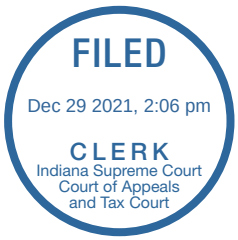

IN THE

Indiana Supreme Court

Supreme Court Case No. 21S-CT-343

Clark County REMC,
Appellant,

–v–

Glenn Reis, et al.,
Appellees.

Argued: October 7, 2021 | Decided: December 29, 2021

Appeal from the Clark Circuit Court
No. 10C01-1808-CT-143
The Honorable Maria D. Granger

On Petition to Transfer from the Indiana Court of Appeals
No. 20A-CT-622

Opinion by Justice Slaughter

Chief Justice Rush and Justices David, Massa, and Goff concur.

Slaughter, Justice.

For decades, the board of a county REMC, a rural electric membership cooperative, adopted a series of policies providing health-insurance benefits to former directors who met certain conditions. We must decide, as an issue of first impression in Indiana, whether the board policy at issue here created a binding contract with the REMC's former directors. We hold there was not a contract because the policy was not an offer.

I

The four plaintiffs are former directors of Clark County REMC, a public-utility company established under the Indiana Rural Electric Membership Corporation Act. See Ind. Code §§ 8-1-13-1 et seq. Clark REMC is administered by a board of directors, on which the plaintiffs served during these years: Glenn Reis, 1984 to 2005; Dale Bottorff, 1992 to 1993 and 1996 to 2014; Steve Stumler, 1994 to 2018; and Jimmie Sanders, 1997 to 2018.

From 1972 until 2018, Clark REMC had a series of board policies that allowed former directors who met eligibility requirements to receive health-insurance benefits. Under the 1972 policy, former directors with either twenty years of service or twelve years of service if forced to retire at age sixty-five could participate in Clark REMC's group health-insurance plan. Under this policy, Clark REMC paid the eligible directors' health-insurance premiums.

The board changed its policy over the years. The changes made in 2014 and 2018 are the basis of the dispute here. The 2014 version did the following:

- eliminated eligibility for the group health-insurance plan for former directors;
- required retired directors to obtain their own health insurance, which Clark REMC then reimbursed subject to certain caps;
- said that "[t]his policy will be reviewed periodically"; and
- said that the updated policy "shall take the place of, revoke and render null and void" the previous version.

The 2018 version then terminated the health-insurance reimbursement policy for former directors.

After the 2018 revision took effect, the plaintiffs sued Clark REMC alleging, as relevant here, breach of contract. Clark REMC moved for summary judgment on the breach-of-contract claim, and the plaintiffs cross-moved for partial summary judgment on liability. The trial court granted summary judgment on this claim for the plaintiffs and against Clark REMC. The plaintiffs' other claims, including a promissory-estoppel claim, were later resolved by a court-approved settlement agreement.

Clark REMC appealed, and the court of appeals affirmed the trial court's judgment. *Clark Cnty. REMC v. Reis*, 167 N.E.3d 333, 335 (Ind. Ct. App. 2021). Clark REMC then sought transfer, which we granted, *Clark Cnty. REMC v. Reis*, 171 N.E.3d 616 (Ind. 2021), thus vacating the appellate opinion.

II

Summary judgment is appropriate when there are no genuine issues of material fact, and the movant is entitled to judgment as a matter of law. *Griffin v. Menard, Inc.*, 175 N.E.3d 811, 813 (Ind. 2021). The parties here do not dispute the underlying facts. What they dispute is the legal effect of the uncontested factual record: whether any of Clark REMC's evolving board policies formed a binding contract with any of the four former directors. Questions of contract formation are legal issues we review de novo. See *Orr v. Westminster Village North, Inc.*, 689 N.E.2d 712, 721 (Ind. 1997) (deciding, as a matter of law, that an employee handbook was not a contract in part because it did not represent an offer).

Under settled Indiana law, a contract requires "offer, acceptance, and consideration". *Indiana Dep't of State Revenue v. Belterra Resort Indiana, LLC*, 935 N.E.2d 174, 179 (Ind. 2010), opinion modified on reh'g, 942 N.E.2d 796 (Ind. 2011). This is true whether a contract is unilateral or bilateral. See *Orr*, 689 N.E.2d at 720–21 (discussing offer, acceptance, and consideration in the context of a unilateral contract). The plaintiffs contend the board's 2018 policy, which eliminated the health-care reimbursement plan for former directors, breached Clark REMC's contract with them. The policies

went through many formulations from 1972 to 2018, but we look to the 2014 version as the purported moment of contract formation. That is when the board established the health-care reimbursement plan, which remained unaltered until the board rescinded it in 2018. The 2014 policy provided in relevant part:

> **5. Health and Hospitalization Insurance.**
>
> c. If permitted by prevailing law, all **eligible** active and past directors who were elected to the Board before January 1, 2000 shall, at such time when he or she stops serving on the Board of Directors, have the option to participate in the Cooperative's family health and hospitalization plan or such substitute health plan acquired through an exchange as dictated by the Affordable Care Act or other prevailing law at the Cooperative's expense. A Director is not eligible for past director coverage under this subsection unless: (A) the Director has served on the Board no less than twelve (12) full years and has reached the full age of 65 years when s/he leaves the Board, or (B) the Director has served on the Board no less than twenty (20) full years and has not reached the full age of 65 years when s/he leaves the Board. **HOWEVER** the amount of health insurance premiums payable by the Cooperative for past director coverage shall not exceed the rates established [below].

