

#364-17

THOMAS FERRARI, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE : DECISION

TOWNSHIP OF BRICK, OCEAN COUNTY, :

RESPONDENT. :

SYNOPSIS

This matter is an ancillary claim for a stipend payment in a companion case in which petitioner challenged his termination from employment as a Certificated Teacher of Military Science in respondent’s school district without the benefit of a tenure hearing. Herein, the petitioner claimed entitlement to a stipend that had been included in the collective bargaining agreement between the respondent Board and the Brick Township Education Association (Association). The parties submitted cross motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue, and the matter is ripe for summary decision; the petitioner’s position in the JROTC program was created pursuant to an “Agreement for the Establishment of an Air Force Junior Reserve Officer Training Corps Unit”; the Agreement included a statement that petitioner’s position as the instructor of senior rank in the school’s JROTC program was equivalent to a department head position; the Board had entered into a collectively negotiated agreement (CNA) with the Association which governed the terms and conditions of employment for all certified personnel; petitioner was a member of the Association; the CNAs between the Board and the Association provided for “Department Heads” to receive a stipend annually; petitioner was never paid a stipend by the Board as a “Department Head”; however, it is well settled that the Commissioner lacks jurisdiction to decide contractual claims unless those claims implicate the agency’s expertise. The ALJ concluded that the Commissioner does not have jurisdiction over this contractual dispute as it does not arise under the school laws. Accordingly, the ALJ ordered that the petition be dismissed for lack of jurisdiction.

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

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.

THOMAS FERRARI, :
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 PETITIONER, :
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 V. : COMMISSIONER OF EDUCATION
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 BOARD OF EDUCATION OF THE : DECISION
 TOWNSHIP OF BRICK, OCEAN COUNTY, :
 :
 RESPONDENT.¹ :
 _____ :

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Respondent’s exceptions – submitted in accordance with *N.J.A.C. 1:1-18.4* – were also considered by the Commissioner.² The Administrative Law Judge (ALJ) dismissed the matter, concluding that the Commissioner does not have jurisdiction to hear contractual disputes. The ALJ found that the underlying issue in the matter relates to interpretation of the agreements entered into between the Board and Air Force, and the collective negotiations agreement (CNA) between the Board and Education Association, and therefore, do not implicate the agency’s special expertise.

Respondent takes exception to the ALJ’s finding that the Commissioner lacks jurisdiction in this matter and seeks reversal of the Initial Decision. The Board argues that petitioner’s claim for payment of stipends is a dispute that arises under the school laws. Specifically, respondent submits: “petitioner seeks the benefit of the enforcement of a collective

¹ The Commissioner notes that the companion case – *Ferrari v. Bd. of Educ. of Twp. of Brick, Ocean County*, OAL Dkt. No. 19971-15, Agency Dkt. No. 326-10/15 – will be determined as a separate matter, as the two cases were not consolidated.

² Petitioner did not file a reply to respondent’s exceptions.

bargaining agreement negotiated between the District and the Education Association. The very benefits he seeks were only [allegedly] due him as a benefit of his employment with the District.” The Board further argues that whether petitioner is entitled to the stipends set forth in the CNA is “a question of interpretation best left to the Commissioner” because petitioner’s “claim for stipends [] is linked to his employ with the District, as negotiated for him by the bargaining unit of the Education Association.” While reflecting the Board’s obvious disagreement with the findings and conclusions contained within the Initial Decision, respondent’s exceptions are unpersuasive, and substantially recast and reiterate the arguments made below. Upon a comprehensive review of the record, the Commissioner is in accord with the ALJ’s determinations.

It is evident that respondent has failed to understand the scope of the Commissioner’s jurisdiction. The Board’s contention that the interpretation of the subject agreements should be “best left to the Commissioner” by virtue of petitioner’s (former) employment in the District, is materially flawed. *See Bd. of Educ. of the Twp. of E. Brunswick v. Twp. Council of the Twp. of E. Brunswick, et al.*, 48 N.J. 94, 102 (1966) (holding “[w]here the controversy does not arise under the school laws, it is outside the Commissioner’s jurisdiction even though it may pertain to school personnel”). It is well-settled that contractual disputes are typically beyond the purview of the Commissioner’s jurisdictional mandate *unless* they implicate the agency’s expertise. *Dolan v. Centuolo*, 2012 N.J. Super. Unpub. LEXIS 1627 (App. Div. 2009). As such, where the interpretation of a contract or a contractual provision is the primary issue, the Commissioner lacks jurisdiction. *See Bd. of Educ. of the Twp. of Middletown v. Witmer*, 2009 N.J. Super. Unpub. LEXIS 2260 (App. Div. 2009). There is no dispute that the claim for stipends in this matter arise from contractual language and assertion of

