

JOHN J. MARCIANTE :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE : DECISION
 MANALAPAN-ENGLISHTOWN :
 REGIONAL SCHOOL DISTRICT AND :
 JOSEPH F. PASSIMENT, JR., ACTING :
 EXECUTIVE COUNTY SUPERINTENDENT, :
 MONMOUTH COUNTY, :
 :
 RESPONDENTS. :
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SYNOPSIS

Petitioner, the Superintendent of Schools in the Manalapan-Englishtown Regional School District, sought a determination that he was reappointed by operation of law to the position of Superintendent for the period from July 1, 2010 to June 30, 2013, at his current salary of \$163,152, as a consequence of the respondent Board's failure to provide him with one year's notice of non-renewal pursuant to *N.J.S.A. 18A:17-20.1*. Respondent Passiment contended that the "deemed reappointed" provision of *N.J.S.A. 18A:17-20.1* simply extended the duration of petitioner's appointment by another three years, but did not automatically continue the salary provisions of the expired agreement – which are subject to the superintendent salary cap regulations, *N.J.A.C. 6A:23A-1.2* and *N.J.A.C. 6A:23A-3.1*, that went into effect in February 2011. The Manalapan-Englishtown Board of Education took no role in this contested matter, though it has an interest in the outcome and the relevant salary guidelines as they apply to the petitioner.

The ALJ found, *inter alia*, that: the petitioner was employed by the respondent Board pursuant to a three-year contract that commenced July 1, 2007; under *N.J.S.A. 18A:17-20.1*, when the Board failed to give petitioner one year notice of an intent to terminate and no new agreement was successfully negotiated prior to July 1, 2010, petitioner's contract was renewed on that date – by operation of law, *N.J.S.A. 18A:17-15 et seq.* – for another three years, with the salary provisions that were contained in the previous contract; therefore, any attempt to apply the salary limitations contained in *N.J.A.C. 6A:23A-3.1* – which was not in effect until February 2011 – would involve a retroactive application of the regulation; there is no basis upon which such application of the regulation can be sustained. Accordingly, the ALJ concluded that – for the duration of the renewed contract – the superintendent salary limitation does not apply; thereafter, if the regulations remain in effect, they will apply to any renewed contract, whether it is the result of an actual new agreement between the district and petitioner Marciante, or the result of *N.J.S.A. 18A:17-20.1*.

Upon careful and independent review, the Commissioner adopted the Initial Decision of the OAL as the final decision in this matter for the reasons stated therein.

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.

April 9, 2011

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The Commissioner has reviewed the record of this matter and the Initial Decision of the Office of Administrative Law (OAL) on the parties' motions for summary decision. Respondent¹ (Passiment) filed exceptions, and petitioner (Marciante) filed a response thereto as provided by *N.J.A.C.* 1:1-18.4.

The respondent argues in its exceptions that the ALJ erred as a matter of law when he concluded that the petitioner's reappointment resulted from the Board's failure to notify Marciante that it would not renew his contract at least one year prior to June 30, 2010, the expiration of his term. Additionally, the respondent also argues that the ALJ erred when he determined that this failure to notify the petitioner in 2009 gave rise to a new contract for all of the same terms, including duration, salary and benefits, effective July 1, 2010. Respondent maintains

¹ The Manalapan-Englishtown Board of Education has taken no role in this contested matter. It does, however, have an interest in the outcome and the relevant salary guidelines as they apply to the petitioner.

that this new contract is unenforceable because it lacked the Executive County Superintendent's (ECS) review and approval as required by *N.J.S.A. 18A:7-8(j)* and *N.J.A.C. 6A:23A-3.1(c)* and that this renewed contract is subject retroactively to the new salary caps imposed on superintendents, pursuant to amended regulations *N.J.A.C. 6A:23A-3.1, et seq.*, effective February 7, 2011.

In response, Marciante agrees with the ALJ findings and conclusions, most importantly that petitioner's employment contract and its terms were renewed by operation of law, pursuant to *N.J.S.A. 18A:17-15, et seq.* Additionally, petitioner avers that he enjoys the additional protection of *N.J.S.A. 18A:17-19, 20.1 and 20.2*, which bar the reduction of his compensation during the term of his contract. Moreover, the petitioner asserts the new salary cap regulations, which became effective on February 7, 2011, cannot be applied retroactively to him as he had been serving as superintendent under the renewed contract for over seven months prior to the effective date.²

Upon his considered review of the record, the Commissioner agrees with the Administrative Law Judge (ALJ) that this matter is ripe for summary decision as there are no genuine issues of material fact to resolve. For the reasons convincingly presented in the ALJ's decision, the Commissioner concurs that petitioner's employment contract, incorporating all of the provisions of the prior contract, was renewed by operation of law on July 1, 2010,³ pursuant to *N.J.S.A. 18A:17-20.1*. Finally, there is no support in law for the retroactive application of the salary

² In support of his argument, Marciante posits, *inter alia*, that the then Acting Commissioner distributed a memo to all Executive County Superintendents on November 15, 2010 which states, "No superintendent contracts are to be reviewed and approved. Furthermore, given the pending regulations with respect to Superintendent contracts that will be effective the date the regulations are approved, contracts expiring subsequent to February 7, 2011 should not be negotiated or extended prior to the effective date of the new regulations."

³ In contrast to this instant case, the Commissioner recently issued a decision in *Diane Bacher v. Mansfield Township Board of Education, Burlington County*, Commissioner Decision No. 84-12 (March 5, 2012), wherein he decided to uphold the ALJ's determination to apply the new salary caps prospectively to the petitioner's contract since the effective date of her new term commenced July 1, 2011, almost six months after the effective date of the new regulations.

caps to this renewed contract since Marciante functioned within its terms since July 1, 2010, seven months before the new regulations became effective on February 7, 2011.

Accordingly, summary disposition is granted to petitioner and respondent's motion is hereby denied.

IT IS SO ORDERED.⁴

ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 9, 2011

Date of Mailing: April 10, 2011

⁴ 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)