IN RE COMPLAINT FILED BY THE FRANKLIN TOWNSHIP BOARD OF EDUCATION REGARDING P.L. 2020, CHAPTER 44	:	STATE OF NEW JERSEY COUNCIL ON LOCAL MANDATES CONSOLIDATED DOCKET NOs.:
IN RE COMPLAINT FILED BY THE LOWER TOWNSHIP ELEMENTARY BOARD OF EDUCATION REGARDING P.L. 2020, CHAPTER 44	:	COLM-1-21 COLM-1-21A COLM-1-21B
IN RE COMPLAINT FILED BY THE GLOUCESTER CITY BOARD OF EDUCATION REGARDING P.L. 2020, CHAPTER 44	:	

EXECUTIVE BRANCH RESPONDENT'S BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

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PLEADING SUMMARY PURSUANT TO COUNCIL RULE 8(b)

Respondent, the Executive Branch of the State of New Jersey, files this motion for summary judgment, seeking dismissal of the consolidated complaints with prejudice. In particular, claimants — the Franklin Township Board of Education, the Lower Township Elementary Board of Education, and the Gloucester City Board of Education — challenge the provisions of L. 2020, c. 44 ("Chapter 44"), as amended by L. 2021, c. 163 ("Chapter 163"), arguing that a shift in employee contributions for the State's longstanding health benefits program for public school teachers constitutes an unfunded State mandate. Claimants are wrong for three reasons: (1) Chapters 44 and 163 do not impose any direct expenditures upon municipalities, and to the extent any such expenditures exist, they are offset by additional resources; (2) Chapters 44 and 163 implement a provision of the New Jersey Constitution; and (3) Chapters 44 and 163 are revisions and modifications of already-existing, decades-old legislation designed to provide health benefits to New Jersey's public school teachers. Thus, because Chapters 44 and 163 are not unfunded mandates, and because they otherwise fall within the well-delineated exceptions to the general proscription against unfunded mandates, claimants' complaints must be dismissed with prejudice.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

A. The School Employees' Health Benefits Program.

In 1961, the Legislature enacted the New Jersey State Health Benefits Program Act (the "SHBP Act") to create the New Jersey State Health Benefits Program ("SHBP"), which provides health coverage to qualified employees and retirees of the State and participating local employers. See L. 1961, c. 49, codified as amended at N.J.S.A. 52:14-17.25 to -17.46a; L. 2011, c. 78 (amending and revising the SHBP); L. 2007, c. 103 (supplementing the SHBP). In 2007, the Legislature enacted the School Employees' Health Benefits Program Act (the "SEHBP Act"), which created the SEHBP to provide health coverage to qualified employees and retirees of participating local education employers. L. 2007, c. 103, codified as amended at N.J.S.A. 52:14-17.46.1 to -17.46.16; see also L. 2020, c. 44 (amending and revising the SEHBP); L. 2011, c. 78 (same). The Legislature expressly declared in 2007 that the SEHBP Act was "revising various parts of the statutory law and supplementing [the SHBP, L. 1961, c. 49]." L. 2007, c. 103 (emphasis added).

Recognizing the need to update the SEHBP formula for teachers, in a unanimous vote the New Jersey Legislature passed Chapter 44 on July 1, 2020, as a modification of the legislative scheme to

provide health benefits to eligible public employees.[1] The Legislature again plainly stated that Chapter 44 was "[a]n Act concerning the health care benefits plans provided by the School Employees' Health Benefits Program and eligible employers that do not participate in the program, and supplementing [the SEHBP, L. 2007, c. 103, and L. 1979, c. 391, as applied to non-participating school districts]." L. 2020, c. 44. Under Chapter 44, New Jersey's school districts are required to offer three plans that provide medical and prescription drug benefits: (1) the New Jersey Educators Health Plan ("NJEHP"); (2) the SEHBP NJ Direct 10 plan; and (3) the SEHBP NJ Direct 15 plan. L. 2020, c. 44; Assembly Appropriations Comm. Statement to S. 2273 (June 26, 2020). The two SEHBP plans were adopted pursuant to Chapter 78 in 2011, and were implemented by the School Employees' Health Benefits Commission. Assembly Appropriations Comm. Statement to S. 2273 (June 26, 2020); L. 2011, c. 78. Chapter 44 also requires a fourth plan, the Garden State Health Plan, to be offered at a later date. Like the NJEHP, it was primarily developed by the Legislature, but the benefits under the Garden State Health Plan will only be available from providers located in New Jersey. Ibid.

Prior to Chapter 44, school district employee contribution

[1] See also L. 2020, c. 137 (cleanup legislation effective December 18, 2020, that made health insurance plans available on the private market).

rates toward health insurance benefits were based on a percentage of premium model, whereas Chapter 44's addition of the NJEHP changes contribution rates to a percentage of salary model. Compare L. 2020, c. 44 with L. 2011, c. 78. Employees who commenced employment prior to July 1, 2020, were required to select one of the three plans during open enrollment, and were automatically enrolled in the NJEHP if they did not affirmatively elect a plan at that time. L. 2020, c. 44, § 1. Employees who commenced employment after July 1, 2020, and did not waive coverage, were automatically enrolled by the employer in the NJEHP, or the Garden State Health Plan (if selected by the employee). Ibid.

Importantly, Chapter 44 provided employers with a safety valve to allay any potential cost to employers, namely, the ability and requirement to enter into collective negotiations with its employees' majority representatives when the implementation of the NJEHP will cost more than the health insurance coverage previously offered. L. 2020, c. 44, § 8. It also required that "the employer and majority representative shall engage in collective negotiations over the financial impact of the difference[,]" when the cost to the employer under Chapter 44 is more than other negotiated health plans. Ibid.

