

301-00

CORDELL WISE, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE CITY : DECISION
OF TRENTON, MERCER COUNTY,
RESPONDENT. :

SYNOPSIS

Petitioner, nontenured physical education teacher, challenged the nonrenewal of his contract for the 1999-2000 school year. The Board contended that petitioner failed to state a cause action upon which relief might be granted and that the petition was not timely filed.

The ALJ noted that the final action in a nonrenewal of contract case occurs when the teaching staff member receives a notice that his/her contract will not be renewed. The ALJ determined that petitioner was required to file within 90 days of the notice of nonrenewal (letter dated April 29, 1999 herein), not within 90 days of the exhaustion of other avenues and mechanisms (September 20, 1999 in this instance). (*Sorace; Riely; N.J.A.C. 6:24-1.2(c)*) The ALJ concluded that the petition was time-barred and it was, therefore, not necessary to reach the question of relief.

The Commissioner agreed with and adopted the conclusion of the ALJ that this matter was time-barred. Moreover, the Commissioner did not find that the factual circumstances presented herein constituted grounds for relaxation of the 90-day rule. Petition was dismissed.

September 11, 2000

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The record and Initial Decision issued by the Office of Administrative Law have been reviewed. Petitioner's exceptions and the Board's reply thereto were timely filed pursuant to *N.J.A.C.* 1:1-18.4.

Petitioner's exceptions aver that it is the Board's September 20, 1999 determination from which petitioner appeals, not the Board's April 29, 1999 letter, as determined by the Administrative Law Judge (ALJ), because September 20 is the date of the Board's *final* decision regarding the renewal of his employment. As to this, petitioner argues, *inter alia*, that the wording of *N.J.S.A.* 18A:27-10(b) does not use the word "final" regarding the written notice from the chief school administrator;¹ thus, his petition was timely filed pursuant to *N.J.A.C.* 6:24-1.2(c).² Petitioner further argues that the ALJ's interpretation of the statutes and regulations is incorrect, having failed to consider the doctrine of exhaustion and other policy issues.

¹ *N.J.S.A.* 18A:27-10 states, "On or before May 15 of each year, each nontenured teaching staff member continuously employed by a board of education since the preceding September 30 shall receive either
a. A written offer of contract for employment from the board of education***, or
b. A written notice from the chief school administrator that such employment will not be offered."

² It is noted for the record that at the time the petition was filed in this matter, *N.J.A.C.* 6:24-1.2(c) controlled. That regulation has since been recodified as *N.J.A.C.* 6A:3-1.3(d).

Moreover, petitioner insists that even if, for the sake of argument, his petition is time-barred, relaxation of the rules is appropriate because, from the facts presented in this matter, it is evident that the Board did not abide by the timelines set forth in applicable statutes and regulations. *N.J.S.A.* 18A:27-3.2; *N.J.A.C.* 6:3-4.2.

Upon careful and independent review of the record, the Commissioner agrees with and adopts the conclusion of the ALJ that this matter is time-barred pursuant to *N.J.A.C.* 6:24-1.2(c) for the reasons stated in the Initial Decision. As correctly determined by the ALJ, *Stockton, supra*, is not applicable to the instant matter. Rather, as determined in *Riely, supra*, and *Sorace, supra*, petitioner was required to file his petition within 90 days of the notice of his nonrenewal, not within 90 days of the exhaustion of other avenues and mechanisms. *See, also, Pacio v. Bd. of Ed. of Lakeland Regional High School District*, 1989 *S.L.D.* 2060, wherein the Lakeland Board voted on April 19, 1988 not to renew a nontenured teacher's contract. Notice of the board's action was sent on May 2, 1988. As in the instant matter, the petitioner in *Pacio*, also sought to convince the board to reverse its nonrenewal decision, which resulted in a decision by the Lakeland Board on May 24, 1988 to affirm its prior decision. In the *Pacio* matter, the Commissioner determined that May 2, 1988 was the date of notice to petitioner which triggered the 90-day filing timeline "because this date represents when [the petitioner] unquestionably received a written notice from the Board of its 'final determination' not to renew her contract.*** Further, the Commissioner would clarify for the record that requests to a board [of education] for reconsideration of its final determination do not toll the running of the 90-day rule.***" (at 2069) This principle of law was also applied in *LeMee v. Board of Education of the Village of Ridgewood*, 1990 *S.L.D.* 663, 672, which states, "Initially, the Commissioner notes that *Pacio, supra*, is clearly dispositive of the threshold question herein, in that it stands unequivocally for the proposition that in nonrenewal disputes the 90-day period for appealing to

the Commissioner is tolled from receipt of the nonrenewal notice, requests for reconsideration notwithstanding.” *See, also, Portee v. Newark Board of Education.*, 94 N.J.A.R.2d (EDU) 381(1994).

Further, upon consideration of the parties’ arguments regarding relaxation of the 90-day rule, the Commissioner concurs with the Board’s position that there is nothing within this matter which justifies relaxation of the filing requirement set forth in *N.J.A.C. 6:24-1.2(c)*. As stated in *Portee, supra*, the 90-day filing requirement has been strictly construed by the Commissioner, the State Board of Education and the Courts and, while the rule gives the Commissioner broad discretion, relaxation is reserved for limited situations wherein a compelling reason can be demonstrated for expanding the limitation period, such as the presence of a substantial constitutional or other issue of fundamental public interest beyond that of concern only to the parties. Upon review of the pleadings in this matter, the Commissioner does not find that the factual circumstances presented herein constitute such grounds for relaxation of the 90-day rule. *Pacio, supra; Sorace, supra; LeMee, supra.*

Accordingly, for the reasons stated in the Initial Decision and herein, the Petition of Appeal is hereby dismissed.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: September 11, 2000

Date of Mailing: September 15, 2000

³ This decision, as the Commissioner’s final determination, may be appealed to the State Board of Education pursuant to *N.J.S.A. 18A:6-27 et seq.* and *N.J.A.C. 6A:4-1.1 et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.