

**New Jersey Commissioner of Education
Final Decision**

Community Charter School of Paterson
Education Association, on behalf of its members,

Petitioner,

v.

Board of Trustees of the Community
Charter School of Paterson, Passaic County,

Respondent.

Synopsis

The petitioner, Community Charter School of Paterson Education Association (“petitioner” or “Association”) alleged that respondent Community Charter School of Paterson Board of Trustees (“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 Association and the Board are parties to a collective bargaining agreement which expired on June 30, 2021; negotiations are continuing to reach a successor agreement; 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; beginning January 1, 2021, the Board offered its employees three Open Access health insurance plans, one of which was identified as substantially equivalent to the NJEHP; that plan was later found to not be equivalent to the NJEHP; the Board claims that it is in negotiations with the Association for a new collective bargaining agreement that will encompass health benefits and costs, but no agreement has yet been reached; the issue to be decided here is the legal authority of the Board to defer offering an equivalent health insurance plan to the Association until negotiations have been completed. The ALJ rejected the Board’s argument that the parties must negotiate regarding the increase in cost prior to the Board offering the plan and determined instead that 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.

Upon review, the Commissioner concurred with the ALJ’s findings and conclusion, and adopted the Initial Decision of the OAL 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*.

<p>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.</p>

55-23

OAL Dkt. No. EDU 03968-21

Agency Dkt. No. 27-2/21

New Jersey Commissioner of Education

Final Decision

Community Charter School of Paterson
Education Association, on behalf of
its members,

Petitioner,

v.

Board of Trustees of the Community Charter
School of Paterson, Passaic County,

Respondent.

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

The Community Charter School of Paterson Education Association (petitioner or Association) is the majority representative for certain employees of the Community Charter School of Paterson 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 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 and ordered the Board to offer its employees a NJEHP-equivalent plan.

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.

In reply, the Board argues that petitioner has not supplied any proof of loss by employees. The Board also contends that the statutory scheme provides for collective negotiations to address issues arising from the costs of these plans, rather than a private right of action.¹

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 that any district "with an increase in net cost . . . as a result of" offering the NJEHP-equivalent plan "shall commence negotiations immediately." The

¹ The Board did not file any exceptions regarding the merits of the Initial Decision.

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 rejects as premature or speculative petitioner's exceptions regarding the issue of remedy. Association members' financial losses, if any, suffered as a result of the Board's failure to offer the required NJEHP-equivalent plan cannot be ascertained until the Board has actually 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 employee health insurance plan.

IT IS SO ORDERED.²


ANGELINA ALLEN McMILLAN, Ed.D.
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 ON MOTION FOR
SUMMARY DECISION

OAL DKT. NO. EDU 03968-21

AGENCY DKT. NO. 27-2/21

**COMMUNITY CHARTER SCHOOL OF
PATERSON EDUCATION ASSOCIATION,
ON BEHALF OF ITS MEMBERS,**

Petitioner,

v.

**COMMUNITY CHARTER SCHOOL OF
PATERSON BOARD OF TRUSTEES,
PASSAIC COUNTY,**

Respondent.

Richard A. Friedman, Esq., and **Sheila Murugan**, Esq., for petitioner
Community Charter School of Paterson Education Association (Zazzali,
Fagella, Nowak, Kleinbaum & Friedman. P.C., attorneys)

Thomas O. Johnston, Esq., for respondent Community Charter School of
Paterson Board of Trustees (Johnston Law Firm, attorneys)

Record Closed: November 21, 2022

Decided: December 7, 2022

BEFORE **GAIL M. COOKSON**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner Community Charter School of Paterson Education Association (“petitioner” or “Association”) brought an action against the respondent Community Charter School of Paterson Board of Trustees (“respondent” or “Board”) alleging the respondent improperly refused to offer an “equivalent” 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 April 27, 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 -13.¹ The matter was assigned to the the Honorable Acting Director and Chief Administrative Law Judge Ellen S. Bass, who managed the matter until her retirement in May 2022. Following the retirement of Judge Bass, the Honorable Judge Joann Candido, A.L.A.J., conferenced the matter telephonically on June 29, 2022, to familiarize herself with the status of the case and any settlement discussions. Thereafter, the matter was reassigned to me. It was agreed that counsel would consider drafting a joint stipulation of facts and presenting the case through dispositive motion practice. The scheduling of a plenary hearing date was deferred and a briefing schedule established. The matter is now ripe for decision.

