright, of counsel)

For the Charging Party,
Schwartz Law Group, LLC, attorneys
(Andrew L. Schwartz, of counsel)

DECISION

Ridgefield Park Administrators Association (Association) appeals from the refusal of the Director of Unfair Practices (Director) to issue a complaint and dismissal of an unfair practice charge (UPC) it filed on October 23, 2017 against the Ridgefield Park Board of Education (Board). The charge alleges that the Board violated subsections 5.4a(1), (3) and (5)^{1/} of the

^{1/} These provisions prohibit public employers, their representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. (3) Discriminating in regard to hire or tenure of employment or any term and condition of employment to encourage or discourage employees (continued...)"

New Jersey Employer-Employee Relations Act (Act) by unilaterally increasing unit employees' contributions towards health insurance premiums.

We summarize the pertinent facts of the dispute as follows. The central issue of the dispute is the Board's unilateral increase, effective in the January 13, 2017 pay period, of the Association's members' health insurance contributions from 1.5% of their base salaries to the Tier Four level contribution rate under P.L. 2011, c. 78 (Chapter 78). The Association first began contributing in accordance with Chapter 78 during the start of the 2011-2012 school year and reached full implementation at Tier Four in the 2014-2015 school year. Following the 2014-2015 school year, the parties executed a new collective negotiations agreement (CNA) with a term of July 1, 2015 through June 30, 2018 (2015-2018 CNA). The parties have since entered into a successor agreement with a term of July 1, 2018 through June 30, 2021 (2018-2021 CNA).

Both the 2015-2018 CNA, and its predecessor the 2012-2015 CNA, are silent as to how much Association members must contribute towards health insurance premiums. Article XV, "Fully

1/ (...continued)
in the exercise of the rights guaranteed to them by this act. (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."

Bargained Agreement” of the 2015-2018 CNA, provides, in pertinent part:

A. This agreement represents and incorporates the complete and final understanding and settlement by the parties of all negotiated matters. During the term of this Agreement, neither party will be required to negotiate with respect to any such matter.

The subsequent 2018-2021 CNA contains the same provision. The only mention of healthcare contribution rate in the 2018-2021 CNA is a section entitled “Fringe Benefits,” wherein the parties agreed to defer the issue of health insurance contribution rate to the Commission’s decision in the instant UPC. That provision provides, in pertinent part:

B. Association members’ health insurance contributions are to be the amount as decided by the Public Employment Relations Commission (“PERC”) through the Unfair Labor Practice having Docket No. CO-2018-099 or, if appealed, by a final judgment of a court of appropriate jurisdiction. Specifically, if PERC (or, if appealed, the final judgment of a court of appropriate jurisdiction) decides that the Board committed an unfair labor practice by moving Association members to Tier IV contribution levels under P.L. 2011 c. 78 (“Chapter 78”) and order the Board to move the members to the prior 1.5% contribution level retroactive to the date of the change giving rise to the PERC matter, the Board will abide by the order and make retroactive reimbursement, and 1.5% will become the contracted language and the baseline for future negotiations. If PERC decides that the Board did not commit an unfair labor practice, then Tier IV will be the contracted language and the baseline for future negotiations.

On January 3, 2017, the Board sent a letter notifying Association members that health insurance contribution rates were being immediately increased from the 1.5% rate, which the Association had been paying since the commencement of the 2015-2018 CNA, to the Tier Four rate. In that letter the Board explained that the parties, in the 2015-2018 CNA, did not negotiate a reduction from the previous Tier Four rate, and thus according to law, the Tier Four rate remains the contribution rate until the parties negotiate otherwise. In response to the Board's unilateral increase, the Association filed the instant UPC, claiming, among other things, that the Board's acceptance of the 1.5% contribution rate from the commencement of the 2015-2018 CNA to the January 2017 increase to Tier Four evidenced a past practice that established the parties had indeed agreed to reduce the contribution rate. The UPC was held in abeyance pending the resolution of the Ridgefield Park Education Association's litigation that involved issues closely mirroring those present here, which ultimately culminated in the decision in In re Ridgefield Park Bd. of Educ., 244 N.J. 1 (2020).

In the October 20, 2020 decision, D.U.P. No. 2021-2, the Director, relying on In re Ridgefield Park Bd. of Educ., supra, and Lacey Tp., P.E.R.C. No. 2020-47, 46 NJPER 447 (¶101 2020), declined to issue a complaint and dismissed the UPC. The Director's decision found that the parties did not agree to

reduce the contribution rate from Tier Four to 1.5% as evidenced by the omission of express health insurance contribution provision(s) from both the 2015-2018 and 2018-2021 CNAs. As such, the Director's decision rejected the Association's request for a hearing on its UPC to determine whether the Association members' health insurance contributions at the 1.5% rate from the commencement of the 2015-2018 CNA, among other oral promises and verbal agreements, constituted the actual agreement to reduce the contribution rate. The Director found this alleged evidence of performance is inadmissible parole evidence insufficient to overcome the clear, unambiguous language of the parties' CNAs, which "represents and incorporates the complete and final understanding and settlement by the parties of all negotiated matters" and "shall be reduced to writing and after ratification, be signed by all parties."

