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LUCILLE DAVY, COMMISSIONER)	SUPERIOR COURT OF NEW JERSEY
OF THE DEPARTMENT OF)	LAW DIVISION - MERCER COUNTY
EDUCATION,)	
)	
Plaintiff)	DOCKET NO.
v.)	
)	VERIFIED COMPLAINT
BARBARA TRZESZKOWSKI,)	IN SUPPORT OF A
KEANSBURG BOARD OF EDUCATION)	DECLARATORY JUDGMENT
and KEANSBURG SCHOOL DISTRICT,)	
)	
Defendants.)	

Plaintiff, Lucille Davy, Commissioner of the Department of Education, whose principal office is at 100 River View Plaza, Trenton, NJ 08625, by way of verified complaint against the Defendants says:

THE PARTIES

1. Plaintiff, Lucille Davy is the Commissioner of the Department of Education and was appointed by Governor Jon S. Corzine and confirmed by the Senate and is charged with supervision of all schools in the State of New Jersey.

2. Defendant, Barbara Trzeszkowski is the current superintendent of the Keansburg school district and has been so employed as superintendent since 1999. Trzeszkowski began working in Keansburg in January 1970 as a teacher and later as a principal before being appointed as superintendent.

3. Defendant, the Keansburg Board of Education is currently comprised of nine elected members: William Manoes, Kimberly Kelaher-Moran, Ann Marie Best, Yolanda Ann Commarato, Cindy Etkorn, Judy Ferraro, Robert Ketch, James Merkel and Christine Blum.

4. On information and belief, at the time the employment contract at issue in this matter was approved, the Keansburg Board of Education was comprised of the following members: James Cocuzza, Joseph W. Hazeldine, Patsy Acconzo, Jr., Annett Jacome, Patricia Hamilton, Edith L. Chimel, MaryAnn Franklin, Kimberly Kelaher Moran and Andrew Murray.

5. Defendant, the Keansburg school district is comprised of 2 primary schools, the Joseph C. Caruso and Fort Monmouth Road schools, one middle school, the Joseph R. Bolger Middle School and one high school, the Keansburg High School.

Factual Allegations

6. The Keansburg school district (hereinafter "Keansburg") is made up of approximately 1800 students with approximately 530 attending Keansburg High School.

7. Keansburg was first designated as an Abbott school district in 1990 and remains in this status in the 2007-08 school year.

8. For the 2008-09 school year, the designation of "Abbott" has been eliminated statewide and Keansburg will fall under the authority of the School Funding Reform Act of 2008 ("SFRA"), L. 2007, c.260, § 18. Under the SFRA, Keansburg will be held to similar requirements currently in place for Abbott districts.

9. For Fiscal Year 2006-2007, Keansburg received over \$34 million dollars in State aid, which accounted for approximately 80 percent of its school budget.

10. For Fiscal Year 2007-08, Keansburg received over \$31 million dollars in State aid, which accounted for approximately 77 percent of its school budget.

11. For Fiscal Year 2008-09, Keansburg is expected to receive close to \$33 million in total state aid which will constitute approximately 78 percent of its school budget.

12. Compared to other k-12 districts in New Jersey, Keansburg is within the top 15 highest spending school districts per pupil in all of New Jersey.

13. Pursuant to N.J.A.C. 6A:23-8.2, each district board of education must also prepare and submit a proposed budget in which the "advertised per pupil administrative costs does not exceed the lower of: (1) the district's adjusted pre-budget year per pupil

administrative costs or (2) the per pupil administrative cost limit for the district's region.

14. The administrative cap described in paragraph 13 above must include all administrative costs, including any severance packages or "buyouts" offered to administrative staff and therefore will limit Keansburg's current Board of Education as well as future Boards' ability to expend administrative costs.

15. This declaratory judgment action arises from a contract entered into on or about February 25, 2004 between Defendants, Barbara Trzeszkowski and former and current members of the Keansburg Board of Education (hereinafter "Keansburg Board of Education"). A true copy of the contract is attached as Exhibit A.