(Emphasis in original).

We hold there was no contract as to any plaintiff because the board's 2014 policy did not manifest Clark REMC's intention or invitation to contract. With no intention to contract, there was no offer; with no offer, there was no binding agreement. Thus, we reverse the trial court's contrary judgment.

"An offer is defined as the manifestation of willingness to enter into a bargain, so made as to justify another person in understanding that his assent to that bargain is invited and will conclude it." *Zimmerman v. McColley*, 826 N.E.2d 71, 77 (Ind. Ct. App. 2005) (cleaned up) (quoting Restatement (Second) of Contracts § 24 (1981)); accord *Conwell v. Gray*

Loon Outdoor Mktg. Grp., Inc., 906 N.E.2d 805, 813 (Ind. 2009) (requiring reasonable certainty of contract terms "including by whom and to whom"). Here, as an initial matter, the 2014 policy did not show Clark REMC's intent was to contract with another person. Rather, the policy was simply the board's internal communication with itself. It was not styled as a "contract" or "agreement" with—or as an offer to—an individual director but as a "Policy of the Board of Directors". It did not memorialize terms and conditions but set out "the practice of the Cooperative". Also, the policy was signed only by the board secretary—and not by the individual plaintiffs or by the board on Clark REMC's behalf. And the policy fell explicitly under the category of "Governance Process". Indeed, the secretary's signature served only as an "affirmation of official Board action adopting this policy". No designated evidence shows it was directed to any plaintiff in any capacity outside his role as a director acting collectively on Clark REMC's behalf. The 2014 policy merely formalized the board's internal operations and did not manifest an intention or invitation by Clark REMC to contract with another. Thus, it was not an offer that any director could accept to form a binding, enforceable contract.

Moreover, the 2014 policy did not convey a promise to any plaintiff with reasonable certainty. The mere "expressed intention to do a given thing" is not a promise and does not create a binding obligation. *Joyce v. Hamilton*, 111 Ind. 163, 165, 12 N.E. 294, 295 (1887); accord 1 Williston on Contracts § 4:9 (4th ed.) ("[A]n ordinance or resolution of a municipality does not amount to an offer since it merely evidences the municipal corporation's intent to do something in the future, but does not thereby make a promise that it shall be done. Nor does a vote by the directors of a private corporation itself amount to an offer for the same reason".). An offer must also convey with "reasonable certainty . . . the terms and conditions of the promises made". *Conwell*, 906 N.E.2d at 813.

Here, the 2014 policy contained no promise at all, only an expression of the board's contemporaneous intention to provide health-insurance benefits to its former directors—an intention that could, and did, change over time. Nothing in this policy suggested the board was promising to continue this benefit in perpetuity or for a former director's lifetime. The

plaintiffs implicitly conceded this point in their summary-judgment motion by acknowledging: "In other words, the REMC agreed to provide health insurance benefits that survived any changes to the contrary." The plaintiffs cannot contend that Clark REMC agreed to continue providing lifetime health benefits without change when they posit that Clark REMC agreed to provide benefits only until it made "changes to the contrary."

Nor did the 2014 policy convey with reasonable certainty the board's promise to provide former directors with health-insurance benefits for life in exchange for their future board service. As explained above, the policy read like an internal governance document and not a binding contract between Clark REMC and individual directors. And the policy itself said it "will be reviewed periodically." Moreover, even without this statement, corporations have inherent power to change their bylaws at will. I.C. § 8-1-13-7(a); *Supreme Lodge, K. of P. of the World v. Knight*, 117 Ind. 489, 496–97, 20 N.E. 479, 483 (1889). Policies are not bylaws; they are even less formal than bylaws. Bylaws, though subordinate to a corporation's articles of incorporation, are typically considered an organization's "most authoritative governing document". Bylaw, Black's Law Dictionary (11th ed. 2019). If corporations can change their bylaws at will, it follows they can change their policies at will, too. The plaintiffs concede there is no difference under the statute in Clark REMC's ability to amend its bylaws versus its policies. Indeed, the statute empowers an REMC to "make its own rules and regulations as to its procedure." I.C. § 8-1-13-7(e). Thus, the default rule in Indiana is that corporations can change their policies at will. A corporate policy that does not reject this rule cannot convey such reasonable certainty about its terms that it represents an offer.

On appeal, the parties' arguments focus on whether there was consideration and whether the former directors had a vested right to lifetime health benefits. Because we hold there was no offer, we need not address whether there was consideration. And because there was no contract, Clark REMC had no ongoing obligation to provide health-care benefits, vested or not, to its former directors. Clark REMC is entitled to summary judgment.

* * *

The 2014 board policy, which established reimbursement benefits for former directors, was not an offer because it did not convey with reasonable certainty promises manifesting an intention or invitation to contract with another. With no offer, there was no contract, and the plaintiffs' breach-of-contract claims must fail. We reverse the trial court's grant of summary judgment to the plaintiffs and remand with instructions to enter judgment for Clark REMC.

Rush, C.J., and David, Massa, and Goff, JJ., concur.

ATTORNEYS FOR APPELLANT
Kent M. Frandsen
Katherine M. Moore
Parr Richey Frandsen Patterson Kruse LLP
Lebanon, Indiana

David A. Lewis
Jeffersonville, Indiana

ATTORNEY FOR APPELLEES
Mark R. Waterfill
Plainfield, Indiana