petitioner's rights pursuant to the terms of the respective agreements. Petitioner avers that the agreement entered into between the Board and the Air Force provides that his position was to be deemed equivalent to that of a department head; and that petitioner was entitled to the negotiated stipend for "Department Heads" as set forth in the CNA between the Board and the Education Association. Such determination requires interpretation of the agreements and review of their intent. The Commissioner, therefore, lacks jurisdiction to determine whether petitioner is entitled to the stipend for "Department Head" as set forth in the CNA.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter and the petition of appeal is hereby dismissed with prejudice for lack of jurisdiction.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: December 21, 2017

Date of Mailing: December 21, 2017

³ Pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*, Commissioner decisions are appealable to the Superior Court, Appellate Division.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION DISMISSING
PETITION FOR LACK OF JURISDICTION

OAL DKT. NO. EDU 03464-17

AGENCY DKT. NO. 47-3/17

THOMAS FERRARI,

Petitioner,

v.

**BOARD OF EDUCATION OF THE
TOWNSHIP OF BRICK, OCEAN COUNTY,**

Respondent.

Edward A. Cridge, Esq., for petitioner (Mellk O'Neill, attorney)

Sebastian F. Ferrantell, Esq., for respondent (Montenegro Thompson Montenegro
& Genz, attorneys)

Record Closed: August 10, 2017

Decided: September 12, 2017

BEFORE **JOSEPH A. ASCIONE, ALJ:**

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

This matter is a secondary matter to the matter, Ferrari v. the Board of Education of the Township of Brick, Ocean County, OAL Docket # 19971-2015, Initial Decision, September 12, 2017, Agency Docket # 326-10/51, wherein petitioner challenged his

removal as a military science teacher without the granting of a tenure hearing by the respondent the Board of Education of the Township of Brick, Ocean County (“Board,” “Brick,” or “District”). The removal, a result of the loss of petitioner’s status as an instructor of the United States Air Force, Junior Reserve Officer Training Corps (JROTC).

The respondent disputed any obligation to provide a tenure hearing as the certification by the State of New Jersey Department of Education as a military science teacher is not independent of the Armed Forces certification as a military science teacher. The latter’s determination qualifies one for certification as a New Jersey military science teacher. The loss of that certification from the Armed Forces results in a failure of the teacher to maintain the New Jersey certification as a military science teacher. The Air Force provided an appeal process for petitioner to address the potential decertification, accordingly, his due process rights were addressed by the Air Force and the decertification of petitioner resulted. Respondent successfully maintained that it had no obligation to conduct a tenure hearing.

On or about December 11, 2015, Petitioner, Major Thomas Ferrari, filed a complaint in the Monmouth County Superior Court, which was subsequently transferred to Ocean County. The complaint, filed in the Law Division, alleges a breach of contract for failure to pay stipends negotiated on his behalf between the Brick Township Education Association (“the Association”) and Respondent, the Brick Township Board of Education.

The parties filed motions and cross-motions for summary judgment before the Hon. Arnold B. Goldman, J.S.C. Respondent took the position that the dispute arose under the school laws, and should have been brought before the Commissioner. On December 2, 2016, Judge Goldman issued an order dismissing the complaint without prejudice, and directing that the matter be consolidated with the case pending in the Office of Administrative Law (“OAL”), Docket No. EDU 19971-15.

Prior to issuance of an initial decision in the EDU 19971-15 matter, the parties requested that the tribunal await the outcome of a New Jersey Superior Court decision

directing the consolidation of an ancillary claim for a stipend payment with the within action. The OAL advised the parties that the J.S.C. did not have the authority to either assign or consolidate the matter and that the OAL jurisdiction depended on a transmittal from the Department of Education. The parties sought that transmittal. This is that matter, transmittal to the OAL occurred on March 13, 2017. Motions and Cross Motions for Summary Judgement filed in the New Jersey Superior Court, Law Division, Ocean County under Docket # L-2340-16 were filed by the parties with the OAL.

