

WALL TOWNSHIP EDUCATION ASSOCIATION; :  
KATHLEEN DORAN; GAIL MAHER;  
EUGENE DELUTIO; KATHLEEN SAYERS; :  
ROBERT LEACH, II; JAMIE LYNN CAMPBELL :  
AND KRISTY ANSBACH, :  
  
PETITIONERS, : COMMISSIONER OF EDUCATION  
  
V. : DECISION  
  
BOARD OF EDUCATION OF THE TOWNSHIP :  
OF WALL, MONMOUTH COUNTY, AND :  
CHERYL DYER, :  
  
RESPONDENTS. :

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#### SYNOPSIS

The Wall Township Education Association (Association) challenged the respondent Board's actions taken in regard to the employment contract of the Superintendent of Schools, Cheryl Dyer, in September 2017. Specifically, the Association took issue with the Board's rescission of Dyer's 2014 contract (2014 Contract) and approval of a new contract on September 19, 2017, for a term beginning July 1, 2017 through June 30, 2020 (2017 Contract). The Association contended that the Board's actions violated public notice and hearing requirements pursuant to *N.J.S.A. 18A:11-11* when it appointed Dyer under the 2017 Contract. The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: there are no genuine issues of material fact in this case, and the matter is ripe for summary decision; the Board and Dyer had an existing employment relationship under the 2014 Contract, which was set to end in 2019 and subject to possible continuation by means of a new contract; in anticipation of the amendment to superintendent salary caps that had been in place in New Jersey since 2011, the Executive County Superintendent issued advice to all school districts in Monmouth County in May 2017 that they could begin negotiations to either amend or rescind current superintendent contracts to adjust employment terms in light of increased salary flexibility; subsequently, the Board and Dyer negotiated a new contract, which was placed on the Board's agenda in September 2017; at the September 19, 2017 Board meeting, the Board voted to rescind the 2014 Contract with Dyer, and approved the newly negotiated 2017 Contract; contract rescission is a recognized, acceptable legal action; "Rescission" of an existing contract is not mentioned in *N.J.S.A. 18A:11-11* as an action that is subject to that provision's requirement for a public notice and hearing. Accordingly, the ALJ concluded that under the facts herein, the Association failed to demonstrate that the Board's action in this regard violated *N.J.S.A. 18A:11-11*. The ALJ denied the Association's motion for summary decision, granted the Board's motion for summary decision, and dismissed the petition.

Upon comprehensive review, the Commissioner concurred with the findings and conclusions of the ALJ, and adopted the Initial Decision as the final decision in this matter. The petition was dismissed.

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.
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OAL DKT. NO. EDU 17516-17  
AGENCY DKT. NO. 252-10/17

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions jointly filed pursuant to *N.J.A.C.* 1:1-18.4 by the Wall Township Education Association and the other petitioners (Association), and the reply exceptions filed by the Wall Township Board of Education (Board) and Superintendent, Cheryl Dyer. In this matter, the Association contends that the Board's action in connection with Superintendent Dyer's contract violated *N.J.S.A.* 18A:11-11; therefore, the contract should be voided. The Administrative Law Judge (ALJ) determined that there were no material facts in dispute and granted summary decision in favor of the Board and Superintendent Dyer. In so doing, the ALJ found that the Association failed to demonstrate that the Board's action in rescinding the 2014 contract and approving a new contract for Superintendent Dyer on September 19, 2017 for a term beginning July 1, 2017 through June 30, 2020 (2017 contract) violated *N.J.S.A.* 18A:11-11.

Upon a comprehensive review of the record in this matter, the Commissioner concurs with the ALJ – for the reasons outlined in the Initial Decision – that the Board's action

did not trigger the advanced public notice and hearing requirements mandated by *N.J.S.A.*

18A:11-11. Pursuant to *N.J.S.A.* 18A:11-11:

A board of education shall not renegotiate, extend, amend, or otherwise alter the terms of a contract with a superintendent of schools, ... unless notice is provided to the public at least 30 days prior to the scheduled action by the board. The board shall also hold a public hearing and shall not take any action on the matter until the hearing has been held. The board shall provide the public with at least 10 days' notice of the public hearing. [*N.J.S.A.* 18A:11-11].

In this case, it is undisputed that the Board did not provide advance notice and a hearing before it rescinded Superintendent Dyer's 2014 contract and adopted the 2017 contract. Thus, the sole question before the ALJ was whether the board's action triggered the requirements outlined in *N.J.S.A.* 18A:11-11.