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-5.4©; 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 sustain the Director's decision not to issue a complaint and dismiss the Association's UPC.

On appeal, the Association first argues that the parties "made a mutual mistake of law by failing to reduce to writing a material term regarding the negotiated healthcare contributions in the 2015-2018 Agreement." Despite its admission that this material term was not expressly incorporated in the 2015-2018 CNA, the Association asserts its contributions at the 1.5% rate for the first 18 months of the 2015-2018 CNA was evidence that the parties agreed to a reduction of the contribution rate from Tier Four.

Chapter 78 requires that once full implementation of the four tiers of healthcare contribution rates is reached, the Tier 4 rate must continue until the parties negotiate a CNA that provides for an alternative rate. N.J.S.A. 18A:16-17.2; In re Ridgfield Park, supra. Thus, the Director was correct in finding that, after full implementation of Chapter 78, Tier Four became part of the parties' CNA and the status quo for future negotiations until the parties agree in a CNA to change the Tier Four rate. The parties reached full implementation at Tier Four upon the expiration of their 2012-2015 CNA, and thus, Tier Four was the contribution rate upon entering their 2015-2018 CNA. As the Director aptly reasoned:

Here, after reaching Tier 4 in the last year of the 2012-2015 Agreement, the

Administrators Association did not enter into a successor collective negotiations agreement with the Board to reduce Tier 4 contributions. The 2015-2018 and 2018-2021 agreements are silent as to what amount Chapter 78 contributions should be reduced. Absent such agreement, Tier 4 contributions remain the status quo and are effectively incorporated as part of the current collective negotiations agreement between the Administrators Association and Board.

Next, the Association argues that the Director's failure to consider the parties' course of performance or to hold a hearing on the UPC to determine whether an agreement to reduce the contribution rate was in fact reached is an error of law that warrants reversal of the Director's decision. However, the Director was correct in rejecting the Association's argument that alleged oral promises/verbal agreements limiting health insurance contributions to 1.5% of base salary should be admissible evidence. As the Director stated:

While evidence of extrinsic circumstances surrounding the formation of a written agreement can be used as an aid in interpreting an ambiguous phrase in an agreement, "such evidence is adducible only for the purpose of interpreting the writing - not for the purpose of modifying or enlarging . . . its terms."

[Quoting Casriel v. King, 2 N.J. 45, 51 (1949) and Raritan Tp. Utilities Authority, H.E. No. 84-33, 10 NJPER 64 (¶15037 1983)].

Here, as found by the Director, the parties' CNA was a fully integrated agreement that cannot be modified by extrinsic evidence of oral promises or verbal agreements. While the

parties' CNA provides that all negotiated terms be reduced to writing and for that writing to be the complete and final agreement between the parties, it is silent on a reduction to the contribution rate. Moreover, as the Director aptly noted, the "Fringe Benefits" provision of the parties' 2018-2021 CNA defers the establishment of the contribution rate to the Commission's decision in the instant UPC, which supports that the 1.5% contribution rate was not agreed to in the 2015-2018 CNA and is an unsettled issue between the parties.

The Association further argues that "PERC should have looked at what the Ridgefield Park Education Association negotiated in its contract in order to understand the intention of the parties here." We disagree. Unlike the Education Association's CNA, which provided for a contribution rate of 1.5% in the CNA, the Association's CNA is silent about the contribution rate. The Association claims that the 2015-2018 CNA omitted this material term because there was an established past practice of the Administrators paying the same rate as the Education Association. However, the Association's CNA does not incorporate by reference the Education Association's CNA to indicate any alleged reduction in the contribution rate.

Finally, the Association raises, for the first time in this appeal, the settlement of a "similar claim" filed by the

Ridgefield Park Supervisors Association.^{2/} "An appeal 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). We decline to consider the proffered settlement of the Supervisors Association, a separate bargaining unit. That settlement occurred prior to the filing of this UPC. As such, the Association had ample opportunity in its briefs to the Director to develop its arguments with regard to any potential relevancy and applicability of that settlement to this dispute. See N.J.A.C. 19:14-1.6©; N.J.A.C. 19:14-2.3.

For all the foregoing reasons, we sustain the Director's decision.

ORDER

The Director's refusal to issue a complaint is sustained, and the Association's unfair practice charge is dismissed.

BY ORDER OF THE COMMISSION

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

ISSUED: January 28, 2021

TRENTON, NJ

^{2/} The argument was not supported by a certification.