On July 7, 2021, the Legislature passed Chapter 163, which amends certain portions of Chapter 44. L. 2021, c. 163. Specifically, the new legislation amends Section 8 of Chapter 44

to further elucidate a school district's obligation to engage in collective negotiations, and requires school districts to submit to this process to "substantially mitigate the financial impact" related to the implementation of Chapter 44. L. 2021, c. 163, § 3.[2] Importantly, the amendment explicitly allows for modification of plan level offerings or contributions for the NJEHP through mandatory collective negotiations, including the amendment of already-existing collective negotiations agreements:

> With regard to employers that have collective negotiation agreements in effect on the effective date of this act, [L. 2020, c. 44], that include health care benefits coverage available to employees when the net cost, which is the cost after deducting employee contributions, to the employer is lower than the cost to the employer would be compared to the New Jersey Educators Health Plan, the employer and the majority representative shall engage in collective negotiations, that include all terms and conditions of employment, to substantially mitigate the financial impact of the difference as agreed to by the parties, which may include modifications to plan level offerings or contributions for the New Jersey Educators Health Plan or the equivalent plan, or to both plan level offerings and contributions. Notwithstanding any provision of law or regulation to the contrary, plan level offerings or contributions for the New Jersey Educators Health Plan or the equivalent plan, or both plan level offerings and contributions, may be modified pursuant to collective negotiations required by this section.

[2] Chapter 163 also delayed the start date of the Garden State Health Plan until January 1, 2022. L. 2021, c. 163, § 2(1)(d).

> Any school district with an increase in net cost as defined above as a result of changes by [L. 2020, c. 44] 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 which may include, but not be limited to, salary increases, step guides, or other terms and conditions of employment.
>
> [L. 2021, c. 163, § 3 (emphasis added).]

There is no discretion — parties shall engage in collective negotiations to offset net costs to employers, unless otherwise mutually waived by the parties. Ibid.

B. Claimants' Initial Pleadings.

Claimants are three school boards located in Somerset, Cape May, and Camden counties, who are obligated to implement Chapter 44 and Chapter 163 (including their mandatory collective negotiations requirements). Franklin Twp. Amended Complaint Addendum, § 3; Lower Twp. Amended Complaint Addendum, § 3; Gloucester City Amended Complaint Addendum, § 3.

After the Franklin Township Board of Education ("Franklin Township") refused to create and implement an NJEHP equivalent plan, the Franklin Township Education Association ("FTEA") and the Franklin Township School Support Association ("Association") filed an action before the Public Employment Relations Commission ("PERC"), and petitions before the Commissioner of Education, seeking compliance with Chapter 44. See Exhibit A (Unfair Practice

Charge, PERC Dkt. No. CO-2021-139); Exhibits B and C (Petitions of Appeal, OAL Dkt. Nos. EDU 01448-2021 and EDU 01442-2021); Franklin Twp. Complaint Addendum, § 5. Those matters are presently pending before PERC and the Office of Administrative Law ("OAL"), respectively, but are in the process of being consolidated to be heard by PERC.

On February 18, 2021 — long after Chapter 44 was implemented and the PERC and OAL matters were filed — Franklin Township filed its initial complaint with the Council on Local Mandates (the "Council" or "COLM"), alleging that Chapter 44 constituted an unfunded mandate. Franklin Twp. Complaint Addendum. The Lower Township Elementary Board of Education ("Lower Township") and the Gloucester City Board of Education ("Gloucester City") filed similar complaints on March 26, 2021, raising substantially the same allegations as Franklin Township. Lower Twp. Complaint Addendum; Gloucester City Complaint Addendum.

In particular, claimants all asserted that with the addition of the NJEHP, employee contribution rates have decreased, and school district employers are being "forced" to absorb the difference because there is no mechanism to offset these costs. Franklin Twp. Complaint Addendum, § 3, ¶ 3; Lower Twp. Complaint Addendum, § 3, ¶ 3; Gloucester City Complaint Addendum, § 3, ¶ 3. They also contended that collective negotiations "over the financial impact of the difference" in implementing the NJEHP were

not possible because the school district employer was still bound by the "contribution percentages, contribution caps, and the coverage or co-payment amounts[,]" and because there were "no health related financial aspects remaining to negotiate." Id. at § 3, ¶ 5; Lower Twp. Complaint Addendum, § 3, ¶ 5; Gloucester City Complaint Addendum, § 3, ¶ 5. Claimants further requested that the Council grant preliminary injunctive relief, enjoining the enforcement of Chapter 44 pending the outcome of this matter. Franklin Twp. Complaint Addendum, § 5; Lower Twp. Complaint Addendum, § 5; Gloucester City Complaint Addendum, § 5.

All three matters were consolidated by order dated April 5, 2021. On May 21, 2021, the Council issued an order denying claimants' application for injunctive relief, and unanimously found that claimants failed to demonstrate that Chapter 44 created a significant financial hardship. See In re Complaint Filed by the Franklin Twp. Bd. of Educ., et al., COLM (May 21, 2021 Order). The Council further concluded that Respondents were able to demonstrate that Chapter 44 results in cost-savings to both taxpayers and school districts, and that claimants are unlikely to prevail on their claim that Chapter 44 is an unfunded mandate. Ibid.

C. Claimants' Amended Pleadings.

Notwithstanding enactment of Chapter 163, claimants filed amended pleadings on July 30, 2021. Notably, claimants acknowledge

that the amendment "allows for meaningful terms of the healthcare plan or contributions to be altered through negotiations," but maintain that Chapter 44 continues to be an unfunded mandate because "there is no mechanism for the [claimants] to recoup the financial impacts of implementing the 'original version' of Chapter 44, or the current and continuing financial impacts while lengthy negotiations occur." Franklin Twp. Amended Complaint Addendum, § 3, ¶ 6; Lower Twp. Amended Complaint Addendum, § 3, ¶ 6; Gloucester City Amended Complaint Addendum, § 3, ¶ 6.

As in their original complaints, Franklin Township continues to allege an increase in its health care costs if the NJEHP plan is implemented; Gloucester City alleges an increase in its health care costs in comparison to the School Health Insurance Fund program in which it participated before; and Lower Township acknowledges that Chapter 44 has caused an overall decrease in the cost of healthcare in the District, but still asserts a loss. Franklin Twp. Amended Complaint Addendum, §§ 3-4; Gloucester City Amended Complaint Addendum, §§ 3-4; Lower Twp. Amended Complaint Addendum, §§ 3-4.

