SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0372-15T1

IN THE MATTER OF CLEMENTON
BOARD OF EDUCATION AND CLEMENTON
EDUCATION ASSOCIATION.

Argued September 19, 2016 – Decided September 30, 2016

Before Judges Sabatino, Haas and Currier.

On appeal from the New Jersey Public Employment Relations Commission, Docket No. SN-2015-041.

Keith Waldman argued the cause for appellant Clementon Education Association (Selikoff & Cohen, P.A., attorneys; Mr. Waldman, of counsel and on the briefs).

Cameron R. Morgan argued the cause for respondent Clementon Board of Education (Parker McCay, P.A., attorneys; Mr. Morgan, of counsel and on the briefs).

Christine Lucarelli, Deputy General Counsel, argued the cause for respondent New Jersey Public Employment Relations Commission (Robin T. McMahon, General Counsel, attorney; Ms. Lucarelli, on the brief).

Jean P. Reilly, Assistant Attorney General, argued the cause for amicus curiae State of New Jersey (Christopher S. Porrino, Attorney General, attorney; Ms. Reilly and Amy Chung, Deputy Attorney General, on the brief).

Patrick Duncan argued the cause for amicus curiae New Jersey School Boards Association (Cynthia J. Jahn, General Counsel, attorney; Ms. Jahn and Mr. Duncan, on the brief).

PER CURIAM

This is an appeal from a scope-of-negotiations ruling issued by the Public Employment Relations Commission ("PERC") on a petition filed by the Clementon Board of Education (the "Board"). The Clementon Education Association (the "Association") appeals from PERC's ruling that, under the circumstances presented, negotiations between the Association and the Board regarding employee health insurance contributions were preempted by L. 2011, c. 78 ("Chapter 78," or "the Act") until the completion of the fourth phase-in year of increased employee contributions mandated by that statute.

For the reasons that follow, we dismiss the appeal as moot because the Board and the Association have settled their dispute by negotiating a new agreement, and because the legal issues presented — which could affect contribution levels for state, county, and municipal employees — are best litigated and decided in another case with an actual, unresolved dispute between the litigants and in which affected interest groups from both sides might appear as amici.

On June 30, 2011, the Association and the Board executed a

collective negotiations agreement ("CNA") that covered the period July 1, 2011, through June 30, 2014. Article XVII.A.1 of the CNA provided that members would contribute to their health care and prescription coverage at a rate of 1.5% of their base salary, which was the rate mandated by L. 2010, c. 2, § 13, codified at N.J.S.A. 18A:16-17.

On June 28, 2011, however, two days before execution of the 2011-2014 CNA, Chapter 78 went into effect, altering the rate at which public employees must contribute to their health insurance costs. Chapter 78 mandated that employees contribute to their health care and prescription coverage on a percentage-of-premium basis, with the percentage varying depending upon the employee's income and the type of coverage selected. See L. 2011, c. 78, §§ 39 and 41, codified at N.J.S.A. 52:14-17.28c and N.J.S.A. 18A:16-17.1.

Chapter 78's contribution rates were to be phased in over the course of four years, as follows:

> during the first year in which the contribution is effective, one-fourth of the amount of contribution;
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> during the second year in which the contribution is effective, one-half of the amount of contribution; and
>
> during the third year in which the contribution is effective, three-fourths of the amount of contribution,

> as that amount is calculated in accordance with section 39 of P.L.2011, c.78 (C.52:14-17.28c).
>
> [N.J.S.A. 18A:16-17.1(a).]

In no case could the employee's contribution rate be less than the 1.5% of base salary provided for in N.J.S.A. 18A:16-17. See N.J.S.A. 18A:16-17.1(a).[1]

Chapter 78 also included a sunset provision, providing that "sections 29 through 44, inclusive, shall expire four years after the effective date." L. 2011, c. 78, § 83. Nevertheless, public employers and employees were bound to complete full implementation of the contribution schedule, even if the date of full implementation occurred after the Act's expiration date. In this regard, N.J.S.A. 18A:16-17.1(c) provides, in pertinent part:

> c. The contribution under subsection a. of this section shall commence: (1) upon the effective date of P.L. 2011, c. 78 for employees who do not have a majority representative for collective negotiations purposes . . . ; and (2) upon the expiration of any applicable binding collective negotiations agreement in force on that effective date for employees covered by that agreement with the contribution required for

[1] The Act allowed for a board of education to enter into a contract that provided "for an amount of employee contribution as a cost share or premium share that is other than the percentage required under subsection a. of this section," but only if the board certified, subject to approval by the Department of Education and the Division of Pensions and Benefits in the Department of the Treasury, that the savings equaled or exceeded the savings from the contributions otherwise mandated under the law. N.J.S.A. 18A:16-17.1(b).

