53-23

New Jersey Commissioner of Education
Final Decision

Queen City Academy Education Association, on behalf of its members, Gary Corcoran and Eric Koellner,

Petitioner,

v.

Board of Trustees of the Queen City Academy Charter School, Union County,

Respondent.

Synopsis

The petitioner, Queen City Academy Education Association ("petitioner" or "Association") alleged that the respondent Queen City Academy Charter School ("respondent" or "Board") improperly refused to offer an employee health plan that is equivalent to the New Jersey Educators Health Plan ("NJEHP") mandated under *N.J.S.A.* 18A:16-13.2 *et seq*.

The ALJ found, *inter alia*, that: there are no material facts at issue here, and the matter is ripe for summary decision; the only issue for determination in this case is the legal authority of the Board to defer offering a NJEHP-equivalent health insurance plan to Association members because of the prospective adverse financial impact that offering such a plan might have on the Board; in July 2020, the New Jersey Legislature enacted *P.L.* 2020, Chapter 44, which amended the health insurance benefits statutes for school employees, requiring that employees at schools that do not participate in the State Employees' Health Benefits Plan be offered the NJEHP or an equivalent plan; it is undisputed that the Board has not offered or provided such a plan; the Board's argument that the parties must negotiate regarding the increase in cost prior to the Board offering the plan is without merit, as the Board must first offer the required NJEHP equivalent plan and then proceed to negotiations over any increase in net costs; further, the Board's argument that this matter should be stayed pending the adjudication of similar matters currently pending before the New Jersey Council on Local Mandates is also without merit, as those matters involve different parties and there is no reason to believe that any order resulting from those matters would be binding or precedential on the OAL. Accordingly, the ALJ granted petitioner's motion for summary decision and ordered the Board to offer its employees a NJEHP-equivalent plan.

Upon review, the Commissioner, *inter alia*, rejected the Board's arguments on exception and concurred with the ALJ's findings and conclusion herein. The Initial Decision of the OAL was adopted as the final decision in this matter. The Board was ordered to offer and implement a NJEHP-equivalent health insurance plan for its employees, as required under *N.J.S.A.* 18A:16-13.2.

53-23
OAL Dkt. No. EDU 01028-21
Agency Dkt. No. 259-12/20

New Jersey Commissioner of Education

Final Decision

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Petitioner,

v.

Board of Trustees of the Queen City Academy Charter School, Union County,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by respondent pursuant to *N.J.A.C.* 1:1-18.4, and petitioner's reply thereto, have been reviewed and considered.

The Queen City Education Association (petitioner or Association) is the majority representative for certain employees of the Queen City Academy Charter School Board of Trustees (Board). In its petition of appeal, the Association alleges that the Board violated *N.J.S.A.* 18A:16-13.2 by refusing to offer its employees a health insurance plan that is equivalent to the New Jersey Educators Health Plan (NJEHP).

Following petitioner's motion for summary decision, the Administrative Law Judge (ALJ) found that the Board is obligated to provide a plan equivalent to the NJEHP; further, it was undisputed that the Board has not offered or provided such a plan. The ALJ rejected the Board's argument that the parties must negotiate regarding the increase in cost prior to the Board offering

the plan, finding that the Board must offer the plan and then proceed to negotiations over any increase in net costs. The ALJ also rejected the Board's argument that this matter should be stayed pending the adjudication of similar matters currently pending before the New Jersey Council on Local Mandates, finding that those matters involve different parties and that there is no reason to believe that any order resulting from those matters would be binding or precedential on the OAL. Accordingly, the ALJ granted petitioner's motion for summary decision and ordered the Board to offer its employees a NJEHP-equivalent plan.

In its exceptions, the Board argues that the ALJ failed to consider various questions of fact related to the Board's ability to finance a NJEHP-equivalent plan, including whether implementing the plan prior to negotiating could threaten the school's ability to provide a thorough and efficient education; whether charter schools must implement an unbudgeted plan when they have no independent taxing authority; whether performance was impossible because Small Market Insurers do not offer a NJEHP-equivalent plan; and whether incurring a net negative financial impact could result in over-expanding an appropriation. The Board also contends that there are issues of fact regarding whether implementing the plan would deviate from the state-approved performance framework and charter mission and design, and whether the Association had engaged in good faith negotiations to mitigate any negative financial impact.

In reply, the Association argues that the Initial Decision correctly concluded that the Board must first offer the NJEHP and then the parties shall negotiate over financial impact. According to the Association, the Board's excuses for its non-compliance must fail, as the Legislature is presumed to be aware of existing laws, and nonetheless intentionally required that boards offer a NJEHP-equivalent plan, without any exception for charter schools; the Legislature was also presumably aware that implementation would have financial consequences, as it required negotiations to

mitigate the impact of offering the plan. The Association further indicates that two other cases addressing the issue of a Board's obligation to offer a NJEHP-equivalent plan have recently been decided, with the same outcome as the Initial Decision in this matter.

