

137-01

SUSAN SETTLE,	:	
	:	
PETITIONER,	:	
	:	
V.	:	
	:	
BOARD OF EDUCATION OF THE	:	
TOWNSHIP OF PENNSVILLE,	:	COMMISSIONER OF EDUCATION
SALEM COUNTY AND ROBERT	:	
PEDDLE, SUPERINTENDENT,	:	DECISION
	:	
RESPONDENTS,	:	
	:	
AND	:	
	:	
PENNSVILLE EDUCATION ASSOCIATION,	:	
	:	
INTERVENOR.	:	
_____	:	

SYNOPSIS

Petitioning Board member challenged the authority of the Board to conduct a “grievance” proceeding against her. She also alleged Open Public Meetings Act (OPMA) violations.

The ALJ concluded that the Commissioner had the jurisdiction to determine under education law whether the Board could consider the grievance filed by the Pennsville Education Association (PEA), which asked the Board to remove or discipline petitioner for her involvement in a dispute of a student’s grade; that to pursue allegations of ethical violations, the PEA would have to file a complaint pursuant to *N.J.S.A. 18A:12-21 et seq.*; that the Board had the right to file a revised grievance which requests only a reprimand or censure of petitioner based on violations of the Board’s policies or procedures; and that the Board had the right to have the consideration of the grievance conducted in a closed session. The ALJ also concluded that the Commissioner had the right to consider allegations of OPMA violations and that the Board did not violate any OPMA provisions.

The Commissioner set aside the Initial Decision. In so doing, he was persuaded by a more fully developed record that petitioner’s main prayers for relief were either not properly addressed in this forum or were not ripe for adjudication. The Commissioner concurred with the Pennsville Education Association that this dispute was not properly before him, since he has no jurisdiction to enforce or interpret collective negotiations agreements. Moreover, the Commissioner was prevented from reviewing petitioner’s attendant OPMA claims. Petition was dismissed. The temporary Order of April 3, 2000 enjoining the Board from considering PEA’s grievance was dissolved.

April 26, 2001

OAL DKT. NO. EDU 2345-00
AGENCY DKT. NO. 109-3/00

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The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. The exceptions filed by Intervenor Pennsville Education Association (hereafter, "PEA") were submitted in accordance with *N.J.A.C.* 1:1-18.4.

In its exceptions, PEA maintains its position, as previously argued before the Administrative Law Judge (ALJ), that the Commissioner should dismiss the within petition since he is without jurisdiction to determine the fundamental issue herein, and the case is not, as to other issues, ripe for adjudication. Specifically, PEA contends that the issue of whether the Board may properly hear and adjudicate the grievance PEA brought before it is, "in its very essence, an argument concerning the statutory scope of negotiations and the Legislature has vested [the Public Employment Relations Commission] -- not the Commissioner -- with primary

jurisdiction to determine scope of negotiability. See *N.J.S.A. 34:13A-5.3*.” (PEA’s Exceptions at 4) PEA continues:

Such a determination would be consistent with the body of caselaw of the Commissioner and the State Board of Education which has consistently recognized that the Commissioner’s jurisdiction does not extend to contractual disputes. For example, the Commissioner and the State Board have recognized that the Commissioner does not have jurisdiction over every contractual action involving a school board. *E.g., Poole v. Bd. of Ed. of Passaic Cty. Reg’l. School District No. 1*, 1978 *S.L.D.* 1039 (St. Bd.) (Commissioner’s jurisdiction does not extend to controversies arising under other laws, even though a school district may be a party to the controversy); *Vitacco v. Lincoln Park Board of Education*, CD 312-98 (7/17/98) (Commissioner dismissed case for lack of subject matter jurisdiction over purely contractual disputes). (*Id.* at 4)

The Commissioner should dismiss the present case, allowing the grievance to proceed to Board determination in furtherance of the employees’ right under [sic] to have the Board hear and adjust grievances under the New Jersey Employer-Employee Relations Act, *N.J.S.A. 34:13A-5.3* and the New Jersey State Constitution, Art I, ¶ 19. (*Id.* at 5)

Moreover, PEA asserts that to the extent petitioner challenges action which the Board might *later* take against her as a consequence of this grievance, and such action may implicate education law, petitioner’s current appeal is premature. (*Id.*) Finally, PEA notes that, as of December 19, 2000, it has submitted an amended grievance to the Board which, significantly, seeks public reprimand and censure of petitioner as the sole form of relief, and the Commissioner should, therefore, “dissolve the permanent restraints in this matter as moot.” (*Id.* at 5)

Upon careful review of the record, now supplemented pursuant to the plenary proceedings which followed the Order issued on April 3, 2000 temporarily enjoining the Board from taking further action in consideration of the within grievance, the Commissioner determines

to set aside the Initial Decision of the ALJ. In so doing, he is persuaded by a more fully developed record that petitioner's main prayers for relief are either not properly addressed in this forum or are not ripe for adjudication. Consequently, he cannot reach petitioner's attendant Open Public Meetings Act (OPMA) claims.