Franklin Township claims it requested to negotiate with the FTEA, but alleges that they have refused to negotiate thus far. Franklin Twp. Amended Complaint Addendum, § 3, ¶ 10. Gloucester City provided a request to negotiate with the Gloucester City Education Association. Gloucester City Amended Complaint

Addendum, § 3, ¶ 10. The status of that request is unclear as of the date of this submission. Lower Township asserts that "Chapter 44 has not provided funding or any other means to make up for the negative financial impact that has already occurred and continues to occur while lengthy negotiations are pending." Lower Twp. Amended Complaint Addendum, § 3, ¶ 10. Claimants have not provided any further information regarding the status of mandatory collective negotiations.

This motion follows.

STANDARD OF REVIEW

The Council may dispose of matters by way of "summary disposition," either through a motion to dismiss or a motion for summary judgment. In re Complaints Filed by the Highland Park Bd. of Educ. & the Borough of Highland Park ("Highland Park I"), COLM (Aug. 5, 1999), at *12; In re Complaint Filed by the N.J. Ass'n of Cntys. ("NJAC I"), COLM (Apr. 26, 2017), at *5. The Council has generally followed the New Jersey Court Rules and decisions of the New Jersey Judiciary and, as it pertains to dispositive motions, has applied the well-settled standard for summary judgment set forth in Rule 4:46-2 and Brill v. Guardian Life Ins. Co., 142 N.J. 520, 540 (1995). Highland Park I at *12; NJAC I at *5.

Thus, summary judgment "is warranted when there is no genuine issue of material fact and the moving party is entitled prevail as a matter of law." NJAC I at *5 (citing Brill, 142 N.J. at 540).

"If one party must prevail as a matter of law, irrespective of the resolution of any factual dispute, summary disposition should be granted on behalf of the moving party." In re Complaint Filed by the Bd. of Educ. & Borough of Highland Park ("Highland Park III"), COLM (Jan. 31, 2003), at *5. While the Council must exercise great caution when deciding motions for summary judgment, it must also "seek[] to avoid burdening the participants with the additional expense and delay of complex fact-finding proceedings where they are not necessary." In re Complaints Filed by the Special Servs. Sch. Dists. of Burlington, Atlantic, Cape May, & Bergen Cntys., COLM (July 26, 2007), at *6.

In this instance, because the issues raised by respondent are those of "textual interpretation" of the challenged law, "'no further factual information' is needed to resolve [the] issues" and summary judgment is appropriate. In re Complaint Filed by the Borough of Jamesburg ("Jamesburg"), COLM (Oct. 28, 2004), at *6.

ARGUMENT

POINT I

CHAPTER 44, AS AMENDED BY CHAPTER 163, DOES NOT VIOLATE THE NEW JERSEY CONSTITUTION OR THE LOCAL MANDATES ACT.

All three complaints must be dismissed with prejudice. Taken together, Chapter 44, as amended by Chapter 163, does not constitute an unfunded mandate as defined by the New Jersey Constitution or the Local Mandates Act ("LMA"), N.J.S.A. 52:13H-1

to -22; but even if it does amount to a "mandate," it is exempted from scrutiny by the Council because it falls within two well-defined exceptions.

In particular, Chapter 44 is not an unfunded mandate because it does not require the direct expenditure of additional resources. N.J. Const. art. VIII, § 2, ¶ 5(a); N.J.S.A. 52:13H-2 and -12(a). And even if it did, its mandatory collective negotiations provisions provide employers with a critical safety valve for offsetting those expenditures. Next, Chapter 44 does not amount to an unfunded mandate because it implements a provision of the New Jersey Constitution. N.J. Const. art. VIII, § 2, ¶ 5(c)(5); N.J.S.A. 52:13H-3(e). And finally, Chapter 44 is similarly exempt from the definition of an unfunded mandate because it simply revised and modified a long-established legislative scheme with respect to health benefits for public employees and public school teachers. N.J. Const. art. VIII, § 2, ¶ 5(c)(3); N.J.S.A. 52:13H-3(c).

In 1995, the New Jersey Constitution was amended to define an unfunded mandate as a law, rule, or regulation that "does not authorize resources, other than the property tax, to offset the additional direct expenditures required for the implementation of the law or rule or regulation." N.J. Const. art. VIII, § 2, ¶ 5 (the "Amendment"). The Amendment and its enabling statute, the LMA, grant the Council the exclusive authority to determine whether

any provision of a law enacted on or after January 17, 1996, or any part of a rule or regulation originally adopted after July 1, 1996, is an unfunded State mandate. Any statute, regulation, or rule that is deemed to be an unfunded mandate "shall, upon such determination cease to be mandatory in its effect and expire." N.J. Const. art. VIII, § 2, ¶ 5; see also N.J.S.A. 52:13H-2 and -12(a).

By its definition, a mandate may avoid nullification by the Council if it "authorize[s] resources" to offset "direct expenditures[,]" or if the Council determines that no such "direct expenditures" are actually required by the law, rule, or regulation. N.J. Const. art. VIII, § 2, ¶ 5(a); N.J.S.A. 52:13H-2 and -12(a). Thus, to prove a claim of unconstitutionality under the Amendment and the LMA, a claimant must demonstrate that: (1) the statute, rule, or regulation imposes a "mandate" on a unit of local government; (2) additional direct expenditures are required for the implementation of the statute, rule, or regulation; and (3) the statute, rule, or regulation fails to "authorize resources, other than the property tax, to offset the additional direct expenditures." Jamesburg at *5; In re Complaint Filed by the N.J. Ass'n of Cntys. ("NJAC III"), COLM (Mar. 31, 2020), at *4.

The Council has explained, therefore, that its "authority is limited to considering whether a mandate is funded or unfunded, and if it is unfunded, whether certain enumerated exemptions

apply." In re Complaints Filed by the Monmouth-Ocean Educ. Servs. Comm'n, the Rumson-Fair Haven Reg'l High Sch. Dist., and the Stafford Twp. Bd. of Educ. ("Monmouth-Ocean"), COLM (Aug. 20, 2004), at *8. To that end, the Amendment and the LMA have also carved out six exemptions to the prohibition against unfunded mandates, two of which are relevant here:

> [t]he following categories of laws or rules or regulations issued pursuant to a law, shall not be considered unfunded mandates.
>
> . . . .
>
> (3) those which repeal, revise or ease an existing requirement or mandate or which reapportion the costs of activities between boards of education, counties, and municipalities;
>
> . . . .
>
> (5) those which implement the provisions of this Constitution[.]
>
> [N.J. Const. art. VIII, § 2, ¶ 5(c).]