> the first year under subsection a. of this section commencing in the first year after that expiration, or upon the effective date of P.L.2011, c.78 if such an agreement has expired before that effective date with the contribution required for the first year under subsection a. of this section commencing in the first year after that effective date.
>
> Once those employees are subjected to the contribution requirements set forth in subsection a. of this section, the public employers and public employees shall be bound by this act, P.L.2011, c.78, to apply the contribution levels set forth in section 39 of this act until all affected employees are contributing the full amount of the contribution, as determined by the implementation schedule set forth in subsection a. of this section. Notwithstanding the expiration date set forth in section 83 of this act, P.L.2011, c.78, or the expiration date of any successor agreements, the parties shall be bound to apply the requirements of this paragraph until they have reached the full implementation of the schedule set forth in subsection a. of this section.
>
> [(emphasis added).]

Further, N.J.S.A. 18A:16-17.2 provides, in pertinent part:

> The public employers and public employees shall remain bound by the provisions of [N.J.S.A. 52:14-17.28c and N.J.S.A. 18A:16-17.1], notwithstanding the expiration of those sections, until the full amount of the contribution required by section 39 has been implemented in accordance with the schedule set forth in section 41.
>
> Employees subject to any collective negotiations agreement in effect on the effective date of [Chapter 78], that has an expiration date on or after the expiration of

> sections 39 through 44, inclusive, of [the Act], shall be subject, upon expiration of that collective negotiations agreement, to sections 39 and 41 until the health care contribution schedule set forth in section 41 is fully implemented.

At N.J.S.A. 18A:16-17.2, Chapter 78 also addressed the negotiation of agreements to be executed after employees reached full implementation of the premium share, setting forth that the full premium share must be considered the status quo in such negotiations. Specifically, the first and final sentences of N.J.S.A. 18A:16-17.2 set forth that:

> A public employer and employees who are in negotiations for the next collective negotiations agreement to be executed after the employees in that unit have reached full implementation of the premium share set forth in [N.J.S.A. 52:14-17.28c] shall conduct negotiations concerning contributions for health care benefits as if the full premium share was included in the prior contract[.]
>
> . . . .
>
> After full implementation, those contribution levels shall become part of the parties' collective negotiations and shall then be subject to collective negotiations in a manner similar to other negotiable items between the parties.

Since the parties' previous CNA expired on June 30, 2011, members were subject to the Chapter 78 contribution rates on July 1, 2011, regardless of the language of Article XVII.A.1 of their 2011-2014 CNA. Therefore, during the three-year CNA period of

July 1, 2011, through June 30, 2014, Association members contributed to their health insurance premiums at the following rates:

YEAR	**RATE OF CONTRIBUTION**
1. July 1, 2011 to June 30, 2012	One-fourth of the amount of contribution
2. July 1, 2012 to June 30, 2013	One-half of the amount of contribution
3. July 1, 2013 to June 30, 2014	Three-fourths of the amount of contribution

As of July 1, 2014, Association members began paying the Year 4 (full percentage-of-premium) rates, which they were statutorily obligated to contribute through June 30, 2015. N.J.S.A. 18A:16-17.1(a) and 18A:16-17.2.

While the Year 4 rates were being paid, the Board and Association engaged in negotiations over a successor agreement to the 2011-2014 CNA. During those negotiations, the Association proposed that the CNA's language be unaltered, and continue to require that employees contribute to healthcare costs at the rate of 1.5% of their salary, i.e., the rate that was statutorily mandated under N.J.S.A. 18A:16-17, prior to the adoption of Chapter 78.

Specifically, by letter dated November 21, 2014, the Association proposed: "Chapter 78 Language Proposal: maintain

in the contract the reference to 1.5% contribution." In that same letter, the Association referenced its understanding of the Board's offer as: "Chapter 78 Language Proposal: delete reference to 1.5% contribution and replace with 'Staff members shall contribute towards their health insurance costs in accordance with the provisions of Chapter 78.'"

On December 22, 2014, the Board filed a petition with PERC for a scope-of-negotiations determination. The Board requested the Commission to rule that the Association's proposal was not negotiable, since health insurance contribution rates were dictated by N.J.S.A. 18A:16-17.1 and N.J.S.A. 52:14-17.28c.

On March 3, 2015, while the scope-of-negotiations petition was pending, the Association amended its negotiations proposal to provide that:

> 3. For 2014-2015, the first year of the contract, the contribution level will be as established by Tier 4 of P.L. 2011 c. 78.
>
> 4. Following full implementation, for the second and third years of the contract (2015-2016 and 2016-2017), the parties agree that the contribution levels will be 1.5%.

On August 13, 2015, PERC issued its decision, ruling in the Board's favor based upon its interpretation of N.J.S.A. 18A:16-17.2. Clementon Bd. of Educ. v. Clementon Educ. Ass'n, PERC No. 2016-10, 42 N.J.P.E.R. 117 (¶ 34 2016). Specifically, PERC found that, under N.J.S.A. 18A:16-17.2, the members' contribution rates

were preempted, and thus not negotiable, until Chapter 78 had been fully implemented. Under the facts presented, the date of full implementation was June 30, 2015, when the employees had completed a full year of payments under the Year 4 rates.