16. This employment contract between Trzeszkowski and the Keansburg Board of Education, was effective for the period, July 1, 2003 through June 30, 2008, and allowed for salaries according to the following schedule:

July 1, 2003 to June 30, 2004	--	\$141,770
July 1, 2004 to June 30, 2005	--	\$149,780
July 1, 2005 to June 30, 2006	--	\$157,269
July 1, 2006 to June 30, 2007	--	\$165,132
July 1, 2007 to June 30, 2008	--	\$173,389

17. The employment contract also allows additional merit increases beyond the amounts described in paragraph 16 above, "based on the Superintendent's progress toward achieving the district goals."

18. Upon separation of service, the contract provides that

Trzeszkowski was to receive "all unused accumulated sick days at the per diem rate of the Superintendent's final annual salary" with payment occurring in 3 equal installments. The contract also provides that "as of June 30,2003, Trzeszkowski had 190.5 accumulated sick days." Exhibit A, at ¶13.

19. Under the contract, Trzeszkowski was also to "receive full payment of vacation days to which she is entitled" under the contract. Ibid.

20. The employment contract goes on "to provide [Trzeszkowski] a sum equal to one month's pay for each year of continuous service in the district if resignation/retirement occurs under the circumstances" established in the contract. This "severance" payout is to be made in five equal annual installments with the first payout to occur on July 15th after resignation or retirement. Ibid.

21. The employment contract allows for severance for all of Trzeszkowski's years of continuous service in the district, without regard to the position or title she held during those years. This contract calls for Trzeszkowski's calculation of her total severance payment to be based on her 2007-2008 salary, her last and highest year's salary as a superintendent. The terms in this paragraph and paragraph 20 above, will be hereinafter referred to as the "severance package".

22. On or about April 28, 2008, the Keansburg Board of

Education entered into an employment contract with Nicholas Eremita to serve as Superintendent of Schools effective July 1, 2008 through June 30, 2011. The contract sets forth the following salaries for the duration of the contract:

July 1, 2008 through June 30, 2009 - \$160,000
July 1, 2009 through June 30, 2010 - \$166,400
July 1, 2010 through June 30, 2011 - \$173,056

A true copy of the contract is attached as Exhibit B.

23. With regard to the Trzeszkowski employment contract, at the time that Trzeszkowski and the Keansburg Board of Education entered into it, the Keansburg Board knew or, based on readily accessible information available at that time, should have known that Trzeszkowski had already accrued a total of approximately 34 years of continuous service in the district.

24. Since this employment contract also did not specify when Trzeszkowski could resign or retire and receive the severance package, there was always the possibility that Trzeszkowski could have sought the severance package soon after her contract was entered into in February 2004.

25. Even though at the time of execution of the employment contract, the Keansburg Board of Education knew or should have known that Trzeszkowski would be immediately eligible for the severance package, the Keansburg Board of Education, without due regard to the fiscal impact such a contract would have on the district, still determined to enter into this employment contract

with Trzeszkowski.

26. On information and belief, based upon Trzeszkowski's current salary, Trzeszkowski is now seeking approximately \$170,137 for unused sick days and \$14,449 for vacation days and an additional \$556,290 under the severance package.

27. On information and belief, Trzeszkowski applied for and is scheduled to receive an annual pension of over \$100,000.00.

28. On information and belief, in May 2007, Trzeszkowski notified the Keansburg Board of Education of her intent not to renew her contract and to retire effective July 1, 2007. The employment contract between Trzeszkowski and the Keansburg Board of Education will expire by its own terms at midnight, June 30, 2008. Exhibit A, at §2.

