

**New Jersey Commissioner of Education
Final Decision**

Franklin Township Education Association,
Janice Regan, and Sheila Holland,

Petitioners,

v.

Board of Education of Franklin Township,
Somerset County,

Respondent.

Synopsis

The petitioner, Franklin Township Education Association (“petitioner” or “Association”) alleged that the respondent Franklin Township Board of Education (“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 Association also filed a related Unfair Practice Charge with the Public Employment Relations Commission (PERC); the Administrative Law Judge (ALJ) found that PERC was the agency with the predominant interest in that case.

The ALJ found, *inter alia*, that: there are no material facts at issue here, and the matter is ripe for summary decision; 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; and 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. Accordingly, the ALJ granted petitioner’s motion for summary decision and ordered the Board to offer its employees a NJEHP-equivalent plan. PERC issued a decision agreeing with the ALJ that the Board is obligated to first offer a NJEHP-equivalent plan and then negotiate regarding any net cost increase.

Upon review, and addressing the issues within the Commissioner’s jurisdiction, the Commissioner, *inter alia*, concurred with the ALJ and PERC that the plain language of *N.J.S.A. 18A:16-13.2* obligates the Board to first offer a plan equivalent to the NJEHP to Association members, before proceeding to negotiations over any resulting increase in costs. Accordingly, 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*.

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

54-23

OAL Dkt. Nos. EDU 01442-21 and 01448-21

Agency Dkt. Nos. 1-1/21 and 3-1/21 (consolidated)

New Jersey Commissioner of Education

Final Decision

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v.

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Somerset County,

Respondent.

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

The Franklin Township Education Association (petitioner or Association) is the majority representative for certain employees of the Franklin Township Board of Education (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). Petitioner also filed an Unfair Practice Charge with PERC. The Administrative Law Judge (ALJ) found that PERC was the agency with the predominant interest.

¹ Respondent did not file a reply to petitioner's exceptions.

Following petitioner's motion for summary decision, the ALJ found that the Board is obligated to provide a plan equivalent to the NJEHP and that 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. Accordingly, the ALJ granted petitioner's motion for summary decision.

In its decision, PERC agreed with the ALJ that the Board is obligated to offer a NJEHP-equivalent plan and then negotiate regarding any net cost increase. PERC amended the Initial Decision to specify that the Board's failure to meet its obligations under *N.J.S.A. 18A:16-13.2* simultaneously violated the New Jersey Employer-Employee Relations Act.

In its exceptions, petitioner agrees with the merits of the ALJ's decision but requests that the remedy be modified to make employees whole for the financial loss suffered as a result of the Board's refusal to offer the NJEHP plan. Petitioner contends that it sought summary judgment solely on the issue of the Board's liability with respect to its failure to offer the plan and stated in its moving papers that the make-whole remedy would subsequently be proven.

Upon review, addressing the issues within the Commissioner's jurisdiction, the Commissioner concurs with the ALJ and PERC 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 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 and PERC 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 rejects as premature or speculative petitioner’s exceptions regarding the issue of remedy. Association members’ financial losses, if any, suffered because of the Board’s failure to offer the required NJEHP-equivalent plan cannot be ascertained until the Board has offered and implemented that plan. Should such damages become evident in the future, the Association is free to file a new petition of appeal.

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.²


ACTING COMMISSIONER OF EDUCATION

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

² 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

OAL DKT. NOS. EDU 01442-2021
AND EDU 01448-2021
AGENCY DKT. NOS. 1-1/21 AND
3-1/21

**FRANKLIN TOWNSHIP EDUCATION
ASSOCIATION, JANICE REGAN, AND
SHELIA HOLLAND,**

Petitioners,

v.

**BOARD OF EDUCATION OF FRANKLIN
TOWNSHIP, SOMERSET COUNTY,**

Respondent,

AND

**FRANKLIN TOWNSHIP EDUCATION
ASSOCIATION,**

Petitioner,

v.

**BOARD OF EDUCATION OF FRANKLIN
TOWNSHIP, SOMERSET COUNTY,**

Respondent.

PERC DOCKET NO. CO-2021-139

CONSOLIDATED

Richard A. Friedman, Esq., for petitioner/respondent, Franklin Township
Education Association, Janice Regan, and Shelia Holland, (Zazzali,
Fagella, Nowak, Kleinbaum & Friedman. P.C., attorneys)

William C. Morlok, Esq., for respondent/petitioner, Board of Education of Franklin
Township, Somerset County, (Parker McCay P.A., attorneys)

RECORD CLOSED: October 31, 2022

DATED: November 18, 2022

BEFORE **SARAH G. CROWLEY, ALJ:**

New Jersey Is an Equal Opportunity Employer

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Petitioner brought an action against the respondent alleging the respondent improperly refused to offer a health plan under N.J.S.A. 18A:13-16.2. The matter was transmitted to the Office of Administrative Law (OAL) as a contested case and assigned to the undersigned. On or about January 8, 2021, the petitioner brought an action against the respondent alleging an Unfair Practice Charge with the Public Employment Relations Commission (PERC) on behalf of the same Franklin Township Education Association. PERC issued a complaint on June 28, 2021. The matters were consolidated by Order, dated September 30, 2022. On September 30, 2022, the petitioner filed a motion for summary decision. Opposition was filed by the respondent, Board of Education on October 10, 2022. Oral argument was conducted via Zoom on October 31, 2022, and the record closed on that date.

