

DENZEL D. RANKINS :
PETITIONER, :
V. :
BOARD OF EDUCATION OF THE : COMMISSIONER OF EDUCATION
CITY OF PLEASANTVILLE, ATLANTIC :
COUNTY and JAMES RIEHMAN, : DECISION
STATE-APPOINTED MONITOR OR :
SUCH OTHER MONITOR CURRENTLY :
ASSIGNED TO THE PLEASANTVILLE :
SCHOOL DISTRICT, :
RESPONDENTS. :

SYNOPSIS

Petitioner – a long-time non-tenured security guard in respondent’s district, who was non-renewed for the 2009-2010 school year – challenged the State-appointed monitor’s rejection of the decision of the Pleasantville Board of Education to rehire petitioner following a *Donaldson* hearing. Petitioner alleged that the State-appointed monitor (Monitor) acted unlawfully in rejecting the Board’s decision to rehire him, and seeks reinstatement to his position as of the beginning of the 2009-2010 school year and compensation for lost salary and emoluments.

The ALJ found that: the School District Fiscal Accountability Act, *N.J.S.A. 18A:7A-54 et seq.*, authorizes the Commissioner to appoint a state monitor whose scope of powers is delineated in Section (b) of the statute; the Monitor’s actions are bound by the education laws; this case involves the non-renewal of a non-tenured staff member – ie: day-to-day operations involving personnel matters – and arises out of alleged inappropriate conduct that is wholly unrelated to the fiscal oversight duties of the Monitor; and neither the Monitor’s contract or statute empowered him to overturn Rankin’s reinstatement by the Board that was exercised at a *Donaldson* hearing, the right to which is granted under education law. The ALJ reversed the action of the Monitor in overruling the Board of Education, and ordered that petitioner be reinstated to his position effective August 11, 2009 and reimbursed for back pay, less mitigation.

Upon comprehensive review of the entire record in this matter, the Commissioner concluded that the Monitor did not exceed his statutory authority when he overturned the Board’s decision to reinstate the petitioner, finding that the Monitor’s decision was related to the fiscal management of school funds because it was based in part on concern that the Board would expose itself to potential legal liability if it knowingly reinstated a non-tenured employee who had evidenced inappropriate behavior in the past. Accordingly, the Commissioner rejected the Initial Decision of the OAL and affirmed the decision of the Monitor not to renew petitioner’s employment.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

October 26, 2010

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by James Riehman, State-Appointed Monitor (“Monitor”), and the respective replies thereto filed by the petitioner and the Pleasantville Board of Education (Board).

The Monitor submitted exceptions to support his contention that the Administrative Law Judge (ALJ) erroneously concluded that the Monitor did not have the authority to overturn the Board’s decision to reinstate the petitioner, a non-tenured security guard, after his *Donaldson* hearing. The Monitor initially takes exception to several factual findings made by the ALJ, arguing that the ALJ generally failed to make findings of fact that encompassed the totality of the evidence presented during the hearing. The Monitor specifically contends that the ALJ erred in finding that: the petitioner has a good relationship with the remaining students; the ALJ’s factual analysis of the Monitor’s rationale for overturning the Board’s vote fails to reflect the testimony; and the ALJ failed to consider the testimony of

assistant principal Hyman-Medley. In his exceptions, the Monitor states that he acted within his authority to override the Board based upon his concern that petitioner has engaged in inappropriate conduct and that his continued employment was not in the interest of the district or the students.