29. On information and belief, the parties to the employment contract, pursuant to the terms of the employment contract entered into between Trzeszkowski and the Keansburg Board of Education, believe that Trzeszkowski will be entitled to receive approximately \$556,290 over a five-year period as a severance package based solely on her years of continuous service with the Keansburg school district even though this employment contract, in fact, expires on June 30, 2008.

30. The \$556,290 severance package is excessive, unreasonable and against public policy.

31. The severance package whereby Trzeszkowski is to receive

approximately \$556,290 is nothing more than a bonus given to Trzeszkowski at the time of her retirement and is contrary to law since there is a lack of valid consideration as between the parties to allow for this provision in the contract.

32. Since N.J.A.C. 6A:23-8.2, as described in paragraphs 13 and 14 above, requires the Keansburg Board of Education to include all administrative costs in its budget, the \$556,290 severance package offered to Trzeszkowski will have to be included in Keansburg's administrative costs for the next 5 years thereby causing Keansburg to have a lesser available amount of other administrative costs and still be under the cap. Stated another way, because this severance amount must be accounted for in Keansburg's budget for administrative costs and because administrative costs are capped, Keansburg will have much less to expend on the district's actual valid administrative needs for this year and for four more years.

Commissioner's Davy's Authority

33. Commissioner Davy has authority to supervise all New Jersey public schools under her inherent authority as Commissioner and also pursuant to, among other things, the 2008 Appropriations Act and the SFRA, §18, and prior to the SFRA, Abbott v. Burke, 149 N.J. 145, 189 (1997) ("Abbott IV"); Abbott v. Burke, 153 N.J. 480, 492 (1998) ("Abbott V") (collectively "Commissioner's Authority").

34. Commissioner Davy also appears on behalf of the citizens

of New Jersey, including those in the Township of Keansburg, pursuant to parens patriae, to protect the rights of citizens from the unreasonable and inappropriate spending of school funds and to ensure that school districts utilize their funds for the overall purpose of educating students, and not for the benefit of any individual or individuals.

35. The Commissioner's Authority includes to ensure that such districts expend state funds in an effective and efficient manner.

36. Pursuant to the Commissioner's Authority, the Commissioner can take necessary and/or affirmative action to ensure the effective and efficient expenditure of funds by school districts.

37. In exercising the Commissioner's authority to ensure the effective and efficient expenditure of funds, Commissioner Davy is not limited to any specific type of action she can consider to ensure that funds are spent appropriately, but rather, may implement whatever necessary or affirmative action she deems appropriate, including filing an action in Superior Court, as necessary, to ensure the appropriate expenditure of funds.

38. The severance package in the Trzeszkowski employment contract, is not an effective and efficient expenditure of funds.

39. That severance package is also excessive, unreasonable and against state law and public policy.

40. The severance provision is also contrary to law based on

the lack of consideration between the parties for the inclusion of that provision.

41. The Keansburg Board of Education members who approved and ratified Trzeszkowski's employment contract with this severance package breached their fiduciary obligation to the citizens of Keansburg and New Jersey to adequately protect the public funds in their care from inappropriate and excessive expenditures. To the extent that the Keansburg Board of Education supports the severance package, the Board is also breaching this same fiduciary obligation.

42. The severance package is also null and void because the contract inappropriately and intrusively binds future Boards for costs, including administrative costs, arising under the contract for five years after the contract has terminated.

43. On information and belief, the first of five installment payments for the severance provision is to be paid by the Keansburg Board of Education on July 15, 2008. Exhibit A, at ¶13.

44. On information and belief, the Keansburg Board of Education has decided not to make any payments on the severance package until this matter has been resolved. Based on this information, Commissioner Davy is not seeking a preliminary injunction to estop the Keansburg Board of Education from making any payments pursuant to this severance package during the pendency of this matter. If this information is found to be inaccurate or

the Keansburg Board determines to make such payments while this matter is pending, Commissioner Davy reserves the right to seek preliminary relief at that time.

COUNT I

45. Plaintiff repeats the allegations as set forth in Paragraphs 1 through 44 above and incorporates the same herein by reference.

