

New Jersey Commissioner of Education
Final Decision

Catherine Coyle,

Petitioner,

v.

Board of Education of the City of Jersey City,
Hudson County,

Respondent,

and

Jersey City Education Association,

Intervenor.

Synopsis

Petitioner – a resident of the City of Jersey City – alleged that the Board violated the School Ethics Act, *N.J.S.A. 18A:12-21 et seq.*, during negotiations members engaged in regarding a Memorandum of Agreement (MOA). The MOA related to a collective bargaining agreement (CBA) between the Board and the Jersey City Education Association (JCEA) that went into effect on July 1, 2019. Petitioner contended, *inter alia*, that certain board members who participated in negotiations had conflicts of interest, and that the Board had improperly invoked the Doctrine of Necessity in approving the MOA. Petitioner sought to invalidate the MOA through an application for emergent relief, which was opposed by the Board. A motion to intervene was filed on behalf of the JCEA, and was granted on July 3, 2019. Emergent relief was denied on July 22, 2019. The Board filed a motion for summary decision on August 6, 2019.

The ALJ found, *inter alia*, that: the only disputed facts herein pertain to whether the respondents violated the School Ethics Act, *N.J.S.A. 18A:12-21 et seq.*; there are no genuine issues of material fact in this case, and the matter is ripe for summary decision; the threshold issue is whether the Commissioner of Education has jurisdiction to consider the within petition; the Commissioner’s jurisdiction is limited to matters that arise under the school laws, *N.J.S.A. 18A:6-9*; petitioner’s claims involve alleged violations of the School Ethics Act, *N.J.S.A. 18A:12-21 et seq.*, which fall under the jurisdiction of the School Ethics Commission; and there is no incidental jurisdiction pursuant to the Open Public Meetings Act as claimed by petitioner. Accordingly, the ALJ granted the Board’s motion for summary decision and dismissed the petition.

Upon review, the Commissioner concurred with the findings and conclusions of the ALJ, and adopted Initial Decision of the OAL as the final decision in this matter. The petition was dismissed.

<p>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.</p>

December 3, 2019

New Jersey Commissioner of Education
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Petitioner,

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Board of Education of the City of Jersey City,
Hudson County

Respondent,

and

Jersey City Education Association,

Intervenor.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed by the petitioner pursuant to *N.J.A.C.* 1:1-18.4 and the replies thereto filed by the Board and the intervenor, Jersey City Education Association (JCEA).

By way of background, the Board and JCEA negotiated a Memorandum of Agreement (MOA) regarding a collective bargaining agreement that took effect on July 1, 2019. Petitioner – a resident of the city of Jersey City – sought to invalidate the MOA in an emergent petition, alleging that members of the Board violated the School Ethics Act, *N.J.S.A.* 18A:12-21 *et seq.*, by participating in the negotiations while having conflicts of interest and that the Doctrine of Necessity was improperly invoked. The Commissioner denied petitioner’s emergent application on July 22, 2019. Thereafter, the Administrative Law Judge (ALJ) dismissed the petition, finding that the Commissioner does not have jurisdiction over the claims set forth in the petition, which all involve alleged violations of the School Ethics Act. Instead, the proper venue would be with the School Ethics Commission (SEC).

In her exceptions, petitioner argues that the Commissioner has jurisdiction over her claims because whether a board of education follows proper procedures in the negotiation and ratification of teacher contracts falls under New Jersey School Law, as *N.J.S.A.* 18A:11-1 requires Boards to act in accordance with the law. Otherwise, a finding that the Commissioner lacks jurisdiction would result in the Commissioner having no oversight over a board negotiating a contract with a union. Additionally, petitioner contends that the Commissioner has primary jurisdiction over this matter because he has oversight over the Board due to the transition plan that returns local control to the district, and that the Commissioner also has incidental jurisdiction over violations of the Open Public Meetings Act (OPMA), *N.J.S.A.* 10:4-6 *et seq.*

Petitioner further argues that the Commissioner has the authority to issue injunctions and should enjoin the MOA. Petitioner maintains that she is not seeking relief under the School Ethics Act – such as a reprimand, censure, suspension, or removal – so she should not be limited to the remedies available under the Act.