See also N.J.S.A. 52:13H-3.

"In interpreting a statute, the Council is 'guided by the legislative objectives sought to be achieved by the statute.'" In re Complaint Filed by Rockaway Twp. Bd. of Educ. Regarding 2013 Laws Relating to Students With Dyslexia, COLM-2-15 (Jan. 3, 2017), at *9 (citing Shelton v. Restaurant.com, Inc., 214 N.J. 419, 429 (2013)). Thus, "[t]he individual statutory components must be construed in the context of the entire statutory scheme." Ibid.

(citing Waterfront Comm'n of N.Y. Harbor v. Mercedes-Benz of N. Am., 99 N.J. 402, 414 (1985)). The Council's review is "circumscribed[,]" and is limited to whether a specific part of a law constitutes an unfunded mandate upon a county, municipality, or school district, with the obligation to, "as far as possible, leave intact the remainder of a statute or a rule or regulation." NJAC III at *4-5 (quoting N.J.S.A. 52:13H-12(a)). In each of the rulings where the Council has invalidated a statute, rule, or regulation, "clear and convincing evidence was presented that counties, municipalities or boards of education would incur expenditures in order to implement the challenged provisions." In re Complaint Filed by the Twp. of Medford ("Medford"), COLM (June 1, 2009), at *12 (McDonald, III, Council Chair, concurring).

Because Chapter 44 does not require the direct expenditure of additional resources, implements a provision of the New Jersey Constitution, and revised and modified a long-established legislative scheme, it does not constitute an unfunded mandate and the complaints should be dismissed.

A. Chapter 44 Is Not An Unfunded Mandate Because It Does Not Require Claimants To Expend Additional Resources.

Chapter 44 is not an unfunded mandate because it does not require claimants to expend additional resources, and claimants have not incurred any direct expenditures. Even if claimants have incurred direct expenditures, they have not availed themselves of

the mandatory collective negotiations process specifically in place to offset those costs. Moreover, because they have failed to participate in this mandatory process, their complaints are not ripe for adjudication before the Council and, therefore, must be dismissed.

The Council may deem any provision of a statute, regulation, or rule an unfunded mandate where such a law "does not authorize resources, other than the property tax, to offset the additional direct expenditures required for the implementation of the law or rule or regulation[.]" N.J. Const. art. VIII, § 2, ¶ 5(a); N.J.S.A. 52:13H-2 and -12(a). But where a statute does not require direct expenditures to be incurred in order to implement the language of the law, there cannot be an unfunded mandate. In re Complaint Filed by the Twp. of Blairstown, COLM (July 8, 2011), at *3. The Council looks to the language of the statute, regulation, or rule to determine whether a direct expenditure is required. In re Complaint Filed by Rockaway Twp. Bd. of Educ., COLM-1-15 (January 3, 2017), at *6. "Broad, generalized terms" of a law evidences a lack of a direct expenditure. Ibid.

A law may avoid invalidation by the Amendment and the LMA if (1) it does not actually require a "direct expenditure," or (2) it authorizes the resources to "offset" that direct expenditure if one exists. Jamesburg at *5; NJAC III at *4. As to the former, the implementation of new insurance plans for school employees

under Chapter 44 does not require direct expenditures to be incurred; rather, any potential transitional costs will be contingent on a number of different factors — including the number of enrollees in any given plan, the scope of coverage, fluctuating insurance premium costs, and most importantly, the result of collective negotiations. As to the latter, the mandatory collective negotiations provisions of Chapter 44 are similarly dispositive. They expressly authorize employers to avail themselves of the resources necessary to offset any direct expenditures (though it is denied that claimants have incurred any).

1. Claimants Have Not Incurred Any Direct Expenditures.

Claimants seek to strike down Chapter 44 because they claim they realized transitional costs when they implemented the NJEHP. Franklin Twp. Amended Complaint Addendum, §§ 3-4; Lower Twp. Amended Complaint Addendum, §§ 3-4; Gloucester City Amended Complaint Addendum, §§ 3-4 (same allegations). Although Franklin Township claims it has suffered increased health care costs as a result of Chapter 44's addition of the NJEHP, it admittedly has not implemented the plan for its employees. Franklin Twp. Amended Complaint Addendum, §§ 3-4. And at the time of their initial filings, all claimants admitted that they did not collectively negotiate with their employees' unions in accordance with L. 2020,

c. 44, § 8 because there were "no health care related financial aspects remaining to negotiate." Id. at § 5; see also Lower Twp. Complaint Addendum, § 5; Gloucester City Complaint Addendum, § 5. Claimants were wrong.

According to Chapter 44 at the time, which was prior to the enactment of Chapter 163, in instances where offering the NJEHP results in an increase in net health care costs to the employer, parties were required to "engage in collective negotiations over the financial impact of the difference." L. 2020, c. 44, § 8. Simply because claimants chose to expend funds without exhausting their right and obligation to collectively negotiate does not equate to mandating them to have done so. Claimants here made no attempt to negotiate any alleged financial impact by negotiating salary, step guides, or other terms and conditions of employment.[3] Thus, claimants have not incurred any direct expenditures as a result of Chapter 44.

2. Even If Claimants Have Incurred Direct Expenditures, the Mandatory Collective Negotiations Safety Valve Authorizes Claimants to Avail Themselves of the Necessary Resources to Offset Those Expenditures.

[3] Franklin Township asserts that they requested to negotiate but alleged that the Franklin Township Education Association had refused to participate in negotiations. Franklin Twp. Amended Complaint Addendum, § 3, ¶ 10. Gloucester City claims it has requested to negotiate with the Gloucester City Education Association. Gloucester City Amended Complaint Addendum, § 3, ¶ 10. Lower Township provides that lengthy negotiations are pending. Lower Township Amended Complaint Addendum, § 3, ¶ 10.

