

#178-11 (OAL Decision: Not yet available online)

RAY WATERS AND THE HORACE MANN :
INSURANCE COMPANY, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE : DECISION
 TOWNSHIP OF TOMS RIVER, :
 OCEAN COUNTY, :
 :
 RESPONDENT. :
 _____ :

SYNOPSIS

Petitioner Ray Waters initially sought a defense and indemnification from the Board under *N.J.S.A. 18A:16-6* when he was named in a Superior Court lawsuit brought by a former student advancing certain allegations against petitioner while he was employed as an art teacher in the Toms River School District. When the Board determined not to provide a defense, the Horace Mann Insurance Company (Company) provided defense counsel to Waters under a policy held by the New Jersey Education Association and Waters subsequently entered into a settlement agreement which resulted in the lawsuit being dismissed as to all claims against Waters. In the instant matter, petitioners sought reimbursement from the respondent Board for costs incurred in defending petitioner Waters. The Board contended that Waters cannot be indemnified because he suffered no loss, and that it has no obligation to reimburse an insurance company for defending an employee.

The ALJ found, *inter alia*, that: the intent of *N.J.S.A. 18A:16-6* was to defray the employee's expenses; the subrogation clause in the insurance policy clearly states that the Company shall be subrogated to all the Insured's rights of recovery against any person or organization; petitioners' contention that the statute does not require an employee to personally go out of pocket to claim indemnification, and that it is sufficient that Waters petitioned for reimbursement, is in line with the Appellate Division's holdings in *Sekuler v. Montgomery Township Board of Education*, A-000091-96T1 (App. Div. May 8, 1997) certif. denied, 151 *N.J.* 464 (1997); and the interpretation urged by the Board is overly mechanistic and not within the statute or existing case law. Accordingly, the ALJ granted the petitioners' request for relief and ordered the respondent Board to reimburse petitioners for all costs and fees expended on behalf of Ray Waters in connection with the defense and settlement of the Superior Court lawsuit.

Upon a thorough and independent review, the Commissioner concurred that summary decision is appropriately granted to petitioners, and adopted the Initial Decision 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.

May 11, 2011

OAL DKT. NO. EDU 2611-10
AGENCY DKT. NO. 56-3/10

RAY WATERS AND THE HORACE MANN	:	
INSURANCE COMPANY,	:	
	:	
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	:	
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_____	:	

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Exceptions of the Board and petitioners’ reply thereto – filed in accordance with the requirements of *N.J.A.C. 1:1-18.4* – were fully considered by the Commissioner in reaching his determination herein.

The Board’s exceptions replicate its arguments advanced before the Administrative Law Judge (ALJ) below. As it is determined that such arguments were fully considered and addressed in the Initial Decision, they will not be revisited here.

Upon full consideration and review, the Commissioner agrees with the ALJ that the law applied to the undisputed facts in this matter clearly dictates that summary decision is appropriately granted to petitioner.

Accordingly, the recommended decision of the OAL is adopted as the final decision in this matter for the reasons clearly presented therein. The Board is hereby directed to

reimburse petitioners for all costs and fees expended on behalf of Mr. Waters in connection with the defense and settlement of the Superior Court lawsuit at issue herein.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: May 11, 2011

Date of Mailing: May 11, 2011

* 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*).