Petitioner also contends that there are genuine issues of material fact that should preclude summary decision. For example, the ALJ makes a finding that a Standing Committee on Labor Negotiations was formed to manage the JCEA, but petitioner maintains that fact-finding is necessary to determine whether the Board members who negotiated with the JCEA had the authority to do so. Additionally, a hearing is necessary to determine if the doctrine of necessity was improperly invoked.¹

In reply, the Board asks the Commissioner to adopt the Initial Decision because the ALJ properly found that the Commissioner lacks jurisdiction over the allegations outlined in the petition. The Board explains that the petition alleges three counts: “improper negotiations due to conflicts of interest”; “unauthorized independent action by President and Vice President”; and “improper voting based on defective doctrine of necessity.” (Petition at 14-19). All of those causes of action involve violations of

¹ Petitioner also argues that the grant of summary decision is improper because the Board has not filed an answer or responsive pleading. It is clear that the Board’s motion for summary decision is akin to a motion to dismiss in lieu of an answer, permitted by *N.J.A.C.* 6A:3-1.5(g), and the Board was directed by the ALJ to proceed in this manner following the denial of emergent relief.

the School Ethics Act and do not arise under the school laws, as required by *N.J.S.A.* 18A:6-9 in order to trigger the Commissioner’s jurisdiction. Petitioner’s argument that her claims arise under *N.J.S.A.* 18A:11-1 does not confer jurisdiction on the Commissioner because even if, *arguendo*, the claims did arise under this statute, the allegations would still require determinations by the SEC regarding the underlying claims of board member conflict of interest and the doctrine of necessity.

The Board notes the Commissioner lacks jurisdiction over contractual disputes, as the negotiation of a contract between a board of education and a union does not fall under School Law but is instead entered into under the Employer-Employee Relations Act, *N.J.S.A.* 34:13A-5.1 *et seq.* Therefore, as the Commissioner does not have the jurisdiction to adjudicate contractual matters, he also does not have the authority to issue the injunction that petitioner seeks. Additionally, the Board points out that the transition plan does not provide any authority for a private party to bring a claim to enforce its terms, nor does it take away the SEC’s jurisdiction over violations of the School Ethics Act. Furthermore, the Board explains that although petitioner did not include an OPMA claim in her petition, even if she had, the Commissioner’s “incidental” jurisdiction over OPMA would not apply in this matter because he does not have jurisdiction over the underlying claim.

Finally, the Board contends that there are no disputes of material fact that preclude the entry of summary decision. The ALJ appropriately found that the Commissioner lacks jurisdiction over the claims made by petitioner; therefore, he does not have jurisdiction to resolve any of the disputed facts.²

Upon review, the Commissioner agrees with the ALJ that the he does not have jurisdiction over this matter as the claims set forth in the petition do not arise out of New Jersey School Law as required by *N.J.S.A.* 18A:6-9; instead, they involve alleged violations of the School Ethics Act. Whether Board members were conflicted or took unauthorized independent action – and whether the Board properly invoked the Doctrine of Necessity – falls squarely within the SEC’s jurisdiction. *N.J.S.A.*

² The arguments made by the JCEA in its reply exceptions are substantially similar to the arguments made by the Board, and therefore will not be addressed in detail.

18A:12-21 *et seq.* The Commissioner does not find petitioner's exceptions to be persuasive as they do not demonstrate that the Commissioner has jurisdiction over this matter. Petitioner cannot attempt to circumvent the SEC's jurisdiction by claiming that her allegations arise under *N.J.S.A.* 18A:11-1, nor does the transition plan confer jurisdiction on the Commissioner instead of the SEC. Additionally, as the ALJ found, petitioner did not allege a violation of the OPMA; nevertheless, the Commissioner would not have incidental jurisdiction over such a claim because the primary allegations fall under the SEC's jurisdiction. With respect to petitioner's argument that there are genuine issues of material fact that should preclude summary decision, it is within the SEC's purview to make factual determinations, as the Commissioner lacks jurisdiction over the petition.

Accordingly, the Initial Decision of the OAL is adopted – for the reasons thoroughly expressed in the Initial Decision – and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: December 3, 2019
Date of Mailing: December 3, 2019

³ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L.* 2008, *c.* 36 (*N.J.S.A.* 18A:6-9.1).



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDU 08804-19

AGY REF NO. 150-6/19

CATHERINE COYLE,

Petitioner,

v.

**BOARD OF EDUCATION OF THE CITY OF
JERSEY CITY, HUDSON COUNTY,**

Respondent,

and

JERSEY CITY EDUCATION ASSOCIATION,

Intervenor.

Elizabeth M. Andes, Esq., for Petitioner (McAndrew Vuotto, attorneys)

Lawrence Bluestone, Esq., for Respondent (Genova Burns, attorneys)

Michael J. Gross, Esq., for Respondent (Kenney, Gross, Kovats & Parton, attorneys)

Raymond M. Baldino, Esq., for Intervenor (Zazzali, Fagella, Nowak, Kleinbaum & Friedman, attorneys)

Record Closed: August 29, 2019

Decided: September 10, 2019

BEFORE **THOMAS R. BETANCOURT**, ALJ:

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner filed a Petition with the Office of Controversies and Disputes in the New Jersey Department of Education (DOE). The contested matter was transferred to the Office of Administrative Law (OAL), pursuant to N.J.A.C. 1:6A-12.1, where it was filed on June 28, 2019, to be heard on an emergent basis.

