

#448-13 (OAL Decision: Not yet available online)

EMMA ALPARONE, LISA KERR, SHERRY KERR, :
RICHARD KOLTON, STEVEN KOVACS, :
KATHERINE LAZZARA, BARBARA MANN , :
AMYE PAIGE MCGAHERAN, EVELYN MICKEL, :
CARLA NOWELL, JUDY ROGERS, :
BETTY SUTTON, KIM TERZUOLO, :
JEFFREY THOMPSON, GERALD TOLOMEO :
AND PATRICIA TUMA, :

PETITIONERS, :

COMMISSIONER OF EDUCATION

V. :

DECISION

BOARD OF EDUCATION OF THE BOROUGH :
OF HIGH BRIDGE, HUNTERDON COUNTY, :

RESPONDENT. :

AND :

HIGH BRIDGE TEACHERS ASSOCIATION, :

PETITIONER, :

V. :

BOARD OF EDUCATION OF THE BOROUGH :
OF HIGH BRIDGE, HUNTERDON COUNTY, :

RESPONDENT. :

SYNOPSIS

Petitioners – teaching staff members employed by the respondent Board, and their teachers association – asserted that the Board violated the Employer-Employee Relations Act (EERA) when it determined, without negotiating with the High Bridge Teachers Association, to recoup funds erroneously paid under the 2002-2005 and 2005-2008 teacher contracts by freezing salaries and withholding increments and other benefits. The Board contended that this was a proper mechanism for recoupment of the funds it had paid in error. The High Bridge Teachers Association appealed the issues to the Commissioner and the Public Employment Relations Commission (PERC); PERC was deemed to have predominant interest in this matter. The parties filed motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts in dispute, and the matter is ripe for summary decision; and there was no violation of the EERA by the Board, as it had managerial discretion to determine the means for recouping an inadvertent overpayment made to petitioners – as long as their salaries were not reduced – without the need to negotiate the terms of repayment. The ALJ granted the motions for summary decision by the Board and the individual petitioners. Further, the ALJ presented a table using the averages of two expert accountings presented by petitioners and the Board to fix the

amounts of overpayment or underpayment to petitioners, and ordered the Board to reimburse all but three petitioners the funds they are owed within 30 days; the Board was also ordered to present a summary of all payroll deductions on three remaining petitioners to enable a final calculation of indebtedness or overpayment in those cases. PERC adopted the recommendations of the ALJ and obtained an extension of time for the Commissioner to issue a final decision on the school law issues.

Upon full review, the Commissioner adopted the Initial Decision's recommendations granting motions for summary disposition by respondent and by the individual petitioners regarding the calculation of overpayments and underpayments.

<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 19, 2013

OAL DKT. NO. EDU 12183-08
PERC DKT. NO. CO-2009-190
DOE DKT. NO. 334-11/08

EMMA ALPARONE, LISA KERR, :
SHERRY KERR, RICHARD KOLTON, :
STEVEN KOVACS, KATHERINE :
LAZZARA, BARBARA MANN, AMYE :
PAIGE MCGAHERAN, EVELYN :
MICKEL, CARLA NOWELL, JUDY :
ROGERS, BETTY SUTTON, KIM :
TERZUOLO, JEFFREY THOMPSON, :
GERALD TOLOMEO AND PATRICIA :
TUMA, :

PETITIONERS, :

COMMISSIONER OF EDUCATION

V. :

DECISION

BOARD OF EDUCATION OF THE :
BOROUGH OF HIGH BRIDGE, :
HUNTERDON COUNTY, :

RESPONDENT. :

And :

HIGH BRIDGE TEACHERS :
ASSOCIATION, :

PETITIONER, :

V. :

BOARD OF EDUCATION OF THE :
BOROUGH OF HIGH BRIDGE, :
HUNTERDON COUNTY, :

RESPONDENT. :

This consolidated case was precipitated by the respondent High Bridge Board of Education's (Respondent) recoupment of overpayments which it had made to several of its

teachers. The individual petitioners and their association filed appeals alleging that the respondent violated the Employer-Employee Relations Act (EERA) when it decided – without negotiating with the High Bridge Teachers Association – to recoup the overpayments by freezing the teachers’ salaries.

Subsequent to the transmission of this matter to the Office of Administrative Law (OAL), petitioners and respondent each presented expert accountings of the overpayments and the recouped amounts. As the accountings were not dissimilar, the parties agreed to average them. Since there was little disagreement about the other facts material to the controversy, the sole issue which remained was the legal question of whether respondent had violated the EERA – more specifically, sections *N.J.S.A.* 34:13A-5.4(a)(1) and (5). In an Initial Decision dated June 27, 2013, the Administrative Law Judge (ALJ) determined that the EERA had not been violated.¹

Because it is the Public Employment Relations Commission (PERC) which is charged with implementing the EERA, *see, N.J.S.A.* 34:13A-5.2, PERC and the Department of Education had jointly decided that PERC had the predominant interest in this controversy. Accordingly, the OAL sent its Initial Decision and the record to PERC for review. On October 2, 2013, PERC issued its decision adopting the ALJ’s conclusion that the EERA had not been violated by respondent.

It remains only for the Commissioner to adopt or reject the ALJ’s remaining recommendations. Upon review, the Commissioner adopts the Initial Decision’s recommendations granting the motions for summary disposition by respondent and by the individual petitioners regarding the calculation of overpayments and underpayments.

¹ No exceptions to the Initial Decision were filed.

More specifically, the Commissioner directs respondent to pay to the individual petitioners listed in the table set forth on page 15 of the Initial Decision (except Sherry Kerr, Carla Nowell and Betty Sutton) the amounts of any payments withheld from their salaries that were in excess of what they owed. Respondent shall pay same within thirty days of the date of this decision – if it has not already done so.

In addition, respondent shall – within 30 days of the date of this decision – provide to all parties a summary of all payroll deductions for petitioners Sherry Kerr, Carla Nowell and Betty Sutton since June 30, 2012, so that the amount of outstanding indebtedness or overpayment to them can be fixed. Within thirty days after the provision of the summary, respondent shall reimburse these three petitioners for any amounts it may have withheld from their salaries that were in excess of what they owed – as set forth on the above-referenced table on page 15 of the Initial Decision.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: December 19, 2013

Date of Mailing: December 19, 2013

² This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36* (*N.J.S.A. 18A:6-9.1*).