

BOARD OF EDUCATION OF THE :
TOWNSHIP OF IRVINGTON, :
ESSEX COUNTY, :

PETITIONER, : COMMISSIONER OF EDUCATION

V. : DECISION

NEW JERSEY STATE DEPARTMENT :
OF EDUCATION, :

RESPONDENT. :

SYNOPSIS

Petitioning “Abbott” District appealed the Department’s determination of its 2003-04 preliminary “maintenance budget,” alleging that the Department’s review was not in accordance with the July 23, 2003 order of the Supreme Court.

The ALJ found that the Department appropriately applied the duly promulgated rule implementing the Court’s order for “maintenance,” and that, accordingly, programs, services and positions must have been actually provided or filled in 2002-03 in order to be aided for 2003-04. On this basis, the ALJ rejected District claims for inclusion of approved and budgeted, but unfilled, 2002-03 positions, and textbook purchases approved as part of the District’s long-range curriculum plan but eliminated from the 2002-03 budget. The ALJ also found, however, that, under the Court-ordered exception for “non-discretionary expenses,” the Department erred in excluding certain expenses associated with salary increases and contractual bonuses.

The Commissioner concurred with the ALJ’s general conclusions, as well as his findings with respect to the unfilled staff positions and textbooks. However, the Commissioner rejected the Board’s claims for salary increases over 5% and monies to cover employee/retiree bonuses for which no evidence of contractual or other obligation was brought to the record.

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 20, 2003

OAL DKT. NO. EDU 5495-03
AGENCY DKT. NO. 192-6/03

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The Department's exceptions with respect to salary increases and retiree/employee bonuses were duly submitted in accordance with the schedule established in response to the Court's order for expedition, and no reply was filed by the Board.¹

Initially, the Commissioner concurs with the Administrative Law Judge (ALJ) that the "maintenance" standard established by the Court, and embodied in implementing regulation, requires programs, services and positions to have been actually provided or filled in 2002-03 in order to be aided for 2003-04. Thus, the Commissioner agrees that amounts attributable to approved and budgeted, but unfilled, 2002-03 positions were properly deducted from the District's 2003-04 "maintenance" budget, as were funds for the purchase of textbooks approved as part of the District's long-range curriculum plan but eliminated from the 2002-03 school budget.

¹ The Board attempted to submit, on October 14, 2003, exceptions to the Initial Decision, briefly reiterating the Board's position and bearing a face date of October 10, 2003. However, pursuant to the ALJ's direction and a telefaxed notice from the Bureau of Controversies and Disputes, exceptions in this matter were due on October 1, 2003; indeed, they would have been due on October 8, 2003 even under normal OAL rules, *N.J.A.C.* 1:1-18.4. Accordingly, they are not considered herein.

With respect to increases for salaries, however, the Commissioner does not agree with the ALJ's analysis. The Department's overall charge in this matter was to determine the level of 2003-04 funding that would enable the District to continue in a "maintenance" mode, that is, to implement in 2003-04 the programs, services and positions provided in 2002-03. While it is true that dollar amounts actually paid out for staffing prior to June 30, 2003 will not perfectly predict the cost of providing comparable staffing in the next, it is *equally* true that originally budgeted amounts and other similar projections are no less imprecise. Thus, in the Commissioner's view, a methodology which preliminarily establishes the 2003-04 cost of providing positions at "maintenance" levels by determining, as nearly as possible without benefit of audit, the actual approved cost of providing them in 2002-03 and then allowing for reasonable, nondiscretionary adjustments, is a uniform, fair and rational method for estimating future expenditures which cannot otherwise be determined with any degree of precision.

In the present instance, the Commissioner finds that applying the District's highest currently contracted increase percentage of 5% to actual salary expenditures for 2002-03 was a reasonable method of projecting preliminary salary costs for 2003-04. The Commissioner is unpersuaded by the Board's argument that this method does not take into account vacancies, retirements, substitutes and positions filled for only part of the year, since variances of these types occur every year and a preliminary district-wide salary budget is appropriately based on the assumption that staffing is a flexible and continuous process, with ebbs and flows that, absent specific evidence to the contrary, generally permit the projection of one year's experience onto the next. To the extent that results may be imperfect, even after adjustment following audit, *N.J.A.C. 6A:10-3.1(g)* provides a mechanism to obtain additional supplemental funding where unanticipated expenditures or unforeseen circumstances warrant.

Additionally, although the record is not entirely clear on this point, to the extent that the Board is seeking funding levels allowing for increases greater than the currently contracted 5% in anticipation of upcoming collective negotiations, such increase cannot properly be considered a “non-discretionary” cost appropriate for State support in a “maintenance” year occasioned in significant part by the need for fiscal austerity.

Finally, the Commissioner cannot agree with the ALJ that additional amounts claimed by the Board to be contractually due for retirees and certain transportation employees must be included within the District’s maintenance budget. As correctly noted by the Department, the record lacks “even a scintilla of documentary evidence” to support the Board’s claims in this regard, for which it bears the burden of proof. (Department’s Exceptions at 4) To the extent that such obligations do, in fact, exist and payment of them in 2003-04 may result in fiscal need, the Commissioner again notes that *N.J.A.C. 6A:10-3.1(g)* provides a mechanism for the Board to obtain additional supplemental funding where unanticipated expenditures or unforeseen circumstances warrant.

Accordingly, for the reasons set forth herein, the Initial Decision of the OAL is adopted except insofar as it recommends inclusion of salary increases and retiree/employee bonuses in the District’s maintenance budget. The Petition of Appeal, therefore, is dismissed in its entirety.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: October 20, 2003

Date of Mailing: N/A

* Pursuant to *P.L. 2003, c. 122, “Abbott”* determinations are final agency actions appealable directly to the Appellate Division of the New Jersey Superior Court.