Petitioner requests a ruling declaring a Memorandum of Understanding (MOA) negotiated between the Respondent Board and the Jersey City Education Association (JCEA) was done contrary to law and should be declared null and void. Petitioner seeks on an emergent basis a temporary restraining order and preliminary injunction against the implementation of the MOA.

JCEA submitted a motion to intervene on July 2, 2019. Oral argument on the motion was held on July 3, 2019 prior to oral argument on the request for emergent relief. The motion to intervene was granted on the record on July 3, 2019. A written Order was also entered on July 3, 2019.

The application for emergent relief was heard on July 3, 2019.

Petitioner was given to July 9, 2019 to submit a supplemental brief to address jurisdiction and potential remedies. No reply from Respondent or Intervenor was permitted. Petitioner submitted her supplemental brief on July 9, 2019, whereupon the record was closed on the request for emergent relief.

The undersigned, by order dated July 9, 2019, denied the request for emergent relief, and ordered the matter dismissed on jurisdictional grounds.

The Commissioner, in an Order on Emergent Relief dated July 22, 2019, adopted the undersigned's order denying emergent relief. The Commissioner further ordered that the matter continue at the OAL "with such proceedings as the parties and the ALJ deem necessary to bring it to closure." The Commissioner noted in a footnote that a

dismissal for lack of jurisdiction cannot be made in an Order on Emergent Relief and would require an Initial Decision, citing N.J.A.C. 1:1-18.1.

A telephone conference was held on July 29, 2019. No hearing date was set to afford Respondent, Jersey City Board of Education, the opportunity to submit a motion for summary decision.

Respondent filed its motion for summary decision on August 6, 2019. Petitioner filed her response on August 23, 2019. Intervenor filed a letter brief in support of Respondent's motion on August 26, 2019. Respondent filed a sur reply on August 29, 2019, whereupon the record was closed.

FACTUAL BACKGROUND

The Respondent herein, the Jersey City Board of Education, negotiated a MOA with the JCEA. This collective bargaining agreement took effect on July 1, 2019. Petitioner filed her petition with the Commissioner on June 27, 2019. It was transferred to the OAL on June 28, 2019, to be heard on an emergent basis. Petitioner alleges certain violations of the School Ethics Act in that some members of the Respondent Board had conflicts with the JCEA and should not have been involved in the negotiation process.

Last year the JCEA went on strike. Thereafter the Board created a Standing Committee on Labor Negotiations to manage the same. Labor counsel for the Board conducted a conflict analysis to identify non-conflicted members for participation on the standing committee. Any agreement negotiated by the standing committee is subject to Board ratification.

The Board determined thereafter that a majority of the Board was conflicted from matters involving collective bargaining with the JCEA. The Board determined that it needed to invoke the Doctrine of Necessity. On three separate occasions the Board

read a resolution adopting the doctrine. The resolution was re-adopted by the Board at its meeting on April 29, 2019. The Board then voted to approve the MOA.

The SEC provided an advisory opinion to the Board on June 3, 2019. The SEC, in said advisory opinion, did not invalidate the Board's adoption of the Doctrine of Necessity.

Petitioner, in her petition, alleges three causes of action: Board president Sudhan Thomas and vice president Lorenzo Richardson engaged in improper negotiations in violation of the common law and the School Ethics Act, N.J.S.A. 18A:12-24; the Board's invocation of the Doctrine of Necessity on March 7, March 28 and April 29, 2019 was defective and in violation of N.J.S.A. 18A:12-21; and, the Board violated the School Ethics Act by failing to obtain full Board approval before negotiating with the JCEA.

LEGAL ANALYSIS AND CONCLUSION

A motion for summary decision may be granted if the papers and discovery presented, as well as any affidavits which may have been filed with the application, show that there is no genuine issue of material fact and the moving party is entitled to prevail as a matter of law. N.J.A.C. 1:1-12.5(b). If the motion is sufficiently supported, the non-moving party must demonstrate by affidavit that there is a genuine issue of fact which can only be determined in an evidentiary proceeding, in order to prevail in such an application. ibid. These provisions mirror the summary judgment language of R. 4:46-2(c) of the New Jersey Court Rules.

The motion judge must "consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party . . . , are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995). And even if the non-moving party comes forward with some evidence, this forum must

grant summary decision if the evidence is “so one-sided that [the moving party] must prevail as a matter of law.” Id. at 536 (citation omitted).

The disputed facts in the instant matter all pertain to questions of whether or not Respondents violated the School Ethics Act, N.J.S.A. 18A:12-21 et seq. No facts alleged in the petition, or argued in Petitioner’s brief as being disputed, pertain to the School Law. N.J.S.A. 18A:1-1 to 76-4, which would properly lay jurisdiction before the Commissioner.

The threshold question in the instant matter is therefore one of jurisdiction: Does the Commissioner, and therefore the OAL, have jurisdiction to consider the petition herein.

