

PREPARED BY THE COURT

CLARENCE ALSTON,

Plaintiff,

v.

PLEASANTVILLE BOARD OF
EDUCATION, CONSTANCE J. BAUER,
STATE APPOINTED MONITOR, JOHN
DOE, 1-10,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
ATLANTIC COUNTY
DOCKET NO. ATL-L-1301-16

ORDER

Dated: June 16, 2017

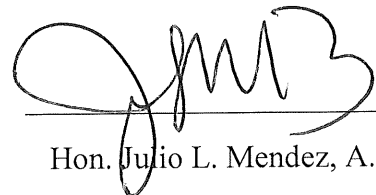
COURT ORDER

The Court having conducted a hearing February 27, 2017, with counsel for plaintiff CLARENCE ALSTON; counsel for defendant PLEASANTVILLE BOARD OF EDUCATION; and counsel for defendant CONSTANCE J. BAUER, STATE APPOINTED MONITOR, and the Court having reviewed the papers submitted, heard the arguments of counsel, having set forth its findings and conclusions in a written memorandum incorporated herein, and for good cause shown;

IT IS on this 16th day of **JUNE 2017, ORDERED**, as follows:

1. For the reasons outlined in this Court's memorandum of decision, the Court holds that the Monitor's actions exceeded her statutory authority pursuant to N.J.S.A. 18A:7A-55 and plaintiff is not required to exhaust administrative remedies.

Date: 06/16/2017



Hon. Julio L. Mendez, A.J.S.C.

**NOT FOR PUBLICATION WITHOUT THE APPROVAL
OF THE COMMITTEE ON OPINIONS**

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
ATLANTIC COUNTY
DOCKET NO. ATL-L-1301-16

Memorandum of Decision

Dated: June 16, 2017

Decided: June 16, 2017

David Castellani, Esquire (Castellani Law Firm) for plaintiff Clarence Alston

Daniel Gallagher, Esquire (The Carroll Law Firm) for defendant Pleasantville Board of Education

Sidney Sayovitz, Esquire (Schenck Price Smith & King) for defendant State Monitor

Mendez, A.J.S.C.

This matter comes before the court upon an order to show cause filed December 16, 2016 against defendants Pleasantville Board of Education and State Appointed Monitor, Constance Bauer. The issues raised in this opinion concern whether the Monitor exceeded her authority under N.J.S.A. 18A:7A-55(b), when she overturned the Board's decision to elect plaintiff as Superintendent and whether the court should dismiss plaintiff's complaint for failure to exhaust administrative remedies. For the reasons stated herein, the court holds that plaintiff is not required to exhaust administrative remedies and that the Monitor's actions exceeded her statutory authority.

FACTUAL BACKGROUND

The Pleasantville Board of Education (hereinafter the “Board”) is the governing body authorized to conduct business on behalf of the Pleasantville School District. N.J.S.A. 18A:27-4.1. Due to financial difficulties, Pleasantville schools have operated under the authority of a State Monitor since 2007. Defendant Constance Bauer is the current Monitor, appointed by the Commissioner pursuant to N.J.S.A. 18A:7A-55. Plaintiff Clarence Alston (hereinafter “Dr. Alston”), a former Superintendent over the Pleasantville School District from 2006-2009, applied for a vacant Superintendent position in 2016. Despite unanimous Board approval, the Monitor refused to award Dr. Alston a contract for Superintendent. The Monitor’s actions form the basis of plaintiff’s complaint.

The Board is empowered to search, appoint, and hire a Superintendent for its School district. In March 2016, the Board and the New Jersey School Board Association advertised an open position for the Superintendent. In March 2016, Dr. Alston submitted his application, was vetted, rated by the NJSBA, and received an “A” rating. Following two successful interviews, on April 27, 2016, the Board selected Dr. Alston for the Superintendent position. The Pleasantville School Board has a full membership of nine voting members. Four members voted to appoint Dr. Alston, two voted against, three members abstained due to conflicts. The Monitor refused to present Dr. Alston’s contract for employment. By letter dated June 1, 2016, the Monitor wrote to the Board that N.J.S.A. 18A:17-15¹ requires a majority vote of the *full* membership of the Board, i.e. 5 votes, in order to appoint a Superintendent and a vote of 4-2 with three abstaining was insufficient under the law. The letter also indicated that the Monitor did not think Dr. Alston was

¹ “The board of education of a Type I district and of any Type II district, now having or hereafter authorized to have a superintendent of schools, may, by contract appoint, for a term of not less than three nor more than five years and expiring July 1, a superintendent of schools by the recorded roll call majority vote of the full membership of the board.”

“well suited to fit the needs of the Pleasantville School District” and that she would not approve Dr. Alston’s candidacy. The letter indicated that the Monitor would appoint an interim Superintendent if the Board did not select a suitable candidate.