46. Plaintiff, Commissioner Davy, is entitled to a judicial declaration pursuant to N.J.S.A. 2A:16-50 et seq. declaring that the severance package is null and void because it violates state law because it is not an effective and efficient expenditure of education funds and because public funds are being used to pay for this unreasonable and excessive provision.

WHEREFORE, plaintiff, Lucille Davy, Commissioner of the Department of Education, demands judgment against defendants declaring that the severance package, is null and void because it violates state law and that the Keansburg Board of Education shall not make any severance payments to Barbara Trzeszkowski based on the severance package; and

- (a) For the costs of this action; and
- (b) For attorney's fees for this action; and
- (c) For such other relief as the Court deems appropriate.

COUNT II

47. Plaintiff repeats the allegations as set forth in Paragraphs 1 through 46 above and incorporates the same herein by reference.

48. Plaintiff, Commissioner Davy, is entitled to a judicial declaration pursuant to N.J.S.A. 2A:16-50 et seq. declaring that the severance package is null and void because it violates New Jersey public policy where public funds are being used to pay for this unreasonable and excessive provision.

WHEREFORE, plaintiff, Lucille Davy, Commissioner of the Department of Education, demands judgment against defendants declaring that the severance package is null and void because it is against public policy and that the Keansburg Board of Education shall not make any severance payments to Barbara Trzeszkowski based on the severance package; and

- (a) For the costs of this action; and
- (b) For attorney's fees for this action; and
- (c) For such other relief as the Court deems appropriate.

COUNT III

49. Plaintiff repeats the allegations as set forth in Paragraphs 1 through 48 above and incorporates the same herein by reference.

50. Plaintiff, Commissioner Davy, is entitled to a judicial

declaration pursuant to N.J.S.A. 2A:16-50 et seq. declaring that the severance package is void because the Keansburg Board of Education members who approved and ratified Trzeszkowski's employment contract breached their fiduciary obligation to the citizens of Keansburg and New Jersey to adequately protect the public funds in their care from inappropriate and excessive expenditures. To the extent that the current Keansburg Board of Education supports the severance package, the Board is also breaching this same fiduciary obligation.

WHEREFORE, plaintiff, Lucille Davy, Commissioner of the Department of Education, demands judgment against defendants declaring that the severance package is null and void because it constitutes a breach of a fiduciary obligation of the Keansburg Board of Education to protect the citizens of Keansburg and New Jersey from inappropriate and excessive expenditures of public funds and that the Keansburg Board of Education shall not make any severance payments to Barbara Trzeszkowski based on the severance package; and

- (a) For the costs of this action; and
- (b) For attorney's fees for this action; and
- (c) For such other relief as the Court deems appropriate.

COUNT IV

51. Plaintiff repeats the allegations as set forth in

Paragraphs 1 through 50 above and incorporates the same herein by reference.

52. Plaintiff, Commissioner Davy, is entitled to a judicial declaration pursuant to N.J.S.A. 2A:16-50 et seq. declaring that the severance package is void because it lacked valid consideration as between the parties to allow for this provision in the contract.

WHEREFORE, plaintiff, Lucille Davy, Commissioner of the Department of Education, demands judgment against defendants declaring that the severance package is null and void because it lacks valid consideration and that the Keansburg Board of Education shall not make any severance payments to Barbara Trzeszkowski based on the severance package; and

- (a) For the costs of this action; and
- (b) For attorney's fees for this action; and
- (c) For such other relief as the Court deems appropriate.

COUNT V

53. Plaintiff repeats the allegations as set forth in Paragraphs 1 through 52 above and incorporates the same herein by reference.

54. Plaintiff, Commissioner Davy, is entitled to a judicial declaration pursuant to N.J.S.A. 2A:16-50 et seq. declaring that the severance package is void because it inappropriately and intrusively binds future Boards for costs, including administrative