NOEL A. TAYLOR,
Petitioner,
v.
BOARD OF EDUCATION OF WESTFIELD, UNION COUNTY,
Respondent.

Decided October 20, 1980

Initial Decision

SYNOPSIS

The Westfield Board of Education refused to include Taylor's department chairmanship stipend in his teacher's salary for his final year before retirement, which would have resulted in increased retirement benefits. The Board refused the request since to do so would violate existing salary guides in force under an agreement with the Westfield Education Association. Taylor appealed this decision to the Commissioner of Education and the matter was heard before an administrative law judge.

The administrative law judge noted that while under N.J.S.A. 18A:27-4 et seq. boards of education may employ teachers and make rules governing their salaries, the time and method of payment and the terms of their employment, this case did not present a controversy between Taylor and the Board over a method of salary payments, but rather an issue over retirement benefits resulting from the level of compensation during employment. Jurisdiction for the resolution of such disputes lies not with the Commissioner of Education but rather with the Board of Trustees of the Teachers' Pension and Annuity Fund under N.J.S.A. 18A:66-56. The judge noted that an attempt to resolve the issue through the Commissioner of Education would require the Commissioner to exceed his jurisdiction to settle disputes.

Accordingly, the judge concluded that Taylor's appeal before the Commissioner should be dismissed.

Noel A. Taylor, Pro Se
William D. Peek, Esq., for Respondent (Nicholas, Thomson, Peek & Meyers, Attorneys)

OSPENSON, ALJ:
Noel A. Taylor, a retired science teacher, who also, for the last 20 years...
of his service with the Westfield School District, served as Science Department chairperson under annual special work-assignment contracts, has alleged that his chairmanship stipend of $2,100 for 1977-78 should have been incorporated, though the Board of Education had never done so in the past, as part of his final year’s teacher’s salary. The measure, petitioner alleges, “would help in my retirement pension.” The Board refused petitioner’s request to include it and thus increase his basic contractual salary because to do so would violate existing salary guides in force under the 1976-78 agreement between it and Westfield Education Association, the recognized exclusive negotiating representative for classroom teachers in the district. Having accepted the arrangement under protest in June 1977, petitioner filed his petition for relief before the Commissioner of the Department of Education by letter on January 30, 1978. The Board filed its answer in denial of relief sought on April 20, 1978. The matter proceeded to pre-hearing conference before an assistant commissioner in the Division of Controversies and Disputes and an order was entered thereon on June 26, 1978.

Thereafter, on May 29, 1980, the matter was transmitted to the Office of Administrative Law for hearing and determination as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. On August 29, 1980, a further pre-hearing conference was held in the Office of Administrative Law, wherein it was determined that the issues should be resolved as if on cross-motions for summary decision, on factual stipulations by the parties and memoranda of law, pursuant to N.J.A.C. 11-13.1 et seq. The record was closed October 14, 1980.

**STIPULATED FACTS**

Petitioner first began employment in the district in September 1945 as a biology teacher and head baseball coach. Beginning in 1958-59 and until 1971-72, he held special work assignments on an annual stipend basis as science department head in the senior high school as well as, *inter alia*, laboratory supervisor, Saturday science coordinator, and after school science laboratory instructor. From 1972-73 until 1975-76, his special work assignments in addition to teaching duties were as head of the high school Science Department. In 1976-77 he was Science Department chairperson. For the last year before his retirement, 1977-78, he also was Science Department chairperson, but was required to achieve, and did achieve in November 1977, his certification as supervisor. He still taught two science/laboratory courses.

The 1976-78 agreement between the Board and Westfield Education Association specifically excludes department heads from the bargaining
unit. As a teacher, petitioner was included in the bargaining unit and his salary was established in the guide at maximum of $20,675 (with master’s degree) and an $800 longevity increment for twenty year’s or more service in the district.


Petitioner retired in June 1978 under the provisions of the Teachers’ Pension and Annuity Fund Law, N.J.S.A. 18A:66-1 et seq. Only Social Security and withholding taxes were deducted by the Board from petitioner’s chairmanship stipend of $2,100. No deductions or pension contributions on petitioner’s behalf were made by the Board under the provisions of N.J.S.A. 18A:66-32 except from petitioner’s regular teacher’s salary.