Thereafter, Dr. Alston filed a complaint and order to show cause against the Monitor and the Board, arguing that a 4-2 vote was sufficient to appoint him as Superintendent and that the actions of the Monitor exceeded her statutory authority under N.J.S.A. 18A:7A-55. The Monitor maintained that her actions were within her authority and that the court should dismiss Dr. Alston’s complaint for failure to exhaust administrative remedies. By a written memorandum of decision dated July 21, 2016, this court held that Dr. Alston did not need to exhaust administrative remedies before seeking relief from the court and that a full majority vote of the 9 Board members was necessary to appoint Dr. Alston as Superintendent. Since this court concluded that the Board did not lawfully appoint Dr. Alston as the new Superintendent, the court did not reach the issue of whether the Monitor’s decision not to award Dr. Alston a contract was within her statutory authority under N.J.S.A. 18A:7A-55. This is the issue in the current litigation.

Following this court’s memoranda of decision in the first Alston case, the Board voted again on August 16, 2016 to appoint Dr. Alston as Superintendent, this time by a 6-0 vote. Despite the Board’s vote, the Monitor again refused to present Dr. Alston’s contract to the County Superintendent for approval and instead presented a contract for another candidate as Interim Superintendent, of which such term expires June 30, 2017. The Board contends that no interviews were conducted, no resumes were reviewed, and not one Board member met the Monitor’s chosen candidate. The Monitor’s actions led plaintiff to file a second order to show cause, filed December 16, 2016. The court heard oral arguments February 27, 2017. Plaintiff request the court restrain

the monitor from usurping the Board's authority and compel the appointment of Dr. Alston as Superintendent.

LEGAL ANALYSIS

- I. The court holds that plaintiff is not required to exhaust administrative remedies before seeking relief from the court.

There is a strong policy that litigants exhaust administrative remedies prior to seeking relief from the court. See R. 4:69-5. The Commissioner of Education has jurisdiction to hear and determine controversies and disputes arising under school laws. N.J.S.A. 18A:6-9. Dr. Alston's claims arise under Title 18A, i.e. School Laws. Again, the Monitor challenges this court's subject matter jurisdiction. In the court's written decision dated July 21, 2016, the court concluded that Dr. Alston was not required to exhaust administrative remedies. Similarly, the court again holds that Dr. Alston need not exhaust administrative remedies before seeking relief from this court.

The requirement to exhaust administrative remedies is neither jurisdictional nor absolute as its terms disclose." Waldor v. Untermann, 10 N.J. Super. 188, 191-92 (App. Div. 1950). In Waldor, the defendant challenged a lower court decision, which ruled plaintiff was unlawfully appointed to the Newark Board of Education. The Appellate Court stated that the plaintiff was not required to exhaust administrative remedies and "the matter was of importance to the community and the expeditious determination was directly in the public interest." Id. at 193. Similarly, in the present case, the appointment of a Superintendent is undoubtedly a matter of great importance to the community of Pleasantville, which in this court's opinion, greatly benefits from a resolution by the court.

Significantly, the requirement to exhaust administrative remedies is less strict when a case involves only a question of law. Wilbert v. De Camp, 72 N.J. Super. 60, 68 (App. Div. 1962) (citing Nolan v. Fitzpatrick, 9 N.J. 477, 486-487 (1952)). The court finds no genuine factual issue.

The issue in this case involve only a question of law: whether the Monitor's decision not to award a contract to Dr. Alston was within her statutory authority pursuant to N.J.S.A. 18A:7A-55. For those reasons, the court holds that Dr. Alston is not required to exhaust his administrative remedies.

II. The Monitor's decision to rescind plaintiffs' contract exceeded her statutory authority pursuant to N.J.S.A. 18A:7A-55.

In this court's opinion, both statutory interpretation and case precedent indicate that the monitor's decision must be grounded in fiscal reasoning. "The Legislature's intent is the paramount goal when interpreting a statute and, generally, the best indicator of that intent is the statutory language." DiProspero v. Penn, 183 N.J. 477, 492, 874 A.2d 1039 (2005). "Words and phrases in a statute must be viewed within their context". Aronberg v. Tolbert, 207 N.J. 587, 598, 25 A.3d 1121 (2011). If the statute's plain language reveals the Legislature's intent, the court need not proceed further. Bosland v. Warnock Dodge, Inc., 197 N.J. 543, 553, 964 A.2d 741 (2009).