The mandatory collective negotiations provision of Chapter 163 is comprehensive: employers and unions "shall engage in collective negotiations, that include all terms and conditions of employment, to substantially mitigate the financial impact of the difference as agreed to by the parties[.]" L. 2021, c. 163, § 3 (emphasis added). The provision further states:

> [a]ny school district with an increase in net cost as defined above as a result of changes by [L. 2020, c. 44] 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 which may include, but not be limited to, salary increases, step guides, or other terms and conditions of employment.
>
> [Ibid.]

In order to gain insight on the significance of this language, we look to the School Employees Contract Resolution and Equity Act, N.J.S.A. 34:13A-31 to -49. That Act is specifically designed to ensure that the collective negotiations process for school employers and employees achieves meaningful results. See N.J.S.A. 34:13A-32 and -33. Importantly, the Act contains a comprehensive and rigorous mandatory mediation process when school employers and majority representatives reach an impasse in negotiations. N.J.S.A. 34:13A-34 to -36; N.J.A.C. 19:12-4.1 to -4.4. The multi-stage process includes fact-finding and investigatory stages, and a super-conciliation phase that can include, among other

requirements, mandatory 24-hour-per-day negotiations until an agreement is reached. See N.J.S.A. 34:13A-34 (requiring parties to participate in mandatory fact-finding to be conducted by a fact finder, who shall issue a report following completion of such fact-finding, and if the employer and majority representative do not reach a voluntary negotiated agreement within twenty days after issuance of the report, PERC shall appoint a super conciliator to assist the parties); N.J.S.A. 34:13A-35 (providing that the super conciliator shall schedule investigatory proceedings); N.J.S.A. 34:13A-36 (stating that if the dispute is not resolved, the super conciliator shall issue a final report to the parties which will also be made public within ten days); N.J.A.C. 19:12-4.1 ("Upon a mediator's report of a failure to resolve the impasse by mediation, the Director of Conciliation may invoke fact-finding with recommendations for settlement and appoint a fact-finder"); N.J.A.C. 19:12-4.2 (setting forth the appointment of the fact-finder); N.J.A.C. 19:12-4.3 (detailing the fact-finder's function); N.J.A.C. 19:12-4.4 (outlining the process for appointment of a super conciliator).

The process set forth in Chapter 44, as amended, is therefore structured to do exactly what the Amendment and the LMA contemplate: offset purported direct expenditures (to the extent any exist) by authorizing the utilization of resources other than property tax funds. The collective negotiations safety valve must

be seen as a critical "resource" that permits Chapters 44 and 163 to avoid scrutiny. And more than that, the collective negotiations process was considered to be the most equitable basis for providing relief, and local discretion to negotiate and offset costs was a paramount goal for the State. L. 2020, c. § 44, 8; L. 2021, c. 163, § 3. There is no indication that any of the claimants have engaged in this process.

In In re Complaint Filed by Ocean Twp. (Monmouth Cnty.) & Frankford Twp. ("Ocean/Frankford"), COLM (Aug. 2, 2002), at *7, the Council accepted respondents' argument that municipalities could cover the cost of complying with a statute requiring zoning permits to be granted or denied within ten days by "charging a . . . reasonable fee, or by increasing a fee that is already charged." The Council reasoned:

> Moreover, the Constitution speaks of authorizing a resource, not literally of providing one, suggesting the ordinary legislative process of delegating to municipalities the power they need to impose taxes or fees. There is reason to give the Legislature the flexibility to authorize local resources: were the State to directly pay the cost of [compliance] . . . it could potentially claim the right to oversee the municipality's administration of its zoning process, a disregard of local prerogatives that New Jersey has traditionally disfavored.
>
> [Ibid.]

The same logic and policy rationale applies here: through its inclusion of a mandatory collective negotiations process in

Chapters 44 and 163, the Legislature authorized employers to act within their discretion and avail themselves the necessary resources to offset any expenditures, with an understanding of their own unique set of resources and local circumstances. And again, while state funding may be directly applied in some circumstances, that is not the sole method of funding. Ocean/Frankford at *7.

There is support for this rationale in the Amendment's legislative history. Local discretion and equitable solutions to the issuance of State mandates were key factors in the Amendment's drafting and passage — the Legislature recognized that "in order to govern effectively, the Legislative and Executive branches must reserve the right to determine the most equitable basis for funding local services in ways that will not impair the ability of the State to act in the public interest[.]" Proposed Amendment to the 1947 Constitution, Senate Committee Substitute for Senate Concurrent Resolution Nos. 87, 26 and Assembly Concurrent Resolution No. 1 and Assembly Concurrent Resolution Nos. 77 and 40 (ACS) (Adopted May 15, 1995; Filed June 20, 1995) (emphasis added). So, the Legislature did not intend that only a State law must offer direct funds to offset expenditures — other equitable solutions were envisioned.

Indeed, the Senate sought through its resolution to propose the Amendment to "scrupulously avoid" "reduction in home rule[,]"

as well as the "severe micromanagement of local affairs from Trenton[.]" Senate Concurrent Resolution No. 87 (Introduced Dec. 15, 1994). In the public hearings leading up to the Amendment's enactment, it was clear that the Legislature's constituents and many municipal leaders did not intend for a one-to-one dollar equivalence — what they demanded was the discretion, autonomy, and ability to evaluate costs and benefits of various programs. Public Hearing Before Senate Community Affairs Committee, Senate Concurrent Resolution No. 87 (Jan. 30, 1995), at 7-8, 15, 17-18, 21, 30, 32, 34. In fact, the Legislature was plainly aware across a range of contexts that negotiation is a legitimate cost-saving technique. See id. at 40 (testimony that joint agreements alleviate burden without need for mandate); Public Hearing Before Senate Community Affairs Committee, Senate Committee Substitute (1R), for Senate Concurrent Resolution Nos. 87, 26 and Assembly Concurrent Resolution No. 1 and Assembly Concurrent Resolution Nos. 77 and 40 (ACS) (May 25, 1995), at 2-3, 8 (testimony that negotiation is a legitimate cost-saving technique).