STATEMENT OF UNDISPUTED FACTS

1. The Association and the Board are parties to a collective bargaining agreement, but which expired on June 30, 2021. They are continuing negotiations to reach a successor agreement. [Certification of Curtis Palmore (“Palmore Cert.”) ¶ 3.]

2. The New Jersey Legislature enacted P.L. 2020, Chapter 44, effective July 1, 2020, which amended the health insurance benefits statutes for school

¹ There is no challenge that the Commissioner of the Department of Education has subject matter jurisdiction to resolve the dispute as coming under “school laws.” See Boonton Educ. Ass’n v. Bd. of Educ. of Boonton, No. A-1670-21, 2022 N.J. Super. Unpub. LEXIS 1940, at *2 (App. Div. Oct. 19, 2022), *aff’g* Final Decision OAL Dkt. No. EDU 4105-21.

employees, requiring, as discussed below, that employees at schools that do not participate in the State Employees' Health Benefits Plan ("SEHBP") be offered the NJEHP or equivalent plan. N.J.S.A. 18A:16-13.2 ("Chapter 44").

3. On July 7, 2021, the Legislature enacted some amendments to various sections of Chapter 44. Specifically, the requirement that the Board must offer an NJEHP or NJEHP-equivalent plan remained the same. [Exhibit A to Certification of Sheila Murugan, Esq. ("Murugan Cert.")]

4. The Board offered the members of the Association healthcare plans known as the Open Access Program (I, II, and III) for the calendar year commencing January 1, 2021.

5. The Board asserts that the OAP III, specifically, is offered as "comparable" to the NJEHP. [Palmore Cert. ¶ 9.]

6. An analysis by the New Jersey Education Association's Assistant Director of Research and Economic Services compared the OAP III plan to the NJEHP and found numerous differences in terms and benefits. [Salerno Cert. ¶ 6; Murugan Cert., Exhibit F.]

7. The Board states that it is negotiations with the Association for a new agreement that will encompass health benefits and costs, but no agreement has been reached yet.

ARGUMENT ON THE MOTIONS

Petitioner argues that the plain letter of the law set forth in Chapter 44 as amended requires the Board to actually offer an equivalent-NJEHP healthcare plan and determine the net cost increases before negotiating with the Association to mitigate those increases.

Respondent argues that it knows the potential cost increases and that the Association must negotiate in good faith a new collective bargaining agreement before

the Board incurs those losses. It also asserts that the OAP III plan offered is substantially consistent with the law's requirements.

LEGAL DISCUSSION

The above-recitation of the factual background, together with a reading of the legal submissions of the parties, makes it clear that the only issue pending determination on this summary disposition motion is the legal authority of the Board to defer offering an "equivalent" health insurance plan to the Association until negotiations have been completed. In other words, the parties argue that the legal issue here is a chicken-egg dilemma as to when negotiations must take place.

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. The Guardian Life Insurance Co. of America, 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.

[Id. at 540]

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

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 536-37]

I **CONCLUDE** in this matter that the issue of when the NJEHP or NJEHP-equivalent health insurance plan must be offered to the Community Charter School covered employees can be decided as a matter of law.²

On July 1, 2020, the New Jersey Legislature enacted P.L. 2020, Chapter 44, which amended the health insurance benefits statues 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.

[N.J.S.A. 18A:16-13.2 (emphasis added).]

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

² A case with the same legal issue has been filed at the OAL and was recently decided on summary motion by the Honorable Sarah Crowley, A.L.J.. Franklin Township Education Association, et al. v. Board of Education of Franklin Township, Somerset County, OAL Dkt. EDU 01442-2021 (Nov. 18, 2022). Not only do I concur with her Initial Decision after doing my own legal research, but I am mindful that it makes sense that both cases move in tandem to the Department and then probably to the Superior Court, Appellate Division, for a consistent and determinative legal analysis.

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.

[Id. (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 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 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 open enrollment period or at such other times or under such conditions as the employer may provide, any plan offered by the employer.

[Id. (emphasis added).]

In June 2021, the New Jersey legislature amended the forgoing 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 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.” [P.L. 2021, c. 163 (emphasis added).] It is undisputed that the respondent 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.

The 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 the parties to 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. They submit documentation 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. They 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 the 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 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.

ORDER

It is **ORDERED** that the motion of petitioner Community Charter School of Paterson Education Association for Summary Decision is hereby **GRANTED**. It is further **ORDERED** that the Community Charter School of Paterson Board of Trustees offer its employees a 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.



December 7, 2022
DATE

GAIL M. COOKSON, ALJ

Date Received at Agency:

12/7/22

Date Mailed to Parties:

12/7/22

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