When a school district demonstrates certain financial shortcomings, the Commissioner is empowered to appoint a State Monitor. N.J.S.A. 18A:7A-55. The Monitor has the following powers:

- (1) oversee the fiscal management and expenditures of school district funds, including, but not limited to, budget reallocations and reductions, approvals of purchase orders, budget transfers, and payment of bills and claims;
- (2) oversee the operation and fiscal management of school district facilities, including the development and implementation of recommendations for redistricting and restructuring of schools;
- (3) ensure development and implementation of an acceptable plan to address the circumstances set forth in subsection a. of this section which resulted in the appointment of the State monitor. The plan shall include measurable benchmarks and specific activities to address the deficiencies of the school district;
- (4) oversee all district staffing, including the ability to hire, promote, and terminate employees;

- (5) have authority to override a chief school administrator's action and a vote by the board of education on any of the matters set forth in this subsection, except that all actions of the State monitor shall be subject to the education, labor, and employment laws and regulations, including the "New Jersey Employer-Employee Relations Act," P.L.1941, c.100 (C.34:13A-1 et seq.), and collective bargaining agreements entered into by the school district;
- (6) attend all meetings of the board of education, including closed sessions; and
- (7) meet with the board of education on at least a quarterly basis to discuss with the members of the board the past actions of the board which led to the appointment of the State monitor and to provide board members with education and training that address the deficiencies identified in board actions.

N.J.S.A. 18A:7A-55(b)

In the present case, both sides offer differing interpretations of the Monitor's statutory authority pursuant to N.J.S.A. 18A:7A-55. Plaintiff argues that the Monitor's decision must always have a fiscal nexus. The Monitor argues that N.J.S.A. 18a:7a-55(b)(4), which empowers a Monitor to "oversee all school district staffing, including the power to hire, promote and terminate employees," does not limit the Monitor's decisions to only fiscal concerns.

The Act authorizes the monitor to "oversee the fiscal management and expenditures of school district funds." N.J.S.A. 18A:7A-55(b)(1). The statute identifies the monitor's various responsibilities, including the obligation to ensure development and implementation of an acceptable plan to address the circumstances . . . which resulted in the appointment of the State monitor. . . . N.J.S.A. 18A:7A-55(b)(3). The grounds for appointing a monitor are identified in N.J.S.A. 18A:7A-55(a). This School District Fiscal Accountability Act is different than N.J.S.A. 18A:7A-15, commonly called the Takeover Act, where the Board loses its legal authority to the Monitor and all of the Board's decisions become advisory.

The Legislature passed the Act in 2006 to address concerns of school districts' failure to correct serious deficiencies identified in their annual audits. The Monitor is not a free agent but is

subservient to the Commissioner and provides oversight until the Commissioner determines the necessary local capacity and fiscal controls have been restored to school district operations. N.J.S.A. 18A:7A-55(e). Importantly, the Act permits a Monitor to override a Board's actions, but only over which the Monitor has supervisory authority. N.J.S.A. 18A:7A-55(b)(5). In this court's opinion, because the Commissioner appoints a Monitor pursuant to N.J.S.A. 18A:7A-55(a) to only address fiscal concerns, the Monitor's authority as provided in N.J.S.A. 18A:7A-55(b) is restricted to financial concerns.

To demonstrate, under the Act the Commissioner may appoint a Monitor to provide direct oversight of a Board if the district receives an *adverse opinion by its independent auditor*, see N.J.S.A. 18A:7A-55(a); the district ends the fiscal year with a *deficit balance*, see N.J.S.A. 18A:7A-55(a)(2); the district fails to develop and implement a plan acceptable to the Commissioner to address a *deficit balance*, see N.J.S.A. 18A:7A-55(b)(5); or the district is required to return federal funds if the district's expenditures are *uncompliant with grant requirements*, see N.J.S.A. 18A:7A-55(b)(7). Indeed, while the statute does not limit the Monitor's authority to actions that address the circumstances that resulted in the appointment of the Monitor, a Monitor is appointed in a fiscal capacity, and whose role is to "dispassionately implement policies to achieve sound fiscal management of the District." See Pleasantville Bd. of Educ. v. Pleasantville educ. Ass'n, N.J. Super Unpub 2311 (2009).

Case law further confirms the Monitor's authority is fiscally limited. In Rankins v. Pleasantville Bd. Of Educ. 2012 N.J. Super Unpub. 2369 (App. Div. 2012), the State Monitor overturned the Board's decision to renew the employment contract of a security guard for alleged inappropriate behavior toward students. The Monitor unilaterally rescinded the guards' contract, arguing that the Board could potentially face future liability issues if the security guard was rehired.

