

#125-15 (OAL Decision: Not yet available online)

CHRISTINE PALING, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
SUSSEX WANTAGE REGIONAL SCHOOL,
DISTRICT, SUSSEX COUNTY, :
RESPONDENT. :

SYNOPSIS

This matter involves a request by the petitioner for damages based on the respondent Board's failure to timely remit pension contributions required under *N.J.S.A. 18A:66-32.1(a)*. Petitioner was employed as a school nurse by the school district when she slipped and fell at work in August 2010, sustaining a head injury. Petitioner filed her appeal on May 14, 2014, seeking to recoup lost pension payments she allegedly would have received had the Board properly made timely pension payments while she was out of work on temporary disability leave. The respondent Board contended it had based its action upon advice from the Division of Pensions, and that the petitioner did not timely file her appeal pursuant to *N.J.A.C. 6A:3-1.3(i)*. The Board asserted that the 90 day period for filing of the appeal must be counted from December 15, 2013 – the date when petitioner received notice of the Board's non-payment of pension contributions from the Division of Pensions. Petitioner asserted that she never received this notice from the Division of Pensions, and that the 90 day period for filing should be counted from March 13, 2014 – when she received a letter from respondent's counsel confirming that no contributions had been made for the period in question.

The ALJ found, *inter alia*, that: petitioner's appeal was timely filed; the respondent Board should have been aware of the governing regulation applying to this matter, and its reliance on verbal direction from the Division of Pensions was not reasonable and justifiable; respondent failed to abide by the mandates of *N.J.S.A. 18A:66-32.1(a)* when it did not remit payments to the retirement system on petitioner's behalf during her period of disability; however, neither the OAL nor the Commissioner has the authority to award the remedy sought by the petitioner, which is essentially a money judgment. Accordingly, the ALJ dismissed the appeal.

Upon review, the Commissioner concurred with the ALJ's determination that the petition must be dismissed for lack of jurisdiction. In so determining, the Commissioner noted that his jurisdiction over school laws does not extend to pension disputes arising under *N.J.S.A. 18A:66-32.1(a)*. Further, the Commissioner noted that it is well established that the authority to decide pension disputes lies squarely with the Board of Trustees of the Teachers Pension and Annuity Fund. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter, and the petition was dismissed.

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.

April 2, 2015

OAL DKT. NO. EDU 6863-14
AGENCY DKT. NO. 126-5/14

CHRISTINE PALING, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE : DECISION
 SUSSEX WANTAGE REGIONAL SCHOOL, :
 DISTRICT, SUSSEX COUNTY, :
 :
 RESPONDENT. :

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, Christine Paling, and the Sussex Wantage Regional School District's (District) reply thereto.

This matter involves a request by the petitioner for damages based on the District's failure to timely remit pension contributions required under *N.J.S.A. 18A:66-32.1(a)* during a period of time that the petitioner was receiving temporary disability payments. The petitioner alleges that she would have had the requisite 25 years of service credit for retirement in December 2013, and if the District made the proper pension contributions, she could have started receiving pension benefits in January 2014. However, the District's failure to timely make the requisite pension contributions resulted in a delay in her retirement from January 2014 until June 2014, resulting in a loss of five months of pension benefits. The Administrative Law Judge (ALJ) found that the petitioner filed her petition in a timely manner; however the ALJ determined that neither the Commissioner nor the OAL have the authority to award the monetary judgment sought by the petitioner. Therefore, the ALJ recommended that the petition be dismissed for lack of jurisdiction.

Upon review, the Commissioner concurs with the ALJ's determination that the petition of appeal must be dismissed for lack of jurisdiction. The petitioner is seeking damages in connection with the five months of pension payments that she could have received if the District did not delay its obligations under *N.J.S.A. 18A:66-32.1(a)*.¹ Despite the petitioner's contention that the Commissioner has the authority to provide her relief because the District violated a provision found in Title 18A: Education, the Commissioner's jurisdiction over school laws does not extend to pension disputes arising under *N.J.S.A. 18A:66-32.1(a)*. It is well established that the authority to decide pension disputes lies squarely with the Board of Trustees of the Teachers Pension and Annuity Fund. *See, Board of Trustees of the Teachers' Pension and Annuity Fund of the State of New Jersey v. Alex A. La Tronica, et al.*, 81 *N.J. Super* 461, 467-470 (App. Div. 1963). Furthermore, the Commissioner is without power to award consequential damages. *T.B. and M.B. on behalf of minor child S.B. v. Board of Education of Park Ridge*, May 24, 2007, *aff'd, State Board*, September 5, 2007. Consequently, the ALJ correctly concluded that the Commissioner and the OAL lack jurisdiction to award the petitioner the relief sought in this case.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: April 2, 2015

Date of Mailing: April 2, 2015

¹ The District did ultimately make the outstanding pension contributions on the petitioner's behalf in the amount of \$10,570.34 based upon calculations provided by the Division of Pensions.

² 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.