As a threshold matter, the Commissioner finds that because the terms contained in *N.J.S.A.* 18A:11-11 are clear and unambiguous, there is no need to delve into the statute any further to surmise if the Legislature intended to include the rescission of a superintendent's contract as one of the Board actions that triggers the notice and hearing requirement contained in *N.J.S.A.* 18A:11-11.<sup>1</sup> It is well recognized that when interpreting a statute, the analysis begins with an examination of the plain language of the statute. *State v. S.B.*, 230 *N.J.* 62, 68 (2017); *DiProspero v. Penn*, 183 *N.J.* 477, 492 (2005). The Legislature included specific terms in *N.J.S.A.* 18A:11-11 for which the notice and hearing requirement apply, i.e. "renegotiate, extend, amend, or otherwise alter the terms of an existing contract." Importantly, neither "rescission" nor "rescind" were included by the Legislature and "a court may not rewrite a statute or add language that the Legislature omitted." *State v. Munafo*, 222, *N.J.* 480, 488 (2015) (citing *Diprospero, supra*, 183 *N.J.* at 492). Therefore, a board of education does not have to provide

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<sup>1</sup> If the Legislature determines that the omission of "rescission" from *N.J.S.A.* 18A:11-11 was inadvertent and intended to include the rescission of a superintendent's contract in the list of actions that requires notice and a hearing, it can amend the statute.

the notice and hearing requirements outlined in *N.J.S.A.* 18A:11-11 in order to rescind a superintendent's contract.

The Commissioner further finds that the action taken by the Board regarding Superintendent Dyer was properly characterized as the rescission of the 2014 contract and the adoption of the 2017 contract. The Association maintains that the action the Board took with respect to Superintendent Dyer's contract was not technically a rescission. Instead the Board's action constituted the renegotiation, extension, amendment, or other alteration of Superintendent Dyer's 2014 contract, which should have triggered the notice and hearing requirement in *N.J.S.A.* 18A:11-11. The Association points to several exchanges between the Board and Superintendent Dyer prior to the rescission of the 2014 contract as evidence that there was a "renegotiation, extension or alteration" of Superintendent Dyer's 2014 contract. It is undisputed that there were discussions between the Board and Superintendent Dyer related to the provisions contained in the 2017 contract. However, there was no renegotiation, extension, amendment or alteration of the 2014 contract because that contract was rescinded, which terminated the agreement between the parties. Once a contract ceases to exist, it cannot be renegotiated, extended, amended or altered. Thus, the Board's action rescinding the 2014 contract and adopting the 2017 contract did not fall within the scope of *N.J.S.A.* 18A:11-11.<sup>2</sup>

In its exceptions, the Association also asserts for the first time that the Initial Decision is plainly at odds with the unpublished opinion in *Dolan v. Centuolo*, 2012 *N.J. Super. Unpub. Lexis* 167(A-2470-10T4 & A-2710-10T4) (April 23, 2012).<sup>3</sup> Significantly, in *Dolan, supra*, the Appellate Division was not reviewing the Commissioner's interpretation of

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<sup>2</sup> Notably, there is no hearing and notice requirement under *N.J.S.A.* 18A:11-11 when a board of education enters into a new contract with a superintendent.

<sup>3</sup> The Commissioner finds the petitioners' remaining exceptions unpersuasive, largely reflecting arguments and objections previously raised before the ALJ and clearly taken into account by him in granting summary decision in favor of the Board and Superintendent Dyer.

*N.J.S.A.* 18A:11-11, but instead, the Commissioner’s finding that she lacked jurisdiction over the substance of the dispute. The Appellate Division found that the Commissioner did have jurisdiction over the matter and it remanded the case to the Commissioner for further proceedings.<sup>4</sup> In the unpublished opinion, the Appellate Division simply posed the question as to whether the hearing and notice requirement in *N.J.S.A.* 18A:11-11 may have been triggered in connection with the disputed contract in that case. The court did not evaluate the applicability of the statute and, more importantly, made no definitive determination on the applicability under the circumstances surrounding the contract of the superintendent in that matter. Despite the fact that *Dolan, supra*, does not have any precedential value due to its unpublished nature<sup>5</sup>, it is significant to note that the Appellate Court did not interpret that statute, which is at issue in this case.

Accordingly, for the reasons expressed therein, the Initial Decision is adopted as the final decision in this matter and the petition of appeal is dismissed.

IT IS SO ORDERED.<sup>6</sup>

ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 1, 2018

Date of Mailing: June 1, 2018

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<sup>4</sup> At some point after the case was remanded by the Appellate Division, the matter was withdrawn.

<sup>5</sup> “No unpublished opinion shall constitute precedent or be binding upon any court. Except for appellate opinions not approved for publication that have been reported in an authorized administrative law reporter, and except to the extent required by *res judicata*, collateral estoppel, the single controversy doctrine or any other principle of law, no unpublished opinion shall be cited by any court.” *N.J. Court Rules, R. 1:36-3.*

<sup>6</sup> 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).