Id. at 10. The ALJ reversed the monitor's decision stating that the monitor's decision to rescind the guard's contract were "for reasons that were **not connected to solving the district's fiscal or audit deficiencies**... [but] for reasons exclusively related to [the guard's] alleged conduct." On appeal, the Commissioner rejected the ALJ findings and stated,

"there is no doubt that the state monitors have the power to make personnel decisions for non-tenured staff members, **when those decisions are necessary to solve the district's fiscal or audit deficiencies**. N.J.S.A. 18A:7A-55. Further, in order to achieve fiscal stability, state monitors have the authority to override a vote of the board of education"

"Certainly, the exposure to potential legal liability for a school district that is plagued with financial shortcomings is a valid fiscal rationale for making a personnel decision regarding.... Therefore... the Monitor's decision as related to the fiscal management of school funds, and thus falls within the statutory authority of a state monitor."

(emphasis added)

Ultimately, the Rankins court held that exposure to potential legal liability provided a valid fiscal rationale for the action taken and that the Monitor's decision was fiscally related. Crucially, Rankins further indicates that the Monitor's authority must have a nexus to financial affairs, as the ALJ and Commissioner, administrative agencies empowered to interpret the statute, were required to find a fiscal nexus to affirm the Monitor's decision. The Commissioner cautioned that the Monitor did not have unfettered discretion to override Board decisions, but must make decisions "grounded in fiscal accountability" and "must continue to have fiscal or financial concerns or motivations in order to appropriately overturn a Board's decision." Id.

In the present case, by letter dated June 1, 2016, the Monitor made clear that even upon a successful Board vote for Dr. Alston, the Monitor would not approve Dr. Alston's appointment. The Monitor's rationale seems to indicate that because Dr. Alston's contract was not renewed when he served as Superintendent nearly 8 years prior, Dr. Alston was unsuccessful during his

term. In this court's review of the Monitor's letter, the Monitor presented not one fiscally rationed reasoned. The court is impressed with the due diligence that eventually led to the Board's selection of Dr. Alston as Superintendent. Dr. Alston's credentials were vetted by the Board and the NJSBA and Dr. Alston was found to be qualified. The Board also conducted an extensive search and interviewed many candidates before selecting Dr. Alston. The Board ultimately voted unanimously 6-0 to offer a contract to Dr. Alston. The Monitor refused to acknowledge the vote and instead unilaterally chose her own Interim Superintendent. The Board contends no interviews were conducted, no resume reviewed, and not one Board member met the Monitor's chosen candidate.

The court is concerned by the Monitor's actions. Though the Board operates with a Monitor, the Board is not subject to full monitorship pursuant to N.J.S.A. 18A:7A-15, commonly called the Takeover Act, where the Board loses its legal authority and has only those powers and privileges of an advisory Board. Under the Takeover Act, the Board may not adopt a resolution, appoint a Superintendent, hire, or select a curriculum. The school becomes a state operated school district with a state appointed Superintendent. N.J.S.A. 118A:7A-15. Such sweeping powers do not exist under the School District Fiscal Accountability Act. In this court's opinion, the Monitor exceeded her authority by refusing to approve the Board's Superintendent selection. Unlike the Takeover Act, the authority of the Monitor under the School District Fiscal Accountability Act has limitations and must have a nexus to fiscal concerns. The statute clearly demonstrates a legislative purpose to limit the Board's powers through oversight by the Monitor until the necessary sound fiscal management is restored. See Bd. Of Educ. v. Riehman N.J. Super Unpub LEXIS 312 (2013). In this court's opinion, based on statutory interpretation and case precedent, the Monitor's authority is limited to fiscal decisions. Selecting a Superintendent is the most important decision a

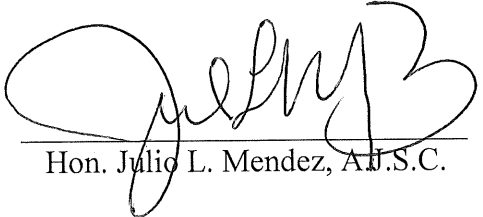
Board makes. The Board's unanimous vote to appoint Dr. Alston clearly indicates their confidence in Dr. Alston to serve in that capacity.

During the course of litigation, the Monitor attempted to establish a fiscal rationale for her decision, indicating that Dr. Alston's employment would subject the Board to a three-year contractual salary requirement of \$500,000.00 and should the Board become unhappy with Dr. Alston, the Board would be subject to a costly legal proceeding. The court is unconvinced with the Monitor's arguments, as the Board's future discontent could happen with any candidate. The Monitor's actions, which have made the Board less than an advising committee, have far exceeded the Monitor's authority. The court finds the Monitor's decision woefully lacking of any fiscal rationale as required by N.J.S.A. 18A:7A-55, and as such, is outside the scope of the Monitor's statutory authority.

CONCLUSION

Therefore, for the reasons stated herein, the court holds that plaintiff is not required to exhaust administrative remedies and that the Monitor's actions exceeded her statutory authority pursuant to N.J.S.A. 18A:7A-55.

Date: 06/16/2017



Hon. Julio L. Mendez, A.J.S.C.