DISCUSSION

During the 1977-78 school year, petitioner’s final year of service before retirement, should his stipend for Science Department chairperson have been included by the Board in his teacher’s contractual salary in order, as he contends, that the increased compensation “help in his retirement pension?”

Informally framed, petitioner’s petition for relief is nevertheless sufficiently clear to imply that he seeks resolution and remediation of a controversy between himself and the Westfield Board of Education that he feels arises under school laws. For it is only such controversies that trigger the Commissioner’s dispute resolution jurisdiction under N.J.S.A. 18A:6-9. At issue first and fundamentally, therefore, is whether the controversy here does indeed arise under school laws.

It is fundamental, of course, that boards of education may employ teaching staff members and make rules governing their salaries, time and mode of payment and the terms and tenure of their employment. N.J.S.A. 18A:27-4 et seq. General disputes between a teacher and a board as to the obligations of the board under its contract of employment are those that by broad and ancient provisions of the statute are within the cognizance of the Commissioner to resolve and are subject thereafter to appeal to the State Board of Education. See, for example, Board of Education Beach Haven v. State Board of Education, 115 N.J.L. 364, 367 (Sup. Ct. 1935). In that case, the board passed a resolution to seek retirement by the Teachers’ Pension and Annuity Fund (TPAF) of one of its teachers. Application was accordingly made by the board to the Board of Trustees of the Fund, and
the teacher was retired. The teacher appealed to the Commissioner of Education from the action of the borough board in making the request for retirement. The Commissioner dismissed the appeal upon the ground that the board acted within its rights. On appeal to the State Board of Education, that board reversed the Commissioner, having found there was an existing contract between the board of education and the teacher that could not be abrogated. It ordered the board to pay the teacher an amount equal to what her salary would have been had she not been retired. On appeal to the Supreme Court this decision was affirmed.


‘Compensation’ means the contractual salary, for services, as a teacher as defined in this article, which is in accordance with established salary policies of the member’s employer for all employees in the same position but shall not include individual salary adjustments which are granted primarily in anticipation of the member’s retirement or additional remuneration for performing temporary or extra-curricular duties beyond the regular school day or the regular school year.

*Board of Trustees of Teachers’ Pension and Annuity Fund v. LaTronica*, 81 N.J. Super. 461 (App. Div. 1963), was an appeal from a decision of the State Board of Education affirming a decision of the Commissioner of Education in three consolidated cases. The Commissioner reversed a decision of the Board of Trustees of TPAF that awarded to three teachers smaller retirement allowances than they believed they were entitled to under law. Both the Commissioner and the State Board of Education held the Board of Trustees of TPAF had not statutory authority to interfere with salary determinations made by local boards of education. On appeal to the Appellate Division of Superior Court, the Board of Trustees of TPAF contended that neither the Commissioner nor the State Board of Education had jurisdiction to review rulings of the Board of Trustees and that the Board of Trustees could refuse to award retirement allowances based upon extra compensation paid to a teacher during his final year of employment before retirement. In one of the three cases, which were factually similar, a teacher was re-engaged in the spring of 1958 for the 1958-59 school year at an
increase according to guide. In the fall of 1958, when he gave notice of retirement at the end of the year, the board of education voted retroactively to increase his salary over the guide by $1,250. In July 1959 when he retired, he claimed benefits based on his increased salary. His claim was denied by the trustees. The Appellate Division said the controversy "quite obviously" did not arise under either the school laws or the rules and regulations of the State Board or the Commissioner within the meaning of N.J.S.A. 18A:6-9.

