

LERROY SEITZ,	:	
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PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE	:	DECISION
TOWNSHIP OF PARSIPPANY-TROY HILLS,	:	
MORRIS COUNTY AND	:	
KATHLEEN SERAFINO, EXECUTIVE	:	
COUNTY SUPERINTENDENT FOR	:	
MORRIS COUNTY,	:	
	:	
RESPONDENTS.	:	
	:	

SYNOPSIS

Petitioner, the Superintendent of Schools in Parsippany-Troy Hills Township, challenged the decision of the respondent Board of Education to rescind his employment contract as district superintendent, dated November 9, 2010, and to reduce his salary to \$177,500 – the maximum allowed under the salary caps set forth in *N.J.A.C. 6A:23A-1.2* and *N.J.A.C. 6A:23A-3.1*, which went into effect on February 7, 2011. Petitioner contended, *inter alia*, that respondent Kathleen Serafino, formerly the Executive County Superintendent (ECS) for Morris County, had verbally approved the contract prior to the effective date of the new salary regulations. The Board filed a counterclaim to recoup the salary it had paid to the petitioner in excess of the salary cap.

The ALJ found, *inter alia*, that: *N.J.S.A. 18A:7-8(j)* directs each ECS to review and approve all superintendent employment contracts in their county; although *N.J.A.C. 6A:23A-3.1* does not mention that a written approval of these contracts is necessary, credible testimony at the hearing established that approval letters are the Department of Education’s protocol; the ECS never gave express or implied approval of petitioner’s contract prior to the announcement of the new regulations on November 1, 2010; pursuant to *N.J.A.C. 6A:23A-1.2(e)(2)* and its specific reference to *N.J.S.A. 18A:17-20.1*, petitioner’s alternate argument – that his initial contract, for a salary substantially higher than that prescribed in the new regulations, automatically “rolled over” because advance notice was not given of a change to the terms of the contract – is without merit; petitioner’s initial contract remained in effect until it expired on July 1, 2011, entitling him to compensation in excess of the new salary cap; on July 1, 2011, the ECS directed the Board to submit a new contract for her approval that complied with the maximum salary provisions; the Board rescinded and voided petitioner’s former contract, but continued to pay petitioner in excess of the maximum until November 3, 2011, subsequent to the ECS’s directive to reduce his salary to \$177,500 or face sanctions; and the Board’s counterclaim for the amount of petitioner’s salary paid in excess of the salary caps, following the ECS’s directive to recoup same, is within the jurisdiction of the Commissioner. Accordingly, the ALJ concluded that the Board’s actions in reducing petitioner’s salary were proper, and ordered the petition dismissed with prejudice. Further, the ALJ ordered that the Board is entitled to reimbursement in the sum of \$17,597, as stipulated by the parties.

Upon careful and independent review, the Commissioner adopted the Initial Decision of the OAL as the final decision in this matter for the reasons well stated therein.

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.

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Before the Commissioner is a dispute concerning whether a proposed employment contract between petitioner, LeRoy Seitz, and respondent Board of Education of the Township of Parsippany-Troy Hills (Board) was lawfully approved and executed before the regulatory amendment capping superintendents' salaries came into effect on February 7, 2011. The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions and replies thereto, filed pursuant to *N.J.A.C. 1:1-18.4*.<sup>1</sup> The Administrative Law Judge (ALJ) determined that the proposed contract was never approved by respondent, Kathleen C. Serafino, then-Executive County Superintendent (ECS) for Morris County. Thus, the ALJ concluded that the contract was invalid and that the Board was entitled to recoup \$17,597 from petitioner for the resultant overpayment of his salary as the

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<sup>1</sup> By letters dated June 19, 2013, petitioner asserted that respondents' respective reply papers were filed out of time and, therefore, should be disregarded. Upon review, the Commissioner finds that all replies were timely filed in accordance with *N.J.A.C. 1:1-18.4(d)*.

superintendent for the Parsippany Troy-Hills School District. Upon a comprehensive review of the record, the Commissioner is in accord with the ALJ's determinations.

Petitioner excepts to a number of the ALJ's factual findings. Most notably, petitioner contends that the ALJ erred in determining that Dr. Serafino did not verbally approve the proposed contract.<sup>2</sup> Petitioner argues that this factual finding is contrary to his own testimony as well as that of Mr. Ralph Goodwin, former Interim Executive County School Business Administrator. In reply, respondent Serafino maintains that the weight of the evidence supports the ALJ's finding that she did not verbally approve petitioner's contract.

The ALJ, as a finder of fact, has the greatest opportunity to observe the demeanor of the involved witnesses and, consequently, is best qualified to judge their credibility. *In the Matter of Tenure Hearing of Tyler*, 236 N.J. Super. 478, 485 (App. Div.) *certif. denied*, 121 N.J. 615 (1989). As such, an ALJ's factual findings are entitled to substantial deference. The Commissioner "may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent and credible evidence in the record." (N.J.S.A. 52:14B-10(c)). A reasoned review of the record, with this governing standard in mind, provides no basis for concluding that the ALJ's credibility assessments and resultant fact finding were without the requisite level of support. To the contrary, after full consideration of all evidentiary proofs which comprise the record, the Commissioner is satisfied that the ALJ carefully measured evidentiary conflicts, testimonial inconsistencies and potential biases in deciding what testimony to credit. Accordingly, the

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<sup>2</sup> Petitioner also cited several instances in which the ALJ's summary of witness' testimony was allegedly inconsistent or incomplete. Upon review, the Commissioner finds that the alleged inconsistencies would not alter determination of the salient issues in this case.

