

WINSLOW TOWNSHIP PARAPROFESSIONAL:
ORGANIZATION LOCAL 6171, AFT, AFL-CIO,

PETITIONER,

V.

BOARD OF EDUCATION OF THE TOWNSHIP,
OF WINSLOW, CAMDEN COUNTY,

RESPONDENT.

AND

WINSLOW TOWNSHIP PARAPROFESSIONAL
ORGANIZATION LOCAL 6171, AFT, AFL-CIO,

CHARGING PARTY,

V.

BOARD OF EDUCATION OF THE TOWNSHIP,
OF WINSLOW, CAMDEN COUNTY,

COMMISSIONER OF EDUCATION

DECISION

SYNOPSIS

In this consolidated matter, the petitioner – Winslow Township Paraprofessional Organization, Local 6171 AFT, AFL-CIO (Union) – alleged that the respondent Board acted in bad faith when it decided to subcontract unit work and terminate bargaining unit paraprofessionals (PERC issues). The Board contended that it negotiated in good faith, that the Union rejected proposals for cost saving, and that the purpose of privatization was fiscal responsibility. The Union raised three additional issues under the education laws, *N.J.S.A. 18A:1 et seq.*: it asserted that the Board privatized certain positions without submitting requests for proposals or invitations for bids; the Union further claimed that the Board violated *N.J.S.A. 18A:27-10.2* by failing to provide proper notice to educational and bus aides that their positions were to be terminated; and it opined that the Board violated the New Jersey Constitution by hiring a private staffing company to educate the district’s students. The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: there are no issues of material fact in this case, and the matter is ripe for summary decision; the Board exercised lawful managerial prerogative to subcontract unit work, and there is no evidence that it acted in bad faith; in regard to the education law issues, the Union did not establish that the Board failed to submit an appropriate RFP when it privatized certain positions; the Board did fail to timely notify employees that their jobs would be terminated as required in *N.J.S.A. 18A:27-10.2*, but the regulations do not provide for any specific remedy; and the Board did not violate the State Constitution by privatizing paraprofessional work. Accordingly, the ALJ granted the Board’s motion for summary decision on the PERC issues and denied the Union’s cross motion, and granted that portion of the Union’s motion relating to the Board’s untimely termination notice to employees, but denied the remaining issues.

Upon review, the Commissioner adopted the Initial Decision of the OAL as the final decision in this matter.

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.

November 10, 2014

OAL DKT. NOS. PRC 15022-13 and EDU 10977-11 (consolidated)
AGENCY DKT. NO. 159-6/11

WINSLOW TOWNSHIP PARAPROFESSIONAL :
ORGANIZATION LOCAL 6171, AFT, AFL-CIO, :
PETITIONER, :
V. :
BOARD OF EDUCATION OF THE TOWNSHIP, : COMMISSIONER OF EDUCATION
OF WINSLOW, CAMDEN COUNTY, :
RESPONDENT. : DECISION
AND :
WINSLOW TOWNSHIP PARAPROFESSIONAL :
ORGANIZATION LOCAL 6171, AFT, AFL-CIO, :
CHARGING PARTY, :
V. :
BOARD OF EDUCATION OF THE TOWNSHIP, :
OF WINSLOW, CAMDEN COUNTY, :

This matter involves a consolidated action that stemmed from a petition of appeal filed by the Winslow Township Paraprofessional Organization (petitioner) with the Department of Education, and an unfair practice charge filed with the Public Employment Relations Commission (PERC). In those filings, the petitioner alleged that the Winslow Township Board of Education (Board) violated several education laws and acted in bad faith when it decided to subcontract unit work to non-union employees and terminate the bargaining-unit professionals. On August 29, 2013, the petitions were consolidated for hearing before the Office of Administrative Law (OAL), and the parties agreed that PERC has predominant interest as to the issues within its jurisdiction and the Commissioner has jurisdiction to determine any remaining

education issues.¹ Thereafter, the petitioner and the Board filed cross-motions for summary decision.

With respect to the education issues, the Administrative Law Judge (ALJ) granted the petitioner's motion for summary decision in part, and denied it in part.² Specifically, the ALJ determined that the petitioner did not establish that the Board failed to comply with the competitive contract process contained in *N.J.S.A.* 18A:18A-4, and it did not show that the Board's decision to hire a private staffing company violated the New Jersey State Constitution. The ALJ did, however, find that the Board violated *N.J.S.A.* 18A:27-10.2 because it did not give notice to the educational aides and bus aides before May 15, 2010 that their positions were to be terminated. Despite the violation of *N.J.S.A.* 18A:27-10.2, the ALJ concluded that the petitioner did not show any prejudice to the employees based on the fact that the notices were not issued until June, 2010, and that unlike in the case of teaching staff members, the governing statutory provision does not include a remedy for the failure to give timely notice to paraprofessionals.

The record of this matter – which includes the Initial Decision of the OAL, the petitioner's exceptions to the Initial Decision, the Board's reply thereto, and the final decision of PERC – has been reviewed.³ In its exceptions filed at PERC,⁴ the petitioner contends that the ALJ erroneously found that there was no remedy for the Board's violation of *N.J.S.A.* 18A:27-10.2. Even though the statute does not include a provision for re-appointment, the petitioner

¹ The procedural history of this consolidated matter is outlined in the Initial Decision and in the final decision issued by PERC and will not be repeated here.

² Although the briefs submitted by the parties did not address any education issues, the ALJ made a determination with respect to the education issues that were delineated in the petition of appeal that was filed with the Department of Education.

³ PERC issued a final decision on September 18, 2014, dismissing the Unfair Practice Complaint based on the fact that the Board exercised lawful managerial prerogative to subcontract unit work and did not act in bad faith.

⁴ There were no separate exceptions filed with the Commissioner of Education.

argues that a logical approach would be to borrow the remedial nature of *N.J.S.A. 18A:27-11* concerning notice to teaching staff members, and reappoint the paraprofessionals because of the Board's faulty notice.

Upon review, the Commissioner is in accord with the ALJ's determination that the petitioner did not establish that the Board failed to comply with *N.J.S.A. 18A:18A-4* and did not show that the Board's decision to hire a private staffing company violated the New Jersey State Constitution. The Commissioner also agrees with the ALJ's conclusion – for the reasons stated in the Initial Decision – that *N.J.S.A. 18A:27-10.2* does not entitle the paraprofessionals to automatic reappointment based on the Board's failure to give notice by May 15, 2010 that employment would not be offered for the next year. Accordingly, the Initial Decision is adopted as the final decision in this matter.

IT IS SO ORDERED.⁵

ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 10, 2014

Date of Mailing: November 12, 2014

⁵ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36*.