

BOARD OF EDUCATION OF THE :  
CITY OF PLEASANTVILLE, :  
ATLANTIC COUNTY, :  
PETITIONER, : COMMISSIONER OF EDUCATION  
V. : DECISION  
: :  
JAMES RIEHMAN, STATE-APPOINTED :  
MONITOR, :  
RESPONDENT. :

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### SYNOPSIS

Petitioning Board alleged that respondent improperly overturned the Board’s decision to reject a proposed settlement of a lawsuit filed by an employee under the Conscientious Employee Protection Act (CEPA). The Board contended that the state-appointed monitor overstepped his authority under *N.J.S.A. 18A:7A-54 et seq.* – the School District Fiscal Accountability Act – which it claims limits the power of the monitor by assigning the Board the sole power to sue or be sued.

The ALJ found that: the sole question to be addressed in this matter is whether the respondent had the authority to override the Board’s decision not to enter into a settlement agreement; the respondent’s argument – that litigation has fiscal consequences and he is empowered by the School District Fiscal Accountability Act, *N.J.S.A. 18A:7A-54 et seq.* (SDFAA), to oversee all fiscal affairs of the district – is without merit, as under this construction of the SDFAA, the state monitor would have the power to overrule any non-procedural action by the board of education; this interpretation of the SDFAA renders indistinguishable the line between monitoring and the full state intervention allowed under *N.J.S.A. 18A:7A-15 et seq.*, which grants a State District Superintendent total authority over the operation of the school district; the respondent bases his authority to settle the lawsuit on the language of *N.J.S.A. 18A:7A-53(b)(1)*, which affords the state monitor the authority to make “payment of bills and claims” but does not empower him to “settle” claims; and once a matter is in litigation, authority over the case’s disposition arises from the power to sue – which is specifically and exclusively granted to the Board of Education under *N.J.S.A. 18A:11-2(a)*. Accordingly, the ALJ concluded that the respondent overstepped his bounds when he overturned the Board’s decision to reject the proposed settlement, and granted the Board’s motion for summary decision.

Upon comprehensive review, the Commissioner concluded that the Monitor did not exceed his statutory authority under *N.J.S.A. 18A:7A-55* when he overturned the Board’s decision to reject the proposed settlement. In so deciding, the Commissioner found, *inter alia*, that: state monitors have the authority – pursuant to *N.J.S.A. 18A:7A-55(b)(5)* – to override a vote of the board of education in order to achieve fiscal stability; and the ALJ’s reference to the power afforded to State District Superintendents under *N.J.S.A. 18A:7A-15 et seq.* is completely unrelated to the School District Fiscal Accountability Act and the statutory authority of state monitors. Accordingly, the Commissioner rejected the Initial Decision of the OAL and affirmed the decision of the Monitor to overrule the Board’s rejection of the settlement agreement at issue in this matter.

<p>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.</p>
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OAL DKT. NO. EDU 11454-10  
AGENCY DKT NO. 539-9/10

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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 filed pursuant to *N.J.A.C. 1:1-18.4* by James Riehman, State-Appointed Monitor (“Monitor”).<sup>1</sup>

The Monitor submitted exceptions to support his contention that the Administrative Law Judge (ALJ) erroneously concluded that he did not have the authority to overturn the Board’s decision to reject the settlement proposal in the Abdullah matter, which involved a Conscientious Employee Protection Act (CEPA) claim by a former employee. The Monitor first argues that the ALJ erroneously relied on *N.J.S.A. 18A:11-2(a)*, which provides that the authority over a case’s disposition in litigation is exclusively granted to the Board. The Monitor points out that *N.J.S.A. 18A:11-2(a)* in no way limits the authority of state monitors. Additionally, the ALJ failed to acknowledge that the Monitor was appointed because of the fiscal shortcomings of the district to provide direct oversight of the Board’s business operations and to oversee the expenditure of school funds, which involves making decisions in litigation that could

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<sup>1</sup> The Board submitted a letter stating that it had no exceptions and was instead relying on the Initial Decision.

result in significant financial exposure to the Board. In his exceptions, the Monitor also contends that the ALJ improperly analogized the State Intervention Statute and the powers afforded to the State District Superintendent with the State Monitor's Authority under the School District Fiscal Accountability Act, *N.J.S.A. 18A:7A-54 et seq.* ("Fiscal Accountability Act"). Finally, the Monitor argues that the ALJ's legal conclusion misinterprets the governing law; frustrates the purpose of the Fiscal Accountability Act; and overlooks legal precedents upholding the authority of state monitors.

Upon a comprehensive review of the record in this matter, the Commissioner finds that the Monitor did not exceed his statutory authority under *N.J.S.A. 18A:7A-55* when he overturned the Board's decision rejecting the settlement proposal in the Abdullah matter. Pursuant to the Fiscal Accountability Act, the Commissioner is authorized to appoint a state monitor to oversee the fiscal management and expenditures of school district funds when an independent audit reveals the existence of certain financial shortfalls that are delineated in the Act. *N.J.S.A. 18A:7A-55(a)* and (b). Further, in order to achieve fiscal stability, state monitors have the authority to override a vote of the board of education. *N.J.S.A. 18A:7A-55(b)(5)*.

In this case, trial counsel for the Board recommended that the Board approve a settlement in the amount of \$225,000 to settle a claim filed by a former employee under the Conscientious Employee Protection Act. Under the settlement proposal, the Board would be required to pay \$100,000 and its insurance carrier would pay \$125,000. Trial counsel for the Board recommended the settlement based upon the issues that could compromise the Board's defense at trial, as well as the potential for a jury verdict of \$500,000 or higher plus attorney's fees. Despite the trial counsel's recommendation, the Board voted to reject the settlement proposal and continue with the litigation. Based on his concern for the financial exposure to the

Board if the litigation were to continue, the Monitor overruled the Board's decision and authorized the settlement proposal. The Commissioner finds that the potential exposure for a high damages award in the \$500,000 range for a school district that is plagued with financial shortcomings is a valid fiscal rationale for entering into a settlement that would essentially cost the Board \$100,000. Therefore, the Commissioner finds that the Monitor's decision was related to the fiscal management of school funds, and thus falls within the statutory authority of a state monitor.

Additionally, the ALJ's reference to the power afforded to State District Superintendents under *N.J.S.A. 18A:7A-15, et seq.* is completely unrelated to the Fiscal Accountability Act and the statutory authority of state monitors; further, its mere existence is irrelevant to a determination as to whether a state monitor exceeded his authority in overruling a school board decision. Moreover, despite the ALJ's suggestion to the contrary, the Commissioner's finding that the Monitor did not exceed his authority in this case does not equate to a blanket determination that state monitors have the power to overrule all non-procedural actions by the Board.

Accordingly, the Initial Decision of the OAL is rejected; and the Monitor's decision to overrule the Board and to approve the settlement in the Abdullah case is hereby affirmed.

IT IS SO ORDERED.<sup>2</sup>

ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 13, 2011  
Date of Mailing: July 13, 2011

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<sup>2</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.