

CLARISSA GILLIAM GARDNER :
 :
 PETITIONER, :
 :
 V. :
 :
 BOARD OF EDUCATION OF THE CITY OF :
 HACKENSACK, BERGEN COUNTY, : COMMISSIONER OF EDUCATION
 :
 : DECISION
 RESPONDENT :
 AND :
 :
 JAMES MONTESANO, PATRICIA AQUINO- :
 LOZANO AND CELSO KING, :
 :
 INTERVENORS. :

SYNOPSIS

Petitioning member of the Hackensack Board of Education challenged determinations that certain Board members were disqualified from voting on the contract renewals of personnel because of purported conflicts of interest, and further challenged the Board's invocation of the Doctrine of Necessity as a convenience to overcome its failure to appoint personnel by a majority vote of the full board membership. The respondent Board contended that the Commissioner is without jurisdiction to entertain petitioner's claims because they do not arise under the school laws, and filed a motion to dismiss.

The ALJ found, *inter alia*, that: petitioner's claims in this matter do not involve a controversy or dispute arising under the school laws pursuant to *N.J.S.A.* 18A:6-9, and therefore does not fall under the Commissioner's jurisdiction; even if the Commissioner could be said to have incidental jurisdiction to decide whether a board of education properly invoked the Doctrine of Necessity, dismissal of the petition is warranted because there is no underlying school law controversy. Accordingly, the ALJ concluded that the Commissioner lacks jurisdiction with regard to petitioner's claims, and granted respondent's motion to dismiss the petition.

Upon independent review of the record, the Initial Decision, and petitioner's and respondent's exceptions thereto, the Commissioner concurred with the findings and conclusions of the ALJ. The Initial Decision of the OAL was adopted as the final decision in this matter. The Commissioner further declined to entertain the petitioner's request pursuant to Court Rule 1:13-4 to transfer the matter to the School Ethics Commission as if it were originally filed there, as election of the appropriate forum in which to proceed – the School Ethics Commission or Superior Court – is one which should be made by the petitioner.

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.

June 7, 2013

OAL DKT. NO. EDU 9421-12
AGENCY DKT. NO. 146-5/12

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

Petitioner’s exceptions charge that the Administrative Law Judge (ALJ) failed to address her argument that the involvement of *N.J.S.A.* 18A:27-1¹ brings this matter within the jurisdictional purview of the Commissioner. Specifically, in this regard, petitioner argues that the use of the Doctrine of Necessity by the Board was merely a scheme to overcome the failure of the Board on numerous occasions to have the number of votes required under *N.J.S.A.* 18A:27-1 to appoint the administrators in question. She charges that the Board misused

¹ It is noted that this provision, which is entitled **Appointment of teaching staff members; vote required.** specifies “No teaching staff member shall be appointed, except by a recorded roll call majority vote of the full membership of the board of education appointing him.”

N.J.S.A. 18A:12-24 and *N.J.S.A.* 12-24.1 to assert conflicts of interest that petitioner contends do not exist in order to invoke the Doctrine of Necessity to achieve the result desired by certain board members. Petitioner exceptions further urge that should the Commissioner concur with the ALJ that the Commissioner lacks jurisdiction to adjudicate this matter, that he – pursuant to Court Rule 1:13-4, Transfer of Actions – transfer the matter to the School Ethics Commission as if it were originally filed there.

In reply, the Board maintains that petitioner’s suggestion that the tangential involvement of *N.J.S.A.* 18A:27-1 in this matter converts this case to a school law matter under the jurisdictional purview of the Commissioner is no less than preposterous. The Board further urges the Commissioner to reject petitioner’s “request” that – should he find a lack of jurisdiction in this forum – he transfer the case to the School Ethics Commission pursuant to Court Rule 1:13-4. The Board maintains that – as argued in its brief below – the Rules of Court are not binding upon an administrative matter.

Upon full consideration, the Commissioner – finding petitioner’s exceptions wholly without merit – is in full accord with the ALJ’s conclusion “that petitioner’s claims do not sufficiently implicate the school laws or necessitate an interpretation of the school laws, requiring the expertise of the Commissioner, to warrant the exercise of the Commissioner’s dispute-resolution jurisdiction” (Initial Decision at 10)² As such, the Board’s motion to dismiss is appropriately granted as the Commissioner lacks subject matter jurisdiction to adjudicate the within controversy. The Commissioner further declines to entertain petitioner’s request that he transfer this matter, as the election of the appropriate forum in which to proceed – whether that

² The crux of petitioner’s claim here is the propriety of the invocation of the Doctrine of Necessity by the Board. Even assuming, *arguendo*, that the Commissioner had incidental jurisdiction over Doctrine of Necessity issues, such jurisdiction would only arise where there is a separate underlying *primary* issue arising under the school laws clearly present which, without question, is not the case here.

may be the School Ethics Commission or Superior Court – is one which must be made by the petitioner.

Accordingly, the recommended decision of the OAL is adopted for the reasons stated therein and the instant petition of appeal is hereby dismissed.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: June 7, 2013

Date of Mailing: June 7, 2013

³ 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).