The Commissioner of the Department of Education has jurisdiction over disputes “arising under the school laws.” N.J.S.A. 18A:6-9.

Should there be jurisdiction a second question arises: can the remedy of a temporary restraining order on the MOA, and the voiding of the MOA be granted.

The answers to both questions clearly is no. The Commissioner, and therefore the OAL, does not have jurisdiction as the claims set forth in the petition all hinge upon alleged violation of the School Ethics Act, N.J.S.A. 18A:12-21 et seq. The proper venue for the within matter would be the School Ethics Commission (SEC). N.J.S.A. 18A:12-27.

Further, the SEC has no authority to grant the relief requested in the petition. The SEC may impose the following sanctions pursuant to N.J.S.A. 18A:12-29(c):

Upon completion of the hearing, the commission, by majority vote, shall determine whether the conduct complained of constitutes a violation of this act, or in the case of a board member, this act or the code of ethics, or whether the complaint should

be dismissed. If a violation is found, the commission shall, by majority vote, recommend to the commissioner the reprimand, censure, suspension, or removal of the school official found to have violated this act, or in the case of a board member, this act or the code of ethics. The commission shall state in writing its findings of fact and conclusions of law. The commissioner shall then act on the commission's recommendation regarding the sanction.

Further, should the Commissioner have jurisdiction on some other area of school law, which I cannot determine exists, there is no authority for the Commissioner under any area of school law that permits the issuance of a temporary restraining order or injunctive relief of the MOA, which is a collective bargaining agreement.

Petitioner reargues the points made in her brief in support of the request for emergent relief and the supplemental brief filed on July 9, 2019.

Petitioner again argues that the Respondent Board is formed pursuant the School Law and is only authorized to act under the School Law. Petitioner further argues that much of what the Board does is done pursuant to the School Law. N.J.S.A. 18A:1-1 to 76-4. While this argument rings true, it avoids the real issue herein: the entire petition was brought under alleged violations of the School Ethics Act.

Petitioner then argues again that the Commissioner, and therefore the OAL, has jurisdiction under the Transition Plan. The Transition Plan was issued by the New Jersey Board of Education after it transferred control of the schools of Jersey City back to the local Board of Education.

Nothing contained in the Transition Plan provides jurisdiction to the Commissioner, and therefore the OAL, to hear a petition arising under the School Ethics Act.

Petitioner again claims the Commissioner has incidental jurisdiction as she alleges that the Respondent Board violated the Open Public Meetings Act for not properly noticing all its meetings pursuant to N.J.S.A. 10:4-9, and for not keeping all meetings open to the public at all times in violation of N.J.S.A. 10:4-12. Petitioner cites Gardner v. Board of Education of the City of Hackensack, Bergen County, OAL Dkt. No. EDU 09421-12, 2013 WL 2467918, at *6 (OAL May 1, 2013), citing Sukin v. Northfield Bd. of Educ., 171 N.J. Super. 184, 187 (App. Div. 1979).

Again, I note that Petitioner did not make any claim in the petition based upon a violation of the Open Public Meetings Act. To suggest she did assert such a claim is not accurate.

In Gardner the incidental jurisdiction of the Commissioner is based upon a controversy under the school laws. In the instant matter there is a claim of jurisdiction under the School Ethics Act.

As to Petitioner's arguments regarding the remedy requested, an injunction, Petitioner cites Shankar v. Bd. of Educ. of the City of New Brunswick, Middlesex County, et al., 13 N.J.A.R. 566, 576 (Jan. 2, 1990). The holding in Shankar has no bearing on the instant matter. It revolved around a request for an injunction to name petitioner valedictorian. It cannot be read to grant the Commissioner authority to issue an injunction against the MOA where all the facts alleged revolve around violations of the School Ethics Act.

Having determined that there is no jurisdiction of the Commission to hear this matter, and therefore no jurisdiction for the OAL to hear it, the matter should be dismissed.

Based upon the foregoing, I **CONCLUDE** that Respondent's motion for summary decision be **GRANTED**; and that the petition should be **DISMISSED** with prejudice as there is no jurisdiction to hear this matter.

ORDER

It is hereby **ORDERED** that Respondent's motion for summary decision is **GRANTED**; and,

It is further **ORDERED**, as there is no jurisdiction to hear the underlying claim in the petition, that the petition is dismissed with prejudice.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



September 10, 2019
DATE

THOMAS R. BETANCOURT, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____
db

APPENDIX

List of Moving Papers

For Petitioner:

Brief in Opposition to Motion for Summary Decision

Certification of Elizabeth M. Andes, Esq.

For Respondent:

Notice of Motion for Summary Decision

Brief in Support of Motion for Summary Decision

Letter sur reply brief

For Intervenor:

Letter brief in support of Motion for Summary Decision