The PEA brought before the Board a Grievance Report, initially filed on February 28, 2000, seeking petitioner's removal and stating, in pertinent part:

The Association contends that Mrs. Settle's actions were in violation of Articles III, IV, IX, and other Articles and policies relevant to the instant matter. We further contend that her attendance at this conference was in direct violation of the established, Board approved, "Student Grievance Procedure" found in the student handbook***. In addition we maintain that Mrs. Settle has once again overstepped her bounds as a Board Member and is in violation of the Code of Ethics ***; and Applicability of the Code of Ethics *** established for School Board members.****" (Petition of Appeal, Exhibit A at 1)

Although PEA recognized that, in most cases, it is an administrator, rather than a board member, who is the target of a grievance, PEA nonetheless reasoned that if an action can be brought against an administrator who is not a party to the collectively negotiated agreement for an alleged violation of the contract or Board's policies, then such an action should be viable against a Board member. (PEA Reply Brief, September 25, 2000 at 4) PEA viewed the filing of the grievance as its right under its collectively negotiated agreement (*id.*), which provides, in pertinent part, that:

A grievance shall mean a complaint by a member of the negotiating unit that there has been to him a personal loss, injury, or inconvenience resulting from a violation, misinterpretation, or inequitable application of any of the provisions of this Agreement, Board policies, or administrative decisions affecting him. (Exhibit J-1, Agreement Between the Pennsville Education Association and the Pennsville Township Board of Education, July 1, 1997 – June 30, 2000 at 3)

Thus, with respect to petitioner's claims that the grievance is improperly directed at her, and that the Board is without the power to hear the grievance or discipline her pursuant thereto,¹ the Commissioner must concur with the PEA that this dispute is not properly before him, since he has no jurisdiction to enforce or interpret collective negotiations agreements. *Vitacco, supra*; *Solomons v. Fair Lawn Bd. of Education*, 1984 S.L.D. 384.²

Further, as to petitioner's demand that the Board be permanently enjoined from taking any disciplinary action against her because it is not authorized under *N.J.S.A. 18A:11-1* to do so,³ the Commissioner concurs with the PEA that petitioner's prayer for such relief is premature. Although petitioner's alleged violations were considered at the Board meeting held on March 27, 2000 as "a result of" the grievance filed against her by the PEA (Petition of Appeal at Exhibit B), the Board had not, on its own initiative, made any findings or taken any disciplinary action against petitioner which might be considered an exercise of its authority pursuant to *N.J.S.A. 18A:11-1*.⁴ Neither, as the ALJ observes, had a complaint been filed against petitioner "pursuant to *N.J.S.A. 18A:12-21 et seq.*" (Initial Decision at 10)

¹ The Petition of Appeal and accompanying Motion for Emergent Relief, requested, in pertinent part, "A. That the Pennsville Education Association's alleged grievance filed on February 28, 2000 be dismissed due to lack of jurisdiction, as well as lack of standing. B. That the Pennsville Board of Education be restrained from conducting any disciplinary hearing as a result of an improperly filed grievance against an improper party in interest.***" (Petition of Appeal at 8)

² Contrast, *Frenchtown Education Association, supra*, where there is no indication that the local education association's complaint about a board member's classroom visit was in the form of a grievance filed pursuant to its collective agreement, notwithstanding that it "protested these actions" before the board. Rather, when the board discussed the member's conduct and, perceiving no wrong, took no action, the association filed a Petition of Appeal alleging that the board member's action in visiting and observing a constituent member's classroom "was violative of the Board's own policy and *N.J.S.A. 18A:25-7*.***" (*Frenchtown* at 198, 199)

³ Here, the Petition of Appeal and Motion for Emergent relief specifically request "D. That the Pennsville Board of Education be hereby enjoined from taking any disciplinary action against *** Susan Settle, as they are not authorized under *N.J.S.A. 18A:[11-1]* to do so, and as petitioner has not violated any of the subsections of the *N.J.S.A. 18A:12-24*. E. That a declaratory judgment [be issued] that the Pennsville Board of Education is not statutorily empowered to exercise jurisdiction or to take such action.***" (Petition of Appeal at 8-9)

⁴ Contrast, *Crystal, supra*, where the board, acting *sua sponte* upon a perceived violation, voted to censure Crystal for violating its policy prohibiting any board member from making a presentation regarding any board-related matter, or releasing information concerning the board's business, until that member has notified all other board members at least five days prior to the presentation or dissemination. *Crystal, slip. op.* at 4. Although petitioner alleged that the Board's decision to censure him was arbitrary and capricious, the ALJ therein concluded, and the

Therefore, there being no claim before him pursuant to *N.J.S.A.* 18A:6-9, the Commissioner finds that he cannot reach petitioner's allegations which arise under the OPMA, since the Commissioner's jurisdiction to address such violations "has been found to be ancillary – pendant to an equally or more significant related 'school law' issue."⁵ *Rovello, supra*, 93 *N.J.A.R.* 2d (EDU) 313 (1993) at 316; *Cheung v. Freehold Twp. Bd. of Education*, 94 *N.J.A.R.* 2d (EDU) 576 (1994)

Accordingly, the Petition of Appeal is dismissed, and the temporary Order of April 3, 2000 enjoining the Board from considering PEA's grievance is dissolved.

IT IS SO ORDERED.⁶

COMMISSIONER OF EDUCATION

Date of Decision: April 26, 2001

Date of Mailing: April 26, 2001

Commissioner affirmed, that petitioner violated a clearly articulated policy, and pursuant to *N.J.S.A.* 18A:11-1, the board was empowered to censure him for that act. *Crystal slip. op.* at 9.

⁵In this regard, petitioner seeks, "C. That the Pennsville School District be hereby enjoined from holding any hearings in closed sessions with respect to board member, Susan Settle. *** F. That the Pennsville Board of Education and it's [sic] President, Edward Jones and Superintendent, Dr. Robert A. Peddle is [sic] held to have violated the Open Public Meetings Act of 1975, *N.J.S.A.* 10:4-12. G. That Pennsville Board of Education be required to promulgate judicially and statutorily acceptable guidelines for the recording of their public meetings." (Petition of Appeal at 8, 9)

⁶ This decision, as the Commissioner's final determination, may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6A:4-1.1 *et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.