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## Appellate Court Affirms Authority of State Monitor over Board in Implementing Reduction in Force

By Joshua S. Sklarin

The Appellate Division, in *Pleasantville Board of Education, et al. v. Pleasantville Education Association*, recently held that a State Monitor, appointed under *N.J.S.A. 18A:7A-55(a)*, the School District Financial Accountability Act (“Act”), who implements a Reduction in Force (“RIF”), and follows through on that RIF, despite the opposition of a School Board, is well-within his statutory powers. Moreover, the court held that a RIF is a non-negotiable subject in the context of collective bargaining agreements, and thus is not subject to arbitration and grievance proceedings under such agreements.

The Pleasantville Education Association (“PEA”) and the Pleasantville Board of Education (“Board”) were parties to a 2004-2007 Collective Bargaining Agreement (“Agreement”) that contains a multi-step grievance procedure that must be followed in the event of an alleged violation of the Agreement. During the 2006-07 school year, the District employed 91 special education aids, whom the PEA alleged were all notified of their continued employment for the following school year. In March 2007, John Deserable was appointed by the Commissioner of Education, pursuant to the Act, to “provide direct oversight of [the Board’s] business operations and personnel matters[.]” In May 2007, the District’s Superintendent and Deserable recommended a RIF, terminating 22 non-tenured special education aids. The Board rejected the RIF. But Deserable, pursuant to his authority under the Act, overruled the Board, and implemented the RIF.

On August 27, 2007, the PEA, on behalf of the aides, filed a verified complaint and Order To Show Cause (“OTSC”) in the Law Division seeking to restrain Deserable from participating in the Board’s closed sessions and challenging his authority to terminate the aides. The PEA also challenged the RIF by instituting grievance proceedings under the Agreement, arguing that there was no “just cause” for the termination of the aides. On March 5, 2008, the trial judge dismissed the PEA’s OTSC, which she had interpreted as a constitutional challenge to Deserable’s appointment as monitor under the Act. The judge found the appointment constitutional and transferred to matter to the Department of Education (“Department”) for any further proceedings it deemed appropriate. The record contains no information regarding further action taken by the Department.

The grievance proceedings were first denied by the Superintendent. The matter was then heard by the Board, which reversed the (cont’d ➔)

Superintendent, and ordered reinstatement of the aides. Thereafter, Deserable “exercised his statutory authority by declaring the Board’s action ‘null and void.’” Two days later, at the suggestion of the PEA, the aides reported to work. They were then told by the Assistant Superintendent to “go home” because they had not been reinstated.

The PEA then instituted the fourth step in the grievance process and filed a request with the Public Employees Relations Committee (“PERC”) for the commencement of binding arbitration to settle the dispute. The PEA and the Board were the only parties to the arbitration. The PEA and the Board stipulated that the issue to be determined was whether “the District and/or the school administration ha[d] just cause for the termination of the 22 Aides...” The arbitrator determined that the Agreement alone provided the manner in which to resolve the dispute, and that the PEA’s grievance had been “validated” by the Board since it agreed that there was no “just cause.” The arbitrator held that Deserable’s authority under the Act did not extend to override the Board’s resolution of a PEA grievance, which was filed under the terms of the Agreement.

The Board and Deserable filed a complaint in the Law Division seeking to vacate the arbitration award. The trial judge vacated the award because “it would be inappropriate to permit the [B]oard to override [Deserable’s] action through the grievance procedure.” The trial judge reasoned that the monitor’s statutory authority under the Act allowed him to override the Board’s action. The PEA appealed the ruling, arguing that the monitor’s powers are subject to the New Jersey Employer-Employee Relations Act (“EERA”) and the collective bargaining agreements entered into by the school district. Moreover, the PEA claimed that since the Board agreed that there was no “just cause,” and Deserable lacked the authority to invalidate the Board’s resolution, the decision of the Board must be followed.

In affirming the decision of the trial court, the Appellate Division explained that the PEA’s argument was “predicated on the position that

Deserable’s assertion that the RIF fell outside the scope of the arbitration was waived when no action to enjoin the arbitration process was taken.” However, the court agreed with Deserable, who asserted that his right to enforce the RIF was not arbitrable, and that the public policy undergirding his appointment under the Act was properly upheld. Furthermore, the court stated that the district at issue has been categorized as an “Abbott District,” subject to the Act which “was passed to impose oversight on those districts that continued to experience serious fiscal difficulties, notwithstanding the infusion of State assistance.” The Act authorizes the Commissioner of Education to appoint a monitor where a school district either receives an adverse opinion by its independent auditor, or otherwise demonstrates delineated fiscal shortcomings. According to the Act, a monitor has the authority to “oversee all district staffing, including the ability to hire, promote, and terminate employees” and 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...”

While the court acknowledged that its role is limited when reviewing an arbitrator’s award, it may vacate such an award in a public sector setting where there is a misapplication of law. The court explained that the RIF, and Deserable’s power to implement one, was statutory. The court determined that “the PEA’s characterization of its challenge to the RIF as a grievance” was improper because “the RIF decision was not an arbitrable one.” The court held that the arbitration award violated the Act and ignored “the monitor’s role in maintaining the fiscal health of the District.” Thus, the decision of the lower court was upheld, vacating the arbitration award.



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