The Association appealed PERC's determination to this court, arguing that the agency misinterpreted the statute. The Board opposed the appeal, concurring with the Commission's interpretation. PERC, as a co-respondent, also defends its ruling. In addition, we granted leave to the Attorney General and to the New Jersey School Boards Association, to appear as amici, both of which have sided with respondents in supporting PERC's interpretation of Chapter 78.

Significantly, the parties have informed us that after PERC's decision they settled their negotiations with two successor agreements. They entered into an agreement on October 1, 2015, providing for a one-year agreement effective from July 1, 2014, through June 30, 2015, and a three-year agreement effective from July 1, 2015, through June 30, 2018. Counsel confirmed to us at oral argument that during the one-year agreement covering 2014-15, Association workers are to pay the "fourth-tier" contribution levels mandated by Chapter 78, while in the separate three-year CNA, the members all pay at the lower "third-tier" rate of three-fourths of the designated contribution level set forth in N.J.S.A.

18A:16-17.1(a).

The parties and amici have urged us to decide this appeal on the merits despite the parties' settlement. Although we recognize the public policy ramifications of the issues discussed in PERC's decision, we decline that request and dismiss this particular appeal as moot. We do so for several reasons.

It is well established that "our courts normally will not entertain cases when a controversy no longer exists and the disputed issues have become moot." DeVesa v. Dorsey, 134 N.J. 420, 428 (1993). An issue has become moot "when the decision sought in a matter, when rendered, can have no practical effect on the existing controversy." N.Y. Susquehanna & W. Ry. Corp. v. State Dep't of Treasury, Div. of Taxation, 6 N.J. Tax 575, 582 (Tax 1984), aff'd, 204 N.J. Super. 630 (App. Div. 1985); see also Betancourt v. Trinitas Hosp., 415 N.J. Super. 301, 318 (App. Div. 2010) (declining to address the merits of a dispute regarding the authorization of medical treatment that had become moot).

The doctrine of mootness stems from the Judiciary's unique institutional role as a branch of government that only acts when a genuine dispute is placed before it. We generally do not render advisory decisions retrospectively opining about the legality of matters that have already been resolved, for "[o]rdinarily, our interest in preserving judicial resources dictates that we not

attempt to resolve legal issues in the abstract." Zirger v. Gen. Accident Ins. Co., 144 N.J. 327, 330 (1996).

In limited instances, our courts will address the merits of appeals that have become moot, electing to do so "where the underlying issue is one of substantial importance, likely to reoccur but capable of evading review." Ibid.; see also Roe v. Wade, 410 U.S. 113, 125, 93 S. Ct. 705, 713, 35 L. Ed. 2d 147, 161 (1973). For example, we have set aside mootness concerns in certain cases where the matter evading review posed a significant public question or affected a significant public interest. See, e.g., Guttenberg Sav. & Loan Ass'n v. Rivera, 85 N.J. 617, 622-23 (1981); Dunellen Bd. of Educ. v. Dunellen Educ. Ass'n, 64 N.J. 17, 22 (1973).

The present appeal is clearly moot, insofar as we are being asked to determine the legally-permissible scope of the parties' negotiations on their post-June 30, 2014 CNA. Since the parties have completed those negotiations, our decision can have no practical effect vis-à-vis these litigants. See Redd v. Bowman, 223 N.J. 87, 104 (2015); In re Application of Boardwalk Regency Corp. for a Casino License, 90 N.J. 361, 367-68, appeal dismissed sub nom., Perlman v. Att'y Gen., 459 U.S. 1081, 103 S. Ct. 562, 74 L. Ed. 2d 927 (1982); State v. Davila, 443 N.J. Super. 577, 584 (App. Div. 2016); Betancourt, supra, 415 N.J. Super. at 311.

We appreciate that the legal questions raised here, as counsel have represented to us, could affect pending negotiations involving other school districts in the State. However, the present appeal in this settled case is not an optimal mechanism to resolve these questions in the abstract. Indeed, the Attorney General candidly acknowledged to us at oral argument that a ruling to affirm PERC's interpretation of Section 78 could logically have cognate impacts on negotiations under Section 77 of the statute involving State employees, N.J.S.A. 52:14-17.28e, and Section 79 of the statute involving county and municipal employees, N.J.S.A. 40A:10-21.2. No unions representing State, county, or municipal workers are participating in this appeal, as amicus or otherwise, nor are the League of Municipalities or any municipal or county governments.

Because of the widespread potential impact of a decision on the merits, those issues are best reserved for an appropriate appeal with a genuine "live" controversy among the litigants. As we suggested at oral argument, perhaps the resolution of the legal issues can be accomplished through an expedited decision in a different case before PERC, which can then be appealed to this court in a matter that is not moot and with appropriate and wider amici participation.

The appeal is consequently dismissed as moot.

I hereby certify that the foregoing is a true copy of the original on file in my office.

CLERK OF THE APPELLATE DIVISION