



# PERC Upholds Mandatory Contributions Under Chapter 78

In a recent decision favoring school districts, *In the Matter of Ridgefield Park Board of Education and Ridgefield Park Education Association*, the Public Employment Relations Commission (PERC) unanimously determined that a board of education complied with Chapter 78 by requiring employees to contribute at “Tier 4” until the current negotiations agreement expired, and that the board properly sought recoupment from its employees who contributed less than the Tier 4 amount.

Chapter 78, enacted in 2011, required public employees to pay a certain percentage of their health benefits coverage. The amount varied according to the type of coverage (individual, family, etc.), the employee’s base salary and the cost of coverage. Contributions phased in over a four-year period, so that Tier 4, constituted the highest level of employee contribution in the schedule. Chapter 78 began to sunset for some districts as of 2015.

In this case, the board and local education association (which represented the employees) executed a four-year contract in 2014. The contract carried over a provision from the previous contract stating that Association members contribute to health benefits at 1.5 percent of salary or the minimum required by law. During the first year of the contract, the Association began paying Tier 4 of Chapter 78.

However, during the second year of the contract, a dispute arose regarding the amount that employees should contribute. The Association members initially contributed 1.5 percent of their base salary. However, following PERC’s decision in a 2016 case involving the *Clementon Board of Education and the Clementon Education Association*, the employees’ contributions were increased to Tier 4. The board then sought to recoup the underpayment resulting from the Association members unlawfully contributing at 1.5 percent by freezing their salaries.

Here, PERC upheld the board’s actions and found the contribution levels were preempted by Chapter 78 for the entire duration of the contract, and that health insurance contributions did not become negotiable until the next collective negotiations agreement executed after the Association reached full implementation (i.e. contributed at Tier 4 for an entire year). Therefore, since the Association contributed at Tier 4 during the first year of the contract, Chapter 78 required Association members continue to contribute at Tier 4 until the expiration of the current negotiations agreement.

PERC further held the board had the right to recoup the underpayments made by the Association members. The only limitation was the timing and amount of paycheck deductions, which PERC found to be negotiable. However, PERC made clear that since “the right to recoupment stems from the statutory preemption ... in order to trigger an obligation on the Board’s part to negotiate over the recoupment amount and timing, the Association should have requested negotiations.”

Finally, PERC affirmed its prior decision in *Clementon*, in which it held health care contributions only become negotiable once an agreement has expired in which the union has contributed at Tier 4 for an entire year; and during these negotiations for the new agreement, Tier 4 remains the *status quo* because Chapter 78 mandates that the parties “conduct negotiations concerning health care benefits as if [Tier 4] was included in the prior contract.”

The text of the decision is available online by clicking [here](#)

[http://www.perc.state.nj.us/percdecisions.nsf/IssuedDecisions/85257575007C2104852581980069237B/\\$File/PERC%202018%2014.pdf?OpenElement](http://www.perc.state.nj.us/percdecisions.nsf/IssuedDecisions/85257575007C2104852581980069237B/$File/PERC%202018%2014.pdf?OpenElement)

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