

#414-12 (OAL Decision: Not yet available online)

JANINE WALKER CAFFREY, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF : DECISION
THE CITY OF PERTH AMBOY,
MIDDLESEX COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner – who is employed under a three year contract as the respondent Board’s superintendent of schools – challenged the May 7, 2012 action of the Board to place her on a paid administrative leave of absence, contending that the Board improperly invoked the Doctrine of Necessity and failed to comply with the procedural requirements of the Open Public Meetings Act (OPMA), *N.J.S.A. 10:4-6 et seq.* The Board contends that the Commissioner of Education is without jurisdiction in this matter or that, in the alternative, its actions were in all respects legal and proper; the Board filed a motion for summary decision.

The ALJ found, *inter alia*, that: there are no genuine issues of material fact, and the matter is ripe for summary decision; the Commissioner has incidental jurisdiction to determine matters arising under the OPMA as they relate to school law controversies; the Board properly invoked the Doctrine of Necessity because it was unable to act on petitioner’s suspension given the conflicts of interest on the part of several Board members; the question of whether petitioner should remain actively in service was a vital public issue; and the Board properly noticed and advertised the May 7, 2012 meeting. Accordingly, the ALJ granted summary decision to the Board; ordered that the Board’s May 7, 2012 resolution to place petitioner on a paid administrative leave was lawful; and dismissed the petition.

Upon careful and independent review, the Assistant Commissioner – to whom this matter was delegated pursuant to *N.J.S.A. 18A:4-34* – rejected the Initial Decision of the OAL, finding that it did not fully address all of the issues in this case as it only examined the procedural mechanism utilized to hold a vote of the full membership of the Board on the issue of petitioner’s employment status. The Assistant Commissioner also specifically noted that the precedential value of prior case law in this area has been significantly impacted by subsequent statutory and regulatory enactments. Accordingly, the Assistant Commissioner remanded the matter to the OAL for a determination regarding whether the Board’s decision to place the petitioner on paid administrative leave was arbitrary, capricious or unreasonable.

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 25, 2012

OAL DKT. NO. EDU 7205-12
AGENCY DKT. NO. 122-5/12

JANINE WALKER CAFFREY, :
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 PETITIONER, :
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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 the petitioner Janine Walker Caffrey and the Board of Education. The Administrative Law Judge (ALJ) found that the Board properly invoked the Doctrine of Necessity when it voted on May 7, 2012 to put the petitioner on paid administrative leave. As a result, the ALJ granted summary decision in favor of the Board and dismissed the petition of appeal.¹

The Board did not take exception to the ALJ's Initial Decision, but instead urged the Commissioner to issue a final decision adopting the Initial Decision and incorporating the arguments made in its brief below. The Board also asked the Commissioner to take judicial notice of the Board's September 22, 2012 resolution putting the petitioner on paid administrative leave for the remainder of her contract term.

The petitioner filed exceptions asserting that the Initial Decision should not be adopted because the ALJ erroneously determined that the Board properly invoked the Doctrine

¹ The ALJ also dismissed the other counts in the amended petition relating to the Open Public Records Act and the School Ethics Act.

of Necessity. The petitioner specifically argued that the relevant case law requires a determination that there is a pressing public need before the doctrine can be invoked by a board of education. The petitioner further maintains that there is no evidence of a pressing need to place the petitioner on administrative leave, nor is there any evidence that allowing the petitioner to continue her duties as superintendent was contrary to the wishes of most people in the district. As a result, the petitioner argues that the Board was not authorized to invoke the Doctrine of Necessity to enable the conflicted board members to vote on petitioner's employment status. Therefore, the petitioner asserts that the Initial Decision should be rejected and the matter should be remanded to the OAL for a hearing on the issue of whether there was a pressing public need enabling the Board to invoke the Doctrine of Necessity.

Upon a comprehensive review of the record in this matter, the Assistant Commissioner – to whom this matter has been delegated to pursuant to *N.J.S.A. 18A:4-34* – finds that the Initial Decision did not fully address all of the issues in this case. The Initial Decision examined the procedural mechanism utilized by the Board – i.e. the Doctrine of Necessity – to hold a vote of the full membership of the Board concerning the petitioner's employment status. The Initial Decision, however, did not address whether the Board's decision to place the petitioner on an indefinite period of paid administrative leave was arbitrary, capricious or unreasonable.

In 2008, the Commissioner promulgated regulations designed to ensure fiscal accountability and efficiency for all boards of education. See *N.J.S.A. 18A:17-20.2b*; *N.J.A.C. 23A:1.1*. In connection with the need for fiscal efficiency, specific regulations were adopted to establish parameters that govern the early termination of a superintendent's employment contract. *N.J.S.A. 18A:17-20.2b*; *N.J.A.C. 23A:3.2*. Early termination agreements

for the involuntary separation of the superintendent are not only subject to Commissioner review, but the board of education must also show that the separation is “in the best interest of the district’s students and/or district operation.” *N.J.A.C. 23A:3.2(a) and (b)*. Further, the regulations expressly limit the compensation that can be paid to a superintendent under a separation agreement. *N.J.A.C. 23A:3.2(g)*.

In the case at bar, the Board has voted through the Doctrine of Necessity to place the petitioner on paid administrative leave for an indefinite amount of time while designating another individual to complete the duties of the superintendent.² The circumstances surrounding the Board’s decision regarding the petitioner’s employment are analogous to a scenario where a board of education enters into an early termination agreement for the involuntary separation of a superintendent. The Board’s decision to put the petitioner on paid administrative leave under these circumstances cannot escape scrutiny simply because a formal separation agreement has not been negotiated. The need for fiscal accountability and the assurance that the Board is acting in the best interest of the districts’ students remains paramount. Therefore, an analysis is required to determine if the Board’s decision to place the petitioner on paid administrative leave was arbitrary, capricious or unreasonable. It should also be noted that the case law addressing situations where a board of education has put a superintendent on paid administrative leave has been significantly impacted by the promulgation of the regulations that demand financial accountability for all boards of education. See, e.g. *Gerald W. Kohn v. Board of Education of the City of Vineland, Cumberland County*, Commissioner Decision

² On May 7, 2012 the Board voted to put the petitioner on paid administrative leave for an unknown amount of time. As the Board notes in its submission, on September 22, 2012, the Board voted to put the petitioner on paid administrative leave for the duration of her employment contract. Petitioner has also challenged the September 22, 2012 vote in the matter of *Janine Walker Caffrey v. Board of Education of the City of Perth Amboy, Middlesex County, Agency Dkt. No.296-9/12*.

No. 303-01, decided September 14, 2001; *Harrington v. Board of Education of the Township of Clinton*, 95 N.J.A.R. 2d (EDU) 535.

Accordingly the Initial Decision is rejected; and this matter is remanded to the OAL for a determination regarding whether the Board's decision to place the petitioner on paid administrative leave is arbitrary, capricious or unreasonable.³

IT IS SO ORDERED.⁴

ASSISTANT COMMISSIONER OF EDUCATION

Date of Decision: October 25, 2012

Date of Mailing: October 26, 2012

³ The Commissioner's ultimate final decision in this matter will address the procedural use of the Doctrine of Necessity, as well as whether the Board's decision to place the petitioner on paid administrative leave is arbitrary, capricious or unreasonable.

⁴ 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.