"Simply stated, where there is choice, there is no mandate." Medford at *12 (McDonald, III, Council Chair, concurring). There is just such a choice in this instance. And there is also a strong public policy favoring collective negotiation agreements in the public sector. See, e.g., State, Dep't of Corr. v. IFPTE, Local 195, 169 N.J. 505, 537-38 (2001); N.J.S.A. 34:13A-2. Deference

must be given to that process. Taken together, Chapters 44 and 163 do not amount to an unfunded mandate because claimants are required to collectively negotiate for the specific purpose of offsetting the costs of any purported direct expenditures. L. 2021, c. 163, § 3; L. 2020, c. 44, § 8.

While claimants acknowledge that the newly enacted legislation "allows for meaningful terms of the healthcare plan or contributions to be altered through negotiations," they allege that the law remains an unfunded mandate because "there is no mechanism for the Board to recoup the prior financial impacts of implementing the 'original version' of Chapter 44, or the current and continuing financial impacts while lengthy negotiations occur." Franklin Twp. Amended Complaint Addendum, § 3, ¶ 6; Lower Twp. Amended Complaint Addendum, § 3, ¶ 6; Gloucester City Amended Complaint Addendum, § 3, ¶ 6. Claimants are wrong. Their arguments are completely undercut by the fact that none of them have engaged in collective negotiations to date, as encouraged and required by Chapters 44 and 163. This is especially so because Chapters 44 and 163 expressly require employers and employees to seek redress through collective negotiations with no limit on the scope of mitigation. L. 2020, c. 44, § 8; L. 2021, c. 163, § 3.

It is a well-established principle of statutory construction that a statute must be read in its entirety and, if possible, full effect should be given to every word of a statute. See Gabin v.

Skyline Cabana Club, 54 N.J. 550, 555 (1969) ("We cannot assume that the Legislature used meaningless language"). Claimants' restrictive interpretation of the law is unsupported by the plain meaning of the law, which provides no limitation on the scope of mitigation. Thus, the plain language of the collective negotiations provisions of Chapters 44 and 163 authorize the parties to collectively negotiate to address past, present, and continuing financial impacts, as well as future impacts. Claimants' suggestion that collective negotiations will not offset any expenditures is not only hypothetical, but it is at odds with the law's plain language.

3. Because They Have Not Engaged In Collective Negotiations, Claimants' Complaints Must Be Dismissed As Premature.

Because claimants have not attempted to utilize the collective negotiations safety valve or exhaust the remedies at their disposal, it should be noted that this matter is not even ripe for disposition by the Council. See, e.g., Indep. Realty Co. v. Twp. of N. Bergen, 376 N.J. Super. 295, 302 (App. Div. 2005) (explaining that a claim is not ripe for adjudication if the facts illustrate that the rights of a party are "future, contingent, and uncertain"); Burley v. Prudential Ins. Co., 251 N.J. Super. 493, 499 (App. Div. 1991) (under exhaustion principles "[a]ll available and appropriate administrative remedies [] should be fully explored 'before judicial action is sanctioned.'") (quoting Abbott

v. Burke, 100 N.J. 269, 296 (1985)). In fact, rather than engage in the collective negotiations process or exhaust the administrative process (which includes matters before PERC and the OAL), they have opted instead to forum-shop the issue by filing this consolidated action.

To the extent that either the school employers (or even the employees' unions) are attempting to circumvent their obligation to collectively negotiate, this is not the proper forum to litigate a party's noncompliance with the law. If one side is refusing to negotiate, the other party should avail itself of its rights under the School Employees Contract Resolution and Equity Act, or bring an action in the appropriate forum. See N.J.S.A. 34:13A-34 (compelling mandatory fact-finding and super-conciliation process if collective negotiations reach an impasse); N.J.S.A. 34:13A-5.4 (mechanism for the filing of an unfair practice charge). The Council's jurisdiction is limited to the invalidation of a statute where it is determined to be an unconstitutional unfunded mandate, and nothing more. See In re Complaints Filed by the Cntys. of Morris, Warren, Monmouth, & Middlesex, COLM (Oct. 31, 2006), at *14 ("The Council's jurisdiction, however, is limited to the negative power of invalidation[.] . . . Such legal or policy questions as may still remain are properly to be resolved elsewhere within the structure of government established by our Constitution"); Monmouth-Ocean at *8 ("The Council's authority is

limited to considering whether a mandate is funded or unfunded, and if it is unfunded, whether certain enumerated exemptions apply").

Without fulfilling their obligation to negotiate, claimants cannot possibly present "clear and convincing evidence" that they would "incur expenditures in order to implement the challenged provisions." Medford at *11. As such, this action presents nothing more than a premature challenge to Chapter 44 because the collective negotiations process remains outstanding.

For all of these reasons, Chapters 44 and 163 do not require the claimants to expend additional resources and the complaints should be dismissed.

B. Chapter 44 Is Not An Unfunded Mandate Because It Implements A Provision Of The New Jersey Constitution.

While the Council enjoys exclusive jurisdiction over questions of unfunded mandates, the New Jersey Constitution limits the Council's authority in specific ways. The Amendment and the LMA provide that laws and rules or regulations that "implement the provisions of the New Jersey Constitution" shall not be considered unfunded mandates. N.J. Const. art. VIII, § 2, ¶ 5(c)(5); N.J.S.A. 52:13H-3(e). "[I]f a law implements the New Jersey Constitution, it may not be classified as an unfunded mandate, even if it otherwise meets the constitutional and statutory definition of an unfunded mandate." NJAC I at *18. When reviewing legislative

action and its application to a State constitutional provision, the issue is "whether the Act's provisions . . . 'implement' the provisions of the New Jersey Constitution." In re Complaint Filed by the Mayors of Shiloh Borough & Borough of Rocky Hill, et al. ("Shiloh"), COLM (Dec. 12, 2008), at *9. Although the Constitution affords the Council broad authority to review laws enacted by our Legislature, because the provision at issue here implements Article I, Paragraph 19 of the New Jersey Constitution, Chapters 44 and 163 are beyond the purview of the Council and exempt from being challenged as an unfunded mandate.

