

MELINDO A. PERSI, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
TOWNSHIP OF BRICK, :
OCEAN COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner – who previously served the district as Interim Superintendent – challenged his April 30, 2008 termination by the respondent Board, contending that their action violated the terms of a written employment contract which did not expire until November 20, 2008. The Board contended that petitioner was employed through a verbal agreement in which the sole remuneration was \$700 per day for each day worked.

The ALJ found, *inter alia*, that: all of the competent, credible and reliable evidence in this matter supports a finding that the petitioner had a valid and enforceable written contract with the Board, which appointed him as Interim Superintendent through November 20, 2008; petitioner’s contract required 30 days written notice, and he is therefore only entitled to 30 days reimbursement in the amount of \$21,000, reflecting the month of May 2008; petitioner otherwise was compensated appropriately pursuant to his contract. Accordingly, the ALJ ordered that respondent pay petitioner \$21,000, and dismissed the respondent’s counterclaim for reimbursement of \$17,804.66 for payments the Board claimed were erroneously made to petitioner for days not worked and for expenses he was not entitled to as a per diem appointment.

Upon comprehensive 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.

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.

February 24, 2011

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Exceptions and reply exceptions of both petitioner and respondent – filed in accordance with *N.J.A.C. 1:1-18.4* – were fully considered by the Commissioner in making his determination herein.

The parties’ exceptions – in pertinent part – recast and reiterate their arguments advanced below which it is determined were clearly considered and addressed in the Administrative Law Judge’s (ALJ) decision and, therefore, do not require further elaborative comment.¹

Upon comprehensive consideration of the record in this matter – which included transcripts of the hearing conducted on December 9, 2009, April 27 and April 30, 2010 – the Commissioner concurs with the ALJ – for the reasons clearly detailed on pages 9-10 of her Initial Decision – that “[a]ll of the competent, credible and reliable evidence supports a finding

¹ It is noted that petitioner – for the first time in his exceptions – presents a claim for indemnification of legal fees pursuant to *N.J.S.A. 18A:12-20*. Even assuming, *arguendo*, that petitioner qualified for such statutory relief, in that this claim was never presented or argued below, it cannot be considered here.

that petitioner Melindo Persi had a valid, enforceable contract with the Brick Township Board of Education as reflected in J-C, as amended, appointing him as Interim Superintendent through November 20, 2008.” (Initial Decision at 9-10) In so determining, the Commissioner has given full consideration to all evidentiary proofs which comprise the record and recognized that of particular importance was the ALJ’s assessment of the credibility of the witnesses. Such being the case – and the ALJ having had the opportunity to assess the credibility of the various witnesses who appeared before her, and having made findings of fact based upon their testimony – the standard governing the Commissioner’s review is clear and unequivocal:

The agency head may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not supported by sufficient, competent and credible evidence in the record.
(*N.J.S.A. 52:14B-10(c)*)

The Commissioner’s reasoned review of the entire record before him provides no basis whatsoever for any alteration of the ALJ’s determinations.

The Commissioner further concurs with the ALJ “that the BOE employees, in furtherance of the valid contract, paid petitioner appropriately as to salary and expenses” (Initial Decision at 10-11) and, therefore, respondent’s counterclaim for reimbursement of \$17,804.66 – which is predicated on a finding that no valid contract existed between the parties – is appropriately dismissed.

Finally – for the reasons presented by the ALJ on page 12 of her decision – the Commissioner finds and concludes that the sole compensation due petitioner in this matter, pursuant to his contract, is 30-days pay at his per diem rate of \$700, or \$21,000.

Accordingly, the recommended decision of the OAL is adopted as the final decision in this matter. The Board of Education of the Township of Brick is hereby ordered to pay petitioner \$21,000 and its counterclaim for reimbursement is hereby dismissed.

IT IS SO ORDERED.²

ACTING COMMISSIONER OF EDUCATION

Date of Decision: February 24, 2011

Date of Mailing: February 28, 2011

² 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*).