The Commissioner notes that the Board also provided information regarding a Memorandum of Agreement (MOA) that had been reached between the parties.[1] In doing so, the Board acknowledged *N.J.A.C.* 1:1-18.4 – which provides that evidence not presented at the hearing shall not be submitted as part of an exception, nor incorporated or referred to within exceptions – but indicated that because the fact and status of the parties' ongoing negotiations were a part of the OAL record, it was providing the information regarding the MOA to provide clarity. However, the record demonstrates that no information regarding the MOA was submitted to the ALJ, nor does that information "clarify" anything previously submitted – it is new information, and thus its submission was improper pursuant to *N.J.A.C.* 1:1-18.4. Accordingly, the Commissioner did not consider the portions of the Board's exceptions regarding the MOA, or the portions of the Associations reply thereto, in reaching the decision herein.[2]

Upon review, the Commissioner concurs with the ALJ that *N.J.S.A.* 18A:16-13.2 obligates the Board to first offer a plan equivalent to the NJEHP to Association members, and then to proceed to negotiations over any resulting increase in costs. The plain language of the statute provides that an NJEHP equivalent plan "shall" be offered. *N.J.S.A.* 18A:16-13.2(a)(1). Accordingly, the Board's failure to provide such a plan is in violation of the statute. Furthermore, P.L. 2021, c. 163 provides

[1] A copy of the MOA was not provided.

[2] The Board also argues that the Initial Decision failed to recognize that the Council on Local Mandates did not find that Chapter 44 was not an unfunded mandate, but rather that the matter was not yet ripe for decision. As the Initial Decision does not address the substance of the proceedings before the Council, but rather only found that they did not involve the same parties and would not be binding on the OAL, the Commissioner finds this exception irrelevant.

that any district "with an increase in net cost . . . as a result of" offering the NJEHP-equivalent plan "shall commence negotiations immediately." The Commissioner agrees with the ALJ that, based on this language, the law requires negotiations only after the Board offers a NJEHP-equivalent plan, if there is a net cost increase.

The Commissioner does not find the Board's exceptions, which largely reiterate arguments made and rejected during the summary decision proceedings below, to be persuasive. To the extent that the Board may experience a negative financial impact as a result of offering a NJEHP-equivalent plan, that impact may be negotiated, but there is no exception that would allow the Board to avoid its obligation to offer the plan.

Accordingly, the Initial Decision is adopted as the final decision in this matter. Petitioner's motion for summary decision is granted, and the Board is ordered to offer and implement a NJEHP-equivalent plan.

IT IS SO ORDERED.[3]

Angelica Allen-McMillan, Ed.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: February 28, 2023
Date of Mailing: March 1, 2023

[3] This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A.* 18A:6-9.1. Under *N.J.Ct.R.* 2:4-1(b), a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SUMMARY DECISION
OAL DKT. NO. EDU 01028-21
AGENCY DKT. NO. 259-12/20

QUEEN CITY ACADEMY EDUCATION ASSOCIATION, ON BEHALF OF ITS MEMBERS GARY CORCORAN AND ERIC KOELLNER,

Petitioner,

v.

QUEEN CITY ACADEMY CHARTER SCHOOL BOARD OF TRUSTEES, UNION COUNTY,

Respondent.

Richard A. Friedman, Esq., and **Sheila Murugan**, Esq., for petitioner Queen City Academy Education Association (Zazzali, Fagella, Nowak, Kleinbaum and Friedman, attorneys)

Hope R. Blackburn, Esq., for respondent Queen City Academy Charter School Board of Trustees (The Busch Law Group, LLC, attorneys)

Record Closed: December 8, 2022 Decided: January 20, 2023

BEFORE **JUDE-ANTHONY TISCORNIA**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner Queen City Academy Education Association, on behalf of its members Gary Corcoran and Eric Koellner, ("petitioner" or "Association") brought an action against respondent Queen City Academy Charter School Board of Trustees ("respondent" or "the Board") seeking an order compelling the respondent to provide employees with a health plan equivalent to the New Jersey Educators Health Plan (NJEHP) under the Health Benefits Law, N.J.S.A. 18A:16-13.2 et seq., as amended by P.L. 2021, c. 163.

The matter was transmitted by the Department of Education to the Office of Administrative Law (OAL), where it was filed on January 29, 2021, for hearing as a contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13. The matter was assigned to the undersigned on February 22, 2021.

