

#356-08 (OAL Decision not available online)

OAL DKT. NO. EDU 2820-08
AGENCY DKT. NO. 102-4/08

IN THE MATTER OF THE TENURE :
HEARING OF ALONZO KITTRELS, : COMMISSIONER OF EDUCATION
SCHOOL DISTRICT OF THE TOWNSHIP : DECISION
OF WILLINGBORO, BURLINGTON COUNTY. :

The record of this matter and the Initial Decision issued by the Office of Administrative Law (OAL) have been reviewed pursuant to *N.J.A.C.* 1:1-19.1, together with the Stipulation of Settlement subsequently submitted by the parties for review by the Commissioner.¹

Upon such review, the Commissioner finds the present record insufficient to ascertain whether the parties' proposed settlement is consistent with established standards governing settlement of tenure matters. *In re Cardonick*, decided by the Commissioner April 7, 1982, *aff'd* State Board April 6, 1983, 1990 *S.L.D.* 842, 846. While the parties have brought this matter in the posture that the Commissioner's scope of review is limited to settlement of the present tenure charges against respondent and does not extend to the parties' separate agreement for settlement of the multiple litigations pending between them elsewhere, it

¹ During tenure proceedings at the OAL, the parties advised the ALJ that they had – through a mediation conducted by retired Superior Court Judge Peter Ciolino – reached, in principle, a “global” settlement of all matters in dispute between them; however, they were unable to complete the settlement process prior to the OAL hearing date set pursuant to *N.J.A.C.* 1:6B-9.1 in recognition of the strict statutory requirement for expedition of tenure matters. Accordingly, rather than move forward with the scheduled tenure hearing, the parties submitted – and the ALJ approved for purposes of Initial Decision – an incompletely executed Settlement Agreement and General Release, which did not specifically address the tenure matter or the standards for approval of tenure settlements. Subsequently, on July 24, 2008, the Board submitted to the Commissioner the parties' proposed stipulation of settlement for the tenure matter, which did attempt to address the requisite standards and was perfected by July 25, 2008 submission of a Board resolution approving the settlement and August 7, 2008 submission of a fully executed document signed by both respondent and the Board President and Board Secretary.

is clear from the two documents on their face that the tenure settlement – which provides for salary and benefits limited solely to contractual entitlements totaling \$74,511.06² – is inextricably intertwined with, and mutually contingent upon, the aforementioned “global” settlement – which provides for a far more substantial payment (\$225,488.94) as “compensatory damages...for alleged personal injury” in exchange for respondent’s agreement to waive the multiple claims he has made against the Board in various State and federal forums over the past several years, claims the Board itself recognizes as integrally related to its efforts to remove respondent from the position of Superintendent.³ (Board Resolution at paragraph 3) Thus, notwithstanding the parties’ attempt to bifurcate the terms of their agreement so as to insulate portions of it from review herein, it is clear that the proposed tenure settlement does not, in itself, entirely resolve this matter and cannot be reviewed by the Commissioner apart from its companion agreement. Therefore, in order to ensure that the *Cardonick* standard is satisfied, the Commissioner must insist that the parties provide a more specific explication as to the nature and scope of the litigation addressed by the “global” agreement, as well as particularized reasons – beyond the Board’s general statement that it desires to move forward without the costs and threat of ongoing litigation hindering its efforts to establish new leadership in the district and provide a quality education for students – that the *entire settlement package* is in the public interest.

Accordingly, the proposed tenure settlement and the Initial Decision of the OAL recommending its approval are hereby rejected, and this matter is remanded to the OAL for

² Respondent is to receive \$31,197.40 in salary withheld from him following certification of the present tenure charges, back pay of \$12,535.58 for increases withheld during the 2005-06, 2006-07 and 2007-08 school years, pay for accumulated unused vacation (36 days) in the amount of \$20,278.08, and pension reimbursement of \$10,500.00 for the three years in which such reimbursement was withheld.

³ It also provides for payment of the difference between the \$20, 278 allocated by the tenure settlement for unused vacation time (see note 2 above) and any lesser amount that may be dictated by subsequent enactment of legislation limiting such payments.

further proceedings consistent with the concerns set forth above. If the parties are unable or unwilling to expand the record, or to modify their agreement, in accordance with the Commissioner's directive, the tenure charges shall duly proceed to hearing.

IT IS SO ORDERED.⁴

COMMISSIONER OF EDUCATION

Date of Decision: August 26, 2008

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⁴ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36*.