Commissioner adopts the ALJ's factual findings, including the finding that respondent Serafino never verbally approved the proposed employment contract.

Petitioner also excepts to a number of the ALJ's legal conclusions. First, petitioner takes exception to the ALJ's conclusion that ECS approval of a superintendent's employment contract must be in writing. Petitioner argues that the ALJ's determination in that regard was in error, since both *N.J.S.A. 18A:7-8(j)* and *N.J.A.C. 6A:23A-3.1(a)(1)* are silent on the issue of whether written approval is required. However, the Commissioner finds sufficient evidence in the record to support the ALJ's finding that DOE protocol required a written letter of approval for superintendent contracts. To that end, petitioner's own witness, Trudy Doyle, testified that the former Commissioner of Education issued a directive requiring all ECS contract approvals to be in writing, and that the ECSs developed a form letter of approval to comply with that directive. (Initial Decision at 19) Moreover, petitioner's inquiry as to the status of the approval letter evidences his own understanding that a written approval was necessary. (*Id.* at 9)

Petitioner next takes exception to the ALJ's conclusion that respondent Serafino was authorized to direct the Board to rescind the proposed employment contract and reduce petitioner's salary. Petitioner maintains that, in so doing, respondent Serafino exceeded her authority under *N.J.S.A. 18A:7-8*. The Commissioner disagrees. Pursuant to *N.J.S.A. 18A:7-8(j)*, ECSs are charged with the task of reviewing and approving – in accordance with standards adopted by the Commissioner, and prior to execution – all employment contracts for superintendents of schools within their county. Part of that review necessarily entails review for compliance with the maximum salary provision outlined in *N.J.A.C. 6A:23A-3.1*. In directing the Board to rescind the invalid contract and reduce petitioner's salary, respondent Serafino did

nothing more than direct the Board to comply with educational statute and code requirements respecting superintendent contracts.

Petitioner argues that the ALJ erred in determining that his initial contract did not “roll over” by virtue of *N.J.S.A.* 18A:17-20.1. In reply, respondent Serafino maintains that – pursuant to *N.J.A.C.* 6A:23A-3.1(c) and *Bacher v. Bd. of Educ. of the Twp. of Mansfield*, Commissioner Decision No. 84-12, decided March 5, 2012, *aff’d*, Dkt. No. A-3743-11T2 (App. Div. 2013) – any such “roll over” contract is unenforceable absent approval of the ECS. Respondent Serafino further maintains that approval could not have been granted here, since the “roll over” contract would have included a salary in excess of that permitted under *N.J.A.C.* 6A:23A-1.2. The Commissioner concurs with the ALJ and respondent Serafino that petitioner’s initial contract did not roll over, since the salary provision contained therein exceeded the cap and was not approvable by the ECS.

Petitioner also takes exception to the ALJ’s determination that the Commissioner has jurisdiction over the Board’s counterclaim for recoupment. In that regard, petitioner contends that the Board’s counterclaim is a contract claim, which does not involve a direct application of the school laws. The Commissioner disagrees. Petitioner’s disentitlement to the salary amounts sought to be recouped by the Board arises by application of *N.J.S.A.* 18A:7-8(j) and *N.J.A.C.* 6A:23A-1.2 and -3.1. Thus, determination of the counterclaim requires a direct application of the school laws and the Commissioner has jurisdiction to hear and determine such a dispute. *N.J.S.A.* 18A:6-9; *See also O’Toole v. Bd. of Educ. of the Borough of Ramsey*, 212 *N.J. Super.* 624 (App. Div. 1986), *certif. den.* 107 *N.J.* 123 (1987). Furthermore, having determined that the Board is entitled to recoup the amount of \$17,597 from petitioner, “there is no reason in law, policy or good sense to conclude that the [Commissioner is] without

jurisdiction to reduce [his] finding to an order that [Seitz] make the reimbursement.” *Id.* at 627. Indeed, the Appellate Division has held that the filing of a separate Law Division action in order to transform similar findings into an order to pay would be “pointless and wasteful.” *Id.*

With respect to the Board’s counterclaim, petitioner excepts to the ALJ’s determination that relaxation of the 90-day limitation imposed by *N.J.A.C.* 6A:23A-1.2 is appropriate. The Board, on the other hand, excepts to the ALJ’s determination that its counterclaim was untimely and, in the alternative, urges the Commissioner to adopt the ALJ’s conclusion that the relaxation is appropriate. The Commissioner agrees with the ALJ – for the reasons presented on pages 63-66 of his decision – that, although untimely filed, the counterclaim implicates a significant public interest justifying relaxation of the 90-day rule.

Accordingly, the recommended decision of the OAL is adopted for the reasons well expressed therein. The Commissioner hereby directs petitioner LeRoy Seitz to pay to the Board of Education of the Township of Parsippany-Troy Hills the sum of \$17,597.

IT IS SO ORDERED.<sup>3</sup>

ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 15, 2013

Date of Mailing: July 16, 2013

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<sup>3</sup> 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.