

BOARD OF EDUCATION OF THE :  
BOROUGH OF RAMSEY, BERGEN :  
COUNTY, :  
PETITIONER, :  
V. : COMMISSIONER OF EDUCATION  
THE RAMSEY TEACHERS : DECISION  
ASSOCIATION, :  
RESPONDENT. :  
\_\_\_\_\_ :

SYNOPSIS

Petitioning Board sought to invalidate its April 2009 resolution establishing two consecutive two year salary schedules for the school years from 2007-2008 to 2010-2011, contending that the resolution violates the requirements of *N.J.S.A. 18A:29-4.1*, which limits the adoption of salary policies and schedules by boards of education to not more than three years from the effective date of said policies. Respondent teachers association asserted that the action of the Board was consistent with the law, and that the Board is obligated to pay unit members all salary increases promised in the salary schedules. The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: there were no material facts in dispute, and the matter was ripe for summary judgment; *N.J.S.A. 18A:29-4.1* allows adoption of salary policies, including salary schedules, for terms of one, two or three years; such policies are binding upon the adopting board and future boards for one, two, or three years from the effective date of the policy; in 2009, the petitioning Board retroactively agreed upon salary adjustments for 2007-2008 and 2008-2009, as well as the two forthcoming years, 2009-2010 and 2010-2011; accordingly, the 2009 Board bound successor boards for only two years, and its actions were therefore fully compliant with *N.J.S.A. 18A:29-4.1*. The ALJ concluded that during the 2011-2012 school year, the Board must honor the salary guides adopted in 2009 and pay any increments earned under the 2010-2011 salary guide.

The Commissioner rejected the Initial Decision of the OAL, finding, *inter alia*, that the petitioning Board exceeded its authority under *N.J.S.A. 18A:29-4.1* by binding itself and future boards for a total of four years, despite the fact that the salary schedules for the first two years were distributed in a lump-sum retroactive payment. In so determining, the Commissioner rejected the ALJ's conclusion that the salary policy was consistent with the statute because the Board only bound future boards for two years; such a conclusion creates an exception that would allow for retroactive payments as a means to circumvent the three year limit mandated in *N.J.S.A. 18A:29-4.1*. Accordingly, the fourth year of the petitioning Board's policy that provides a salary schedule for 2010-2011 is null and void.

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.

OAL DKT. NO. EDU 03444-11  
AGENCY DKT. NO. 48-2/11

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The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed, as have the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by the Board.<sup>1</sup>

The Board takes exception to the Administrative Law Judge’s determination that the Board did not bind itself beyond the three year limit imposed by *N.J.S.A. 18A:29-4.1*. The Board argues that it is irrelevant that the Board adopted two separate collective bargaining agreements rather than one four year agreement because the Board still effectively bound itself to four years in violation of *N.J.S.A. 18A:29-4.1*. As a result the Board contends that the Initial Decision should be rejected, and that the fourth year of the salary policy should be null and void – precluding the Board from paying the salary increments to teachers based thereon for the 2011-2012 school year.

In support of its argument, the Board cites to an unpublished Appellate Division Opinion in *Bogota Educ. Ass’n. v. Bogota Bd. of Educ.*, Docket No. A-4708-97T2

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<sup>1</sup> The respondent filed reply exceptions out of time without requesting an extension for filing, and as a result they were not considered.

(May 24, 1999).<sup>2</sup> The Board maintains that the facts in *Bogota, supra*, are analogous to the facts in this case and therefore the Commissioner should adopt the legal reasoning in *Bogota, supra*. In its exceptions the Board contends that in *Bogota, supra*, the Appellate Division addressed whether a collective bargaining agreement that provided for a lump-sum retroactive salary payment covering a two year period – and also prospectively established a pay scale for the following two years – was in violation of *N.J.S.A. 18A:29-4.1*. The Appellate Division held that such an agreement was inconsistent with *N.J.S.A. 18A:29-4.1* because the time period affected by the memorandum was four calendar years despite the ratification date of the agreement.

The Board also contends that the ALJ erred by concluding that *N.J.S.A. 18A:29-4.1*'s prohibition on salary guides longer than three years was prospective only. In its exceptions, the Board stresses that the statute does not limit its prohibition to the prospective adoption of teaching salaries, but rather it simply provides that the adopted salary schedules can only be binding upon the adopting board and upon all future boards for a period of one, two or three years. Finally, the Board argues that the intent or good faith of the Board in adopting its resolution is irrelevant to assessing whether the resolution is consistent with *N.J.S.A. 18A:29-4.1*.

Upon a comprehensive review of the record in this matter, the Commissioner finds that the salary policy adopted by the Board pursuant to the April 28, 2009 Resolution (April 2009 Resolution) is in violation of *N.J.S.A. 18A:29-4.1*. Under *N.J.S.A. 18A:29-4.1*, a board of education may adopt a one, two or three year salary policy that shall be binding upon the adopting board and upon future boards for a period of one, two or three years from the effective date of the policy. The plain meaning of *N.J.S.A. 18A:29-4.1* expressly limits salary schedules to no more than three years; further, any contract that establishes a salary schedule

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<sup>2</sup> The Board failed to include the required footnote stating that there are no known contrary unpublished opinions known to counsel pursuant to *R. 1:36-3*.

beyond the third year is not binding. *Board of Educ. of the Tp. of Neptune v. Neptune Tp. Teacher's Ass'n*, 144 N.J. 16, 26-29 (1996).

In this case, it is undisputed that the April 2009 Resolution established salary guides for 2007-2008, 2008-2009, 2009-2010, and 2010-2011. Additionally, the effective date of the salary policy was July 1, 2007, despite the fact that the resolution approving the salary guides was not passed until April 29, 2009. Therefore, when the Board adopted the April 2009 Resolution, it exceeded its authority by binding itself and future boards for a total of four years regardless of the fact that the salary schedules for the first two years were distributed in a lump-sum retroactive payment.<sup>3</sup> The ALJ's determination that the salary policy was consistent with the statute simply because the Board only bound future boards for two years provides an exception allowing for retroactive payments as a means to circumvent the three year limit that is not contained in the statute.

Accordingly, the Initial Decision is rejected; the fourth year of the policy that provides a salary schedule for 2010-2011 is null and void.

IT IS SO ORDERED.<sup>4</sup>

ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 21, 2011  
Date of Mailing: October 24, 2011

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<sup>3</sup> Pursuant to *R. 1:36-3*, the Commissioner is not bound by the holding in *Bogata, supra*. However, the Commissioner notes that the facts in *Bogata, supra*, are similar to the circumstances in the case at bar, and the Commissioner is in accord with the Appellate Division's interpretation of *N.J.S.A. 18A:29-4.1* in that case.

<sup>4</sup> 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.