The mandatory collective negotiations language of Chapters 44 and 163, set forth more fully above, are an express implementation of Article I, Paragraph 19 of the New Jersey Constitution. Under that provision, public employees have a constitutional right to organize and to present "grievances and proposals through representatives of their own choosing." N.J. Const. art. I, ¶ 19. In other words, public employees — including public school staff and teachers — are guaranteed the right to collectively negotiate the terms and conditions of employment. Mt. Holly Twp. Bd. of Educ. v. Mt. Holly Twp. Educ. Ass'n, 199 N.J. 319, 327 (2009); Council of N.J. State Coll. Locals v. State Bd. of Higher Educ. ("CNJSCL"), 91 N.J. 18, 25-26 (1982). This right is further defined by the Legislature through the New Jersey Employer-Employee Relations Act ("EERA"), N.J.S.A. 34:13A-1 to -55. The

EERA expands upon the scope of public employees' right to collective negotiation. N.J.S.A. 34:13A-5.3 ("[T]he majority representative and designated representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievances, disciplinary disputes, and other terms and conditions of employment"). Thus, the right to engage in collective negotiations is axiomatic and a critical component of the right to organize, as set forth in the Constitution. CNJSCL, 91 N.J. at 26-27.

Invalidation of Chapters 44 and 163 would violate teachers' constitutional rights to have their unions negotiate the terms and conditions of employment on behalf of their members. Section 8 of Chapter 44 and Section 3 of Chapter 163 clearly implement this provision of the Constitution, as they mandate school districts and unions to engage in collective negotiations in order to substantially mitigate the financial impact resulting from the implementation of Chapter 44. L. 2021, c. 163, § 3; L. 2020, c. 44, § 8. And upon signing Chapter 44 into law, Governor Philip D. Murphy lauded the bill's constitutional import: "What I think we must take away from this day is that today New Jersey returned to one of the central tenets of our [S]tate, and that is collective negotiations[.]" Brent Johnson, Samantha Marcus, and Matt Arco, Gov. signs bill overhauling teacher benefits, The Star Ledger, July 2, 2020; see Nobrega v. Edison Glen Assocs., 327 N.J. Super.

414, 422-23 (App. Div. 2000) (Governor's statements and news releases pertaining to legislation are viewed as legislative history informing statutory construction), modified, 167 N.J. 520 (2001).

It is anticipated that claimants will argue the invocation of a ¶ 5(c)(5) exemption is misguided because Chapters 44 and 163 do not specifically cite or reference Article I, Paragraph 19. See Monmouth-Ocean at *13-14. Such an argument would be unavailing. "Collective negotiations" is a term of art in New Jersey. It can only mean one thing — specifically referring to negotiations between public employers and employees pursuant to Article I, Paragraph 19 and the EERA. See Mt. Holly Twp., 199 N.J. at 327 (explaining that unlike their private counterparts, public employees do not have the right to collectively bargain, but do have the right to engage in collective negotiations); Camden Bd. of Educ. v. Alexander, 181 N.J. 187, 193-94 (2004) (citing to New Jersey Constitution finding that "public employees are not given the right to 'bargain collectively,'" but may engage in collective negotiations); see generally Lullo v. Int'l Asso. of Fire Fighters, 55 N.J. 409, 436-441 (1970) (distinguishing between collective negotiations and collective bargaining); N.J.S.A. 34:13A-5.3 (requiring the majority representative and representatives of the public employer to meet and "negotiate in good faith with respect to grievances, disciplinary disputes, and other terms and

conditions of employment"). Recall that the Legislature is presumed to be thoroughly conversant with other areas of the law, including the Constitution, controlling decisions of law, and its own legislation. Brewer v. Porch, 53 N.J. 167, 174 (1969); Smith v. Fireworks by Girone, Inc., 180 N.J. 199, 215 (2004). Thus, the Legislature knew exactly what it was doing when it imposed mandatory collective negotiations. In other words, the collective negotiations safety valve is a "clear legislative expression of an intent to implement a specific part of the Constitution[,]" namely Article I, Paragraph 19, by giving "practical effect and [] ensur[ing] the actual fulfillment by concrete means[,]" namely mandatory collective negotiations. NJAC III at *6 (quoting NJAC I at *16).

Because "collective negotiations" is a term of art, the connection between Chapters 44 and 163 and the constitutional provision is not tenuous — there is no "constitutional quagmire[.]" Monmouth-Ocean at *13. They can only mean that the Legislature intended for employees to be able to avail themselves of their constitutional right. NJAC I is instructive on this point. While the Criminal Justice Reform Act did not explicitly cite a constitutional amendment, the Council still concluded that it intended to effectuate a constitutional amendment's purpose. NJAC I at *13-18; see also Medford at *7-8.

And to the extent claimants argue that the protections of the Amendment and the LMA are being sidestepped, while "[o]ne constitutional provision should not be read as thus negating another[,]" it is important to recall that "the competing constitutional directives should be harmonized so as to give effect to both." Shiloh at *8. To otherwise find that Chapters 44 and 163 constitute an unfunded mandate would infringe upon employees' constitutional right to collective negotiations.

Because Chapter 44 implements a provision of the New Jersey Constitution — the right of labor to organize, and in extension, the right to collective negotiation — summary judgment should be granted.

C. Chapter 44 Is Not An Unfunded Mandate Because It Simply Revised A Long-Established Legislative Scheme With Respect To Health Insurance.

Should the Council determine that Chapter 44, as amended by Chapter 163, requires the expenditure of costs, the fact that they are part of a longstanding insurance scheme exempts them from the definition of an unfunded mandate. The Amendment and the LMA specifically exempt laws, rules, or regulations that "repeal, revise or ease an existing requirement or mandate or [that] reapportion the costs of activities between boards of education, counties, and municipalities" from the definition of an unfunded mandate. N.J. Const. art. VIII, § 2, ¶ 5(c)(3); N.J.S.A. 52:13H-3(c). In that vein, because Chapter 44 revises, modifies, and

otherwise updates the legislative scheme with respect to the provision of insurance coverage for New Jersey educators, it is exempt from being considered an unfunded mandate.