In addition to the factual exceptions, the Monitor also takes exceptions to the legal conclusions reached by the ALJ. The Monitor argues that: the ALJ erred in finding that the Monitor acted outside the scope of his contract; the failure of the Monitor to be involved in the Superintendent's decision not to renew petitioner's employment contract is irrelevant to whether the Monitor exceeded his powers; the ALJ erred in finding that the Monitor does not have the authority to make personnel decisions after a non-renewed employee exercises his rights to a *Donaldson* hearing before the Board; the ALJ incorrectly found that the Monitor did not consider any fiscal factors in overturning the Board's decision; the Judge improperly substituted his judgment for that of the Monitor; and the ALJ's legal conclusion misinterprets the governing law and frustrates the purpose of the School District Fiscal Accountability Act, *N.J.S.A. 18A:7A-54 et seq.* ("Fiscal Accountability Act"). In his exceptions, the Monitor generally maintains that – given the petitioner's non-tenured status – he had broad authority to overturn the Board's decision because the Fiscal Accountability Act explicitly grants the Monitor authority over staffing matters, including the ability to hire, promote and terminate employees. Finally, the Monitor argues that the adoption of the Initial Decision would significantly weaken the role of the state monitor.

The Board and the petitioner both submitted reply exceptions that contained similar arguments in response to the Monitor's exceptions. In their replies, the Board and the petitioner urged the adoption of the Initial Decision, and cite testimony from the hearing

transcripts to support the factual findings made by the ALJ. The Board and the petitioner further maintain that the statutory power given to the Monitor under *N.J.S.A. 18A:7A-55* relating to the ability to make staffing and personnel decisions is subject to the education laws and regulations. The Board and the petitioner also emphasize that the Monitor acted beyond the scope of his authority because his decision to overturn the Board was not fiscally motivated. Finally, the Board and the petitioner argue that it was not the intent of the legislature to grant the Monitor the unfettered power to make decisions on issues that do not involve fiscal duties or responsibilities.

Upon a comprehensive review of the entire record in this matter, which included the transcripts of the two hearing dates conducted at the OAL on May 11 and June 11, 2010, the Commissioner finds that the Monitor did not exceed his statutory authority under *N.J.S.A. 18A:7A-55* when he overturned the Board's decision to reinstate the petitioner. Pursuant to the Fiscal Accountability Act, the Commissioner is authorized to appoint a state monitor to oversee the fiscal management and expenditures of school district funds when an independent audit reveals the existence of certain financial shortfalls that are delineated in the Act. *N.J.S.A. 18A:7A-55(a)* and (b). Additionally, there is no doubt that the state monitors have the power to make personnel decisions for non-tenured staff members, when those decisions are necessary to solve the district's fiscal or audit deficiencies. *N.J.S.A. 18A:7A-55*. Further, in order to achieve fiscal stability, state monitors have the authority to override a vote of the board of education. *N.J.S.A. 18A:7A-55(b)(5)*.

In this case, the petitioner's employment was initially not renewed based on the fact that he made inappropriate comments toward female students. The Monitor testified that one of the reasons why he overrode the Board's decision to reinstate the petitioner was related to potential liability for the Board in connection with the reinstatement of the petitioner.

(1T114:17-115:4, 1T116:2-13). The Monitor was concerned that there would be similar issues with the students in the future, and that the Board would then be at risk for legal liability for reinstating petitioner knowing that there was evidence of inappropriate behavior in the past. (*Id.*). Certainly, the exposure to potential legal liability for a school district that is plagued with financial shortcomings is a valid fiscal rationale for making a personnel decision regarding a non-tenured staff member. Therefore, the Commissioner finds that the Monitor's decision was related to the fiscal management of school funds, and thus falls within the statutory authority of a state monitor.

It is important to recognize that the Commissioner's decision in this case does not afford the state monitors more power than is statutorily provided by the Fiscal Accountability Act. State monitors do not have unfettered power to make decisions for the district that are not grounded in fiscal accountability; rather, the state monitors must continue to have fiscal or financial concerns or motivations in order to appropriately overturn a Board's decision.

Accordingly, the Initial Decision of the OAL is rejected; and the Monitor's decision not to renew the petitioner's employment is hereby affirmed.

IT IS SO ORDERED.*

ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 26, 2010

Date of Mailing: October 26, 2010

* Pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*, Commissioner decisions are appealable to the Superior Court, Appellate Division.