Petitioner was granted leave to file a motion for summary decision. The motion and accompanying brief were received by the undersigned on November 8, 2021. Final submissions were received on December 8, 2022, and the record was closed. The matter is now ripe for decision.

UNDISPUTED FACTS

Queen City Academy (QCA) is a charter school operating under the laws of the State of New Jersey, with its initial charter having been issued in 1999. QCA began receiving students in September 2000, and currently serves students in grades K–9. QCA currently operates under a Charter School Agreement with the New Jersey Department of Education, dated September 11, 2012, which requires it to operate within specific parameters, including, but not limited to, the confines of its authorized grade levels, ages of students, individual class sizes, performance framework, and fiscal constraints. The New Jersey Legislature enacted P.L. 2020, Chapter 44, effective July 1, 2020, which amended the health-insurance-benefits statutes for school employees, requiring that employees at schools that do not participate in the School Employees' Health Benefits Plan (SEHBP) be offered the equivalent of the New Jersey Educators Health Plan (NJEHP) provided via the SEHPB. See N.J.S.A. 18A:16-13.2 ("Chapter 44").

Queen City Academy attempted to procure affordable insurance equivalent to the NJEHP, but its attempts to do so were unsuccessful.

ARGUMENTS OF THE PARTIES

Petitioner argues that the plain language of Chapter 44 requires the Board to offer a health plan equivalent to the NJEHP, regardless of any adverse financial impact. In response to this motion, the Board argues that 1) this tribunal should stay its decision until all final adjudication on similar matters pending before the New Jersey Council on Local Mandates are resolved; 2) the matter is not ripe for summary decision; 3) petitioner has not met the standard for summary decision; and 4) summary decision is inappropriate, as there remain material facts in dispute.

Respondent also argues that offering a plan equivalent to the NJEHP would have an adverse financial impact on the Board so as to threaten the school's viability, and that the Board should not be obliged to offer a plan equivalent to the NJEHP because this requirement as set forth in Chapter 44 is an unfunded mandate, and, thus, unenforceable.

LEGAL DISCUSSION

Point 1 of the Board's response to the motion for summary decision argues that the undersigned should stay any determination regarding the motion pending final adjudication of similar matters currently before the New Jersey Council on Local Mandates, namely, matters involving the boards of education of Franklin Township, Gloucester City, and Lower Township. It should be noted, however, that those matters do not involve any of the same parties as the matter before me. Also, the Board does not suggest, and I have no reason to believe, that any order of the Council on Local Mandates would be binding or in any way precedential to this tribunal. Thus, I **CONCLUDE** that the pending matters before the Council on Local Mandates do not preclude the undersigned from ruling on the petitioner's motion.

Upon review of the facts and legal arguments presented by the parties, it appears that the only issue to be determined on this summary-decision motion is the legal authority of the Board to defer offering an "equivalent" health insurance plan to the Association due to the prospective adverse financial impact offering such a plan would have on the Board. The main issue before this tribunal, thus, is strictly a matter of legal interpretation.

It is well established that if there is no genuine issue as to any material fact, a moving party is entitled to prevail as a matter of law. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). The purpose of summary decision is to avoid unnecessary hearings and their concomitant burden on public resources. Under the Brill standard, a fact-finding hearing should be avoided "when the evidence is so one-sided that one party must prevail as a matter of law." Brill guides us thusly:

> [A] determination whether there exists a "genuine issue" of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party.
>
> [Ibid.]

In explaining the standard to be applied in summary motion practice, the Brill Court stated:

> The same standard applies to determine whether a prima facie case has been established by the party bearing the burden of proof in a trial. . . .
>
> . . . If a case involves no material factual disputes, the court disposes of it as a matter of law by rendering judgment in favor of the moving or non-moving party.
>
> [Id. at 535–37.]

Based on the foregoing, I **CONCLUDE** that the issue of whether or not the NJEHP or NJEHP-equivalent health-insurance plan must be offered to the QCA employees can be decided as a matter of law.[1]

On July 1, 2020, the New Jersey Legislature enacted P.L. 2020, Chapter 44, which amended the health-insurance-benefits statutes for school employees and provides:

> (1) Notwithstanding the provisions of any other law, rule, or regulation to the contrary, beginning January 1, 2021 and for each plan year thereafter, a board of education as an employer providing health care benefits coverage for its employees, and their dependents if any, in accordance with P.L.1979, c.391 (C.18A:16-12 et seq.) **shall** offer to its employees, and their dependents if any, the **equivalent** of the New Jersey Educators Health Plan in the School Employees' Health Benefits Program as that plan design is described in subsection f. of section 1 of P.L.2020, c.44 (C.52:14-17.46.13).
>
> . . . .
>
> (2) The plans under this section **shall** be offered by the employer regardless of any collective negotiations agreement between the employer and its employees in effect on the effective date [July 1, 2020] of this act, P.L.2020, c.44, that provides for enrollment in other plans offered by the employer.
>
> [N.J.S.A. 18A:16-13.2(a) (emphasis added).]