STATEMENT OF FACTS

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

(1) Notwithstanding the provision of any other law, rule or regulation to the contrary, beginning January 1, 2021 and for each year thereafter, a board of education as an employer providing health care benefits coverage for its employees and their dependent if any, in accordance with P.L. 1979, c. 291 18A:16-12 et seq. shall offer to its employees, and their dependents if any, the equivalent of the New Jersey Educators Plan in the School Employees' Health Benefits Program as that plan design is described in section f. of section 1 of P.L. 2020,c.44, 52:14-17.46.13.

.....

(2) the plan under this section shall be offered by the employer regardless of any collective negotiation 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.

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

Prior to January 1, 2020, 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 affirmatory a plan 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.

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

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 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 the employee at the annual open enrollment for each plan year until December 31, 2027, provided that he 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 open enrollment period or at such other times or under such conditions as the employer may provide, any plan offered by the employer.

In June 2021, the New Jersey legislature amended the forgoing law to provide that if the provisions of the foregoing result in an increase net cost, the parties "shall commence negotiations immediacy, unless mutually agreed upon by the employer and the majority representative to opt to substantially mitigate the finance impact to the employer as part of the next collective negotiators agreement." It is undisputed that the respondent, Franklin Township Board of Education has not offered or provided its

members with a plan equivalent to New Jersey Educator's Health Plan ("NJEHP"). Moreover, the parties have commenced negotiations over this issue.

The foregoing facts are undisputed and are thus **FOUND** as **FACT**.

LEGAL ANALYSIS AND CONCLUSION

The undisputed facts are that petitioners have not been offered a plan equivalent to NJEHP. And although the "net costs" of such a plan have not, nor could they be determined without such an offering, the parties have commenced negotiations regarding this issue. Notwithstanding the speculative nature of cost increase of such a plan, the Board has maintained that it does not have to offer the plan until after the negotiations are completed. However, the law provides that **if** there is an increase in costs that that parties shall negotiate. Moreover, negotiations have been commenced. The law is not discretionary and does provide an option to providing an equivalent plan. The language is clear and unambiguous --- an equivalent plan **shall** be offered; and if an increase in cost occurs, the parties **shall** negotiate it.

N.J.A.C. 1:1-12.5 provides that summary decision should be rendered "if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." Our regulation mirrors R. 4:46-2(c), which provides that "the judgment or order sought shall be rendered if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law."

A determination whether a genuine issue of material fact exists that precludes summary decision requires the 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 fact finder to resolve the allegedly disputed issue in favor of the non-moving party. Our courts have long held that "if the opposing party offers . . . only facts which are immaterial or of an insubstantial nature, a mere scintilla, 'fanciful

frivolous, gauzy or merely suspicious,' he will not be heard to complain if the court grants summary judgment." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520 (1995) (citing Judson v. Peoples Bank and Trust Co., 17 N.J. 67, 75 (1954)).

The "judge's function is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." Brill, 142 N.J. at 540 (citing Anderson v. Liberty Lobby, 477 U.S. 242, 249, 106 S. Ct. 2505, 2511, 91 L. Ed. 2d 202, 212 (1986)). When the evidence "is so one-sided that one party must prevail as a matter of law," the trial court should not hesitate to grant summary judgment. Liberty Lobby, 477 U.S. at 252, 106 S. Ct. at 2512, 91 L. Ed. 2d at 214.

The respondent has not presented any material facts that are in dispute in this matter. The law in question is clear. It mandates the District to offer the plan equivalent to the NJEHP, and if there is an increase in cost, it mandates the parties to negotiate the issue relating to increase 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. They submit documentation outlining the potential increase in cost. However, even assuming that I accept these projections as fact, it does not relieve the District of the obligation to provide such a plan. They must provide the plan and then proceed to negotiations over such increase in costs.

I therefore **CONCLUDE** that the petitioner is entitled to a judgement as a matter of law on the issue involving the obligation of the District to offer provide a plan equivalent to the NJEHP to 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.

I hereby **FILE** this initial decision with **PUBLIC EMPLOYMENT RELATIONS COMMISSION** for consideration.

This recommended decision may be adopted, modified or rejected by the **PUBLIC EMPLOYMENT RELATIONS COMMISSION**, who/which by law is authorized to make a final decision on all issues within the scope of its predominant interest. If the **PUBLIC EMPLOYMENT RELATIONS COMMISSION** does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision on all of the issues within the scope of predominant interest 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 **CHAIR OF THE PUBLIC EMPLOYMENT RELATIONS COMMISSION, 495 West State Street, P.O. Box 429, Trenton, New Jersey 08625-0429**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

Pursuant to N.J.A.C. 1:1-17.8, upon rendering its final decision **PUBLIC EMPLOYMENT RELATIONS COMMISSION** shall forward the record, including this recommended decision and its final decision, to **CIVIL SERVICE COMMISSION**, which may subsequently render a final decision on any remaining issues and consider any specific remedies which may be within its grant of authority.

Upon transmitting the record, **PUBLIC EMPLOYMENT RELATIONS COMMISSION** shall, pursuant to N.J.A.C. 1:1-17.8(c), request an extension to permit the rendering of a final decision by the **CIVIL SERVICE COMMISSION** within forty-five days of the predominant-agency decision. If **CIVIL SERVICE COMMISSION** does not render a final decision within the extended time, this recommended decision on the remaining issues and remedies shall become the final decision.

November 18, 2022 _____

DATE



SARAH G. CROWLEY, ALJ

Date Mailed to Agency:

PUBLIC EMPLOYMENT RELATIONS COMMISSION: _____

CIVIL SERVICE COMMISSION: _____

Date Mailed to Parties: _____

SGC/tat