The OAL scheduled oral argument for August 10, 2017, the voice transcript of that oral argument is recorded on that date under the EDU 19971-16 docket number. The record closed on August 10, 2017. No order of consolidation issued in the two matters, accordingly, separate Initial Decisions are being issued on the initial application for a tenure hearing and the subsequent application for the interpretation of the contract between the Board and the United States Air Force JROTC as it applies to the petitioner. The separate initial decision reflects that counsel representing the respondent in the subsequent matter differs from counsel representing the respondent herein.

FACTS

The parties submitted their motion and cross motion for summary judgment filed in the New Jersey Superior Court, there is no discrepancy between the each's factual presentations, accordingly, I **FIND AS FACT** the following:

1. In September 2006, petitioner became an employee of respondent, working as an instructor for the AFJROTC program at Brick Memorial High School. Petitioner's Statement of Undisputed Facts ("Petitioner's Facts"), ¶9; Respondent's Statement of Unrefuted Facts ("Respondent's Facts"), ¶1.

2. Respondent is a party to collectively negotiated agreements ("CNAs") with the Association. Petitioner's Facts, ¶2. Via these CNAs, respondent recognizes the Association "as the exclusive and sole-representative of collective negotiations concerning the terms and conditions of employment for all certified personnel . . ." Respondent's Exh. B, p. 3. It is undisputed that petitioner was a member of the

Association, and his employment with respondent was subject to the terms and conditions set forth in the CNAs executed between the Association and respondent. Petitioner's Facts, ¶9; Respondent's Facts, ¶2.

3. On or about July 1, 2006, respondent and the Association entered into a CNA, which provided that "Department Heads" would receive a stipend for the 2006-2009 school years. See Petitioner's Exh. A. On or about July 1, 2009, respondent entered into a successor CNA with the Association, which provided that "Department Heads" would receive stipends for the 2009-2012 school years. See Petitioner's Exh. B. Finally, on or about July 1, 2012, another CNA provided that "Department Heads" would receive stipends for the 2012-2015 school years. See Petitioner's Exh. C. The dollar amount of each stipend is explicitly provided for in the CNAs. See Petitioner's Exhs. A-C.

4. Concurrently, in November 2006, respondent entered into an agreement with the United States Air Force, entitled "Agreement for the Establishment of an Air Force Junior Reserve Officer Training Corps Unit." See Petitioner's Exh. D. The agreement provided, at Section 3(a)(iii), that:

"The institution principal (or equivalent) is the on-site person in charge of the supervision of the AFJROTC Program. The Senior Aerospace Science Instructor ensures the program operates satisfactorily and is appointed to a [sic] institution position equivalent to that of a department head." [Id. at p. 6.]

5. Respondent entered into successor agreements with the Air Force in April 2012 and December 2014, both of which contained the identical provision. See Petitioner's Exhs. E-F.

6. The AFJROTC Operations publication, Instruction 36-2001, defines the Senior Aerospace Science Instructor ("SASI") as:

"The AFJROTC instructor of senior rank at the host school responsible for day-to-day unit operations. The SASI reports to the principal (or equivalent) and ensures applicable instructions are complied with and the unit is operated in an efficient, military manner. The SASI will be designated as a department head (or equivalent) at the host

school. The SASI acts as the unit commander providing overall direction to the ASI and cadet programs/activities.” [See Petitioner’s Exh. I.]

Petitioner asserts that for the entirety of his employment, he was the instructor of senior rank employed by respondent. Certification of Thomas Ferrari, ¶4.

6. Each year, Petitioner signed a “Tenure Teacher Contract Salary Notice,” which indicated Petitioner’s salary, including any stipends that he would be paid. Certification of Megan Osborn (“Osborn Cert.”), Exh. D.