With regard to employees who commenced employment prior to July 1, 2020, N.J.S.A. 18A:16-13.2(b) provides:

> Prior to January 1, 2021, each employer **shall** provide an enrollment period during which all employees who commenced employment prior to the effective date [July 1, 2020] of this act shall be required to select affirmatively a plan

[1] Two cases with a very similar legal issue have recently been decided at the OAL on summary-decision motion, the first by the Hon. Sarah Crowley, ALJ, Franklin Township Education Association v. Board of Education of Franklin Township, Somerset County, OAL Dkt. No. EDU 01442-21, Initial Decision (November 18, 2022), and the second by the Hon. Gail Cookson, ALJ, Community Charter School of Patterson Education Association v. Community Charter School of Patterson Board of Trustees, OAL Dkt. No. EDU 03968-21, Initial Decision (December 7, 2022).

> provided by the employer. If an employee fails to select affirmatively a plan during this enrollment period, the employer **shall** enroll the employee, and the employee's dependents if any, in the equivalent New Jersey Educators Health Plan offered pursuant to subsection a. of this section for the year January 1, 2021 until December 31, 2021.
>
> [Emphasis added.]

With regard to employees who commence employment on or after July 1, 2020, N.J.S.A. 18A:16-13.2(c)(1) provides:

> Beginning on January 1, 2021, an employee commencing employment on or after the effective date [July 1, 2020] of this act but before January 1, 2028 who does not waive coverage, **shall** be enrolled by the employer in the equivalent New Jersey Educators Health Plan, or the equivalent Garden State Health Plan if selected by the employee, as those plans are offered pursuant to subsection a. of this section. The employee **shall** remain enrolled in either the equivalent New Jersey Educators Health Plan or the equivalent Garden State Health Plan selected by the employee at the annual open enrollment for each plan year until December 31, 2027, provided that the employee during this period may waive coverage as an employee and select and change the type of coverage received under the plan following a qualifying life event, in accordance with the plan regulations. Beginning January 1, 2028, the employee may select, during any open enrollment period or at such other times or under such conditions as the employer may provide, any plan offered by the employer.
>
> [Emphasis added.]

In June 2021 the New Jersey Legislature amended the foregoing law to provide that if the provisions of the foregoing result in an increase in the net cost of healthcare plans, the parties "**shall** commence negotiations immediately, unless mutually agreed upon by the employer and the majority representative to opt to **substantially mitigate the financial impact to the employer** as part of the next collective negotiations agreement . . . ." P.L. 2021, c. 163 (emphasis added). It is undisputed that respondent, the Board, has not offered or provided its members with a plan equivalent to the NJEHP.

While the parties have commenced negotiations over this issue, the Board has not had a financial impact yet and the net impact of employee contributions is not known.

Respondent has not presented any material facts that are in dispute in this matter. The law in question is clear. It mandates the Board to put in place a plan equivalent to the NJEHP, and if there is an increase in net cost, it mandates that the parties negotiate the issue relating to that increase in the net cost of the plan. Respondent argues that the financial impact of offering this plan is substantial and the parties need to negotiate the issue prior to offering it. The Board submits the Certification of Chief Academic Officer Danielle West-Augustin, outlining the potential increase in cost. However, even assuming that I accept these projections as fact, it does not relieve the Board of the obligation to provide such a plan. The Board must provide the plan and then, under the more recent amendments to Chapter 44, proceed to negotiations over such increase in net costs, i.e., deducting for employee contributions.

I therefore **CONCLUDE** that petitioner is entitled to a judgment as a matter of law on the issue involving the obligation of the Board to provide a plan equivalent to the NJEHP for its members. I further **CONCLUDE** that after offering such a plan to its members, if there is a net cost increase, the parties shall negotiate this issue to mitigate the financial impact to the employer.

ORDER

It is **ORDERED** that the motion of petitioner, Queen City Academy Education Association, for summary decision is hereby **GRANTED**. It is further **ORDERED** that respondent, Queen City Academy Charter School Board of Trustees, offer its employees an NJEHP-equivalent plan.

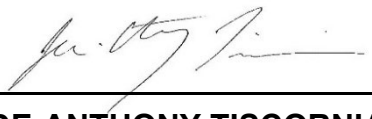
I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION,** who by law is authorized

to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500,** marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

January 20, 2023



DATE **JUDE-ANTHONY TISCORNIA**, ALJ

Date Received at Agency: 1/20/23

Date Mailed to Parties: 1/20/23

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