Chapter 44 is not a paradigm shift. While the SEHBP may have experienced a shift in format, it is not a shift in kind. It is the same species of law, enacted within the same statutory body, designed to achieve the same goal. When the Legislature enacted Chapter 78, it amended certain statutes relating to public employee health benefits, just as Chapter 44 does now. Claimants' characterization of Chapter 44 as a new, sudden enactment and unfunded mandate is flawed — it ignores the living, evolving, and organic system that the Legislature has evaluated and updated on a continuing basis since 1961. See L. 2020, c. 44; L. 2011, c. 78; L. 2007, c. 103; L. 1961, c. 49. It is therefore exempt from the definition of an unfunded mandate by N.J. Const. art. VIII, § 2, ¶ 5(c)(3) and N.J.S.A. 52:13H-3(c).

Claimants' complaints focus on a limited snapshot of the law, but lack any historical perspective. Chapter 163, for instance, amended and revised Chapter 44. L. 2021, c. 163. Take one step back, and Chapter 44 amended and revised Chapter 78 and its predecessors. See L. 2020, c. 44 ("[a]n Act concerning the health care benefits plans provided by the School Employees' Health Benefits Program and eligible employers that do not participate in the program, and supplementing [the SEHBP, L. 2007, c. 103, and L.

1979, c. 391, as applied to non-participating school districts]"). Step back even further, and only then can the State's health benefits program be seen for the unitary whole that it is. See Highland Park I at *5 (the Amendment and the LMA are "limited by the intention to preserve existing statutes and programs"). The State has imposed health benefit requirements for its teachers via statute for decades, and employers have always born a cost. Cf. In re Complaint Filed by Springfield Twp. (Union Cnty.) Bd. of Educ., COLM (Feb. 15, 2012), at *4-6 (noting in dicta that the calculation of transportation costs for non-public school students increased through modifications to the formula in statutes amended over time, including after 1996; and holding that the Board's challenge to a memorandum interpreting pre-1996 statutes "is a dispute about the interpretation and implementation of pre-1996 statutes"). It stands to reason there would be changes to a cost of business that has been in place for decades. That the program has evolved over time to coincide and adapt with real-time social and economic circumstances does not render it completely new or remove it from its historical context.

And while there are limited circumstances in which the ¶ 5(c)(3) exemption is inapplicable, that is not the case here. Rather, the exemption does not apply only in those circumstances where a law "changes an earlier obligation and that change has the clear potential to increase a claimant's funding obligation . . .

." Highland Park I at *24-25 (emphasis added). The circumstances in Highland Park I are distinguishable from the circumstances in this case. Here, Chapter 44 did not impose any additional obligation in such a way as to create a clear potential to increase Claimants' funding obligation. See Point I.A above. In fact, it clearly and deliberately provided for collective negotiations as a safety valve for those school districts that may experience transitional costs in implementing the new insurance. And for the reasons set forth above, it is entirely unclear whether Claimants will be required to expend additional resources because they have not yet negotiated. Chapter 44 thus falls within the exemption for laws that revise existing requirements and is not an unfunded mandate.

Summary judgment should, accordingly, be granted in favor of respondent.

POINT II

THE COUNCIL SHOULD DEFER TO THE LEGISLATURE'S POLICY GOALS.

Public policy considerations can be instructive in deriving legislative intent behind a statute. See State v. Tischio, 107 N.J. 504, 519 (1987) (holding that "considerations of public policy are highly relevant in confirming the proper understanding to be accorded a statute"); Bosland v. Warnock Dodge, Inc., 197 N.J. 543, 553 (2009) (the "task in statutory interpretation is to

determine and effectuate the Legislature's intent"); Burns v. Belafsky, 166 N.J. 466, 473 (2001) ("In order to ascertain legislative intent, the Court may look to extrinsic evidence, including legislative history, committee reports, and contemporaneous construction").

The Council must be mindful to "avoid creating a constitutional problem, unless a contrary position is persuasively required." NJAC I at *17 (citing Ocean/Frankford at *11). "Nor should the Council presume to narrow the discretion traditionally entrusted to the legislative and executive branches to fashion remedies for constitutional problems." Medford at *8.

The Legislature's efforts to revise the State's health benefits programs on a continuing basis are an expression of longstanding public policy that should not be ignored. See, e.g., In re Ridgefield Park Bd. of Educ., 244 N.J. 1, 21 (2020) (describing Legislature's vision for addressing public employee health care costs); Teamsters Local 97 v. State, 434 N.J. Super. 393, 423 (App. Div. 2014) (describing State interest in "controlling the cost of health care benefits, ensuring consistency in health benefit coverage, and further ensuring that the programs that make health care coverage available to public employees remain viable for both current and future employees"). Stated differently, because Chapter 44 is a legislative enactment intended to have salutary benefits for educators and school

employees, as well as an overall positive impact on New Jersey's economic health, the Council should not invalidate Chapter 44, as amended. See Lewis v. Harris, 188 N.J. 415, 459 (2006) (deference should be afforded to legislative enactment unless it is "unmistakably shown to run afoul of the Constitution"); Town of Secaucus v. Hudson Cnty. Bd. of Taxation, 133 N.J. 482, 492-93 (1993), cert. denied sub nom., 510 U.S. 1110 (1994) (statute invalid only if "clearly repugnant to the constitution"); Borough of Seaside Park v. Comm'r of N.J. Dep't of Educ., 432 N.J. Super. 167, 218 (App. Div. 2013) (declining in school funding matter to "second-guess the Legislature's wisdom in allocating tax burdens").

Moreover, the complaints in this matter raise issues of policy (how best to finance the SEHBP) that is beyond the Council's jurisdiction. Cf. Ocean/Frankford at *11 ("There is no obvious reason why the Legislature would have chosen to authorize a fee that offsets part, but not all, of the zoning system"); ibid. (requiring claimants to show "authoritative legislative statement or judicial interpretation limiting" the text of the legislation to impose such a burden); id. at *12 ("the Council does not have the authority to determine whether the funding of any statute is accurate").

Therefore, for these reasons, the public interest and the Legislature's policy goals for enacting Chapter 44 must be

considered, and the Council should defer to the Legislature's vision for ensuring the efficient provision of health benefits to the State's public school teachers. The complaints must be dismissed.

CONCLUSION

For these reasons, respondent's motion for summary judgment must be granted, and the complaints should be dismissed with prejudice.

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