7. Each year, Petitioner signed a form accepting these conditions.

8. Respondent never paid a stipend to petitioner as a “Department Head.”

9. Petitioner held his position with Respondent until May 2015. Osborn Cert., ¶2.

LEGAL DISCUSSION

“To exercise jurisdiction over a dispute, an administrative agency must have specific legislative authority.” Dolan v. Centuolo, Nos. A-2470-10T4, A-2710-10T4, at *11 (App. Div. July 9, 2012), <<http://njlaw.rutgers.edu/collections/courts/>> (citing Archway Programs, Inc. v. Pemberton Twp. Bd. of Educ., 352 N.J. Super. 420, 426 (App. Div. 2002)). Pursuant to N.J.S.A. 18A:6-9, the Commissioner of Education

shall have jurisdiction to hear and determine, without cost to the parties, all controversies and disputes arising under the school laws, excepting those governing higher education, or under the rules of the State board or of the commissioner . . .

[N.J.S.A. 18A:6-9 (emphasis added).]

“Our courts have long recognized the sweep of the Commissioner’s reviewing powers” Bd. of Educ. of E. Brunswick v. Twp. Council of E. Brunswick, 48 N.J. 94, 101 (1966). However, “the sweep of the Department’s interest and the Commissioner’s jurisdiction does not extend to all matters involving boards of education.” Archway, 352 N.J. Super. at 424-25. “Where the controversy does not arise under the school laws, it is outside the Commissioner’s jurisdiction even though it may pertain to school personnel.” E. Brunswick, 48 N.J. at 102.

Generally, “contractual disputes do not fall within the Commissioner’s jurisdictional mandate unless they implicate the agency’s special expertise.” Dolan, at *12. While the Commissioner may have jurisdiction over “contractual claims which are incidental to his obligation to resolve education claims that are the subject of litigation,” B.P. v. Bd. of Educ. of Lenape Reg’l High Sch. Dist., EDU 2782-02, Initial Decision (August 16, 2002), adopted, Comm’r (October 7, 2002), <<https://njlaw.rutgers.edu/collections/oal/>>, the Commissioner will not rule on the enforceability of a contract where “the interpretation of the contract is the primary issue at hand and not merely implicated in a question of the school laws.” Bd. of Educ. of Middletown, No. A-5128-07T3, at *23 (App. Div. August 17, 2009), <<http://njlaw.rutgers.edu/collections/courts/>>. This is because “contract claims against boards do not arise under the school laws but rather from statutory and common law.” Archway, 352 N.J. Super. at 425. Therefore, such claims are “typically and appropriately adjudicated in the courts.” Ibid.

The Commissioner lacks jurisdiction to decide the contractual claim currently before the OAL. Although the matter involves a board of education, the dispute does not arise under the school laws. Rather, the primary issue is the interpretation of the contractual language contained in the Air Force and Association agreements. Interpretation of these contracts is not “incidental” to the Commissioner’s obligation to decide petitioner’s pending tenure claim, as the two claims are distinct and separate.

Respondent argues that the Commissioner has jurisdiction over the matter because “[t]he within dispute is a case in controversy arising under the school laws, (N.J.S.A. 18A:6-9 et seq.)” Respondent’s Reply Brief, p. 3. However, Respondent fails

to explain how the contractual claim is connected to any specific statute under Title 18A. Because the interpretation of the contractual language at issue does not implicate the Department of Education's special expertise, the matter should be decided in Superior Court, where it was originally filed.

CONCLUSION

I **CONCLUDE** the Commissioner does not have jurisdiction to hear this contractual dispute. Although the matter involves a board of education, the controversy does not arise under the school laws. Rather, the primary issue is the interpretation of two series of contracts. Because these contracts do not implicate the Department of Education's special expertise, the matter should be dismissed so that it may be decided in a more appropriate forum.

This tribunal recognizes that this is not the efficient use of judicial resources, however, the Commissioner and the OAL, is without jurisdiction to determine whether petitioner is entitled to any stipend payments.

ORDER

Base on the foregoing, it is **ORDERED** the petition should be **DISMISSED** for lack of jurisdiction.

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 12, 2017
DATE

JOSEPH A. ASCIONE, ALJ

Date Received at Agency:

September 12, 2017

Date Mailed to Parties:

September 12, 2017

cc: Patricia M. Reilly, Esq.

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APPENDIX
LIST OF WITNESSES

For Petitioner:

None

For Respondent:

None

LIST OF EXHIBITS

For Petitioner:

P-1 Superior Court filed Summary Judgment Motion and attachments

For Respondent:

R-1 Superior Court filed Cross Motion for Summary Judgment and Opposition to Summary Judgment