Although included within the controversy was the legality of salary increases by local boards of education, the ruling of the trustees of the fund was the crux of the situation. The appeal from the initial decision of the trustees was improperly taken to the Commissioner of Education and to the State Board of Education. Neither had jurisdiction in pension matters, such having been vested in the trustees of the fund, an administrative agency within the Division of Pensions of the Department of Treasury, which is charged with full responsibilities for the workings of the fund. Ibid., at 466-69

Here, petitioner does not present to the Commissioner for resolution what is merely a controversy between himself and the Westfield Board over mode of salary payment, which in other circumstances might well under N.J.S.A. 18A:27-4 and N.J.S.A. 18A:6-9 be remediable. Instead, he presents for resolution an issue over compensation inherently within the power and jurisdiction of the Board of Trustees of TPAF to determine. As petitioner has framed his petition, his avowed purpose is increased pension benefits: no relief in the terms or for the purpose he seeks it in his final year before retirement could fail to risk an ultra vires intrusion by the Commissioner into the scope of the exclusive jurisdiction of the Board under N.J.S.A. 18A:66-1, 2(d), 56 et seq. Thus, if the Commissioner here were to order respondent, as petitioner asks, to alter ex post facto the mode by which it paid petitioner in 1977-78 for regular and special services so as to amalgamate both payments into one contractual salary for the purpose of increasing petitioner's pension benefits, the Commissioner's adjudication would either put to risk the actuarial integrity of the fund, contrary to jurisdictional mandate, or else represent a futile adjudicatory exercise which would in no way be binding upon the Board of Trustees of TPAF. La Tronica, supra, at 469; and see, Fair Lawn Education Association v. Fair Lawn Board of Education, 79 N.J. 574, 579-582 (1979). Analogous to limitations of the Commissioner's dispute resolution jurisdiction under N.J.S.A. 18A:27-4 and 18A:6-9 is the limitation on powers invested in local boards of education to establish supplemental retirement benefits plans for their teachers. In Fairlawn, supra, the local board and the teachers exclusive bargaining representative in the district negotiated a plan clearly
designated to induce early retirement of older teachers by lump-sum payments beyond benefits provided under the Teachers' Pension Law. The Supreme Court concluded the mode of payment power delegated by the Legislature to local boards under N.J.S.A. 18A:27-4 was not unlimited. The Legislature, said the Court, has not invested local boards with power to establish supplemental retirement plans calculated to jeopardize the actuarial assumptions of a statutory pension system. The Legislature has pre-empted the field, in N.J.S.A. 18A:66-1 et seq., by providing a comprehensive uniform statewide plan for the payment of retirement benefits to New Jersey teachers. The Teachers' Pension Law is meticulous in detail and establishes the criteria for teachers' entitlement to retirement benefits and the method of calculating those benefits. Local boards of education lack statutory power or authority, therefore, to establish such plans. Fairlawn, at 579-81.

CONCLUSION

Based on the foregoing, therefore, I hereby FIND:

1. The above stipulated facts, together with any mediate conclusions of fact, are adopted herein.

2. From 1945 until his retirement in 1978, petitioner was a science teacher employed by respondent and paid according to established teaching salary guides.

3. From 1958 until his retirement, petitioner fulfilled special work assignments as Science Department head or chairperson in addition to his teaching duties.

4. For such special work assignments petitioner was compensated under separate contract in addition to his teacher's salary, but no deductions or pension contributions on petitioner's behalf were ever made to TPAF from such separate compensation.

5. In June 1977, he accepted for the school year 1977-78, his final year of employment before retirement, a special work assignment contract as Science Department chairperson for compensation of $2,100.

6. Petitioner was retired after the end of the school year in July 1978, as a member of the Teachers' Pension and Annuity Fund.

7. In January 1978, after he had unsuccessfully sought to have respondent include both his regular teaching salary and his special work-assignment stipend as part of his total contractual salary in order that his anticipated retirement benefits might be increased, petitioner filed a petition for relief before the Commissioner of Education.

8. There is no authority or jurisdiction under school laws, nor therefore under N.J.S.A. 18A:6-9, for the Commissioner of Education to remedy
petitioner's claim for relief, all such authority and jurisdiction having been exclusively invested by the Legislature in the Board of Trustees of the Teachers' Pension and Annuity Fund under N.J.S.A. 18A:66-1 et seq.

Accordingly, and based on the foregoing, I hereby CONCLUDE that the petition for relief herein should be, and it is hereby, DISMISSED.

After reviewing this Initial Decision, the Commissioner of Education on December 8, 1980 issued the following Final Decision:

The Commissioner has reviewed the entire record of the matter controverted herein including the initial decision rendered by the Office of Administrative Law.

The Commissioner affirms the findings and determination as rendered in the initial decision in this matter and adopts them as his own.