

#259-04

June 30, 2004

Lawrence H. Zisman, *Pro Se*

David H. Coates, Esq.
Turp, Coates, Essl and Driggers, P.C.
170 South Main Street
P.O. Box 191
Hightstown, NJ 08520

Dear Parties:

Pursuant to *N.J.S.A. 18A:6-9* and its implementing regulations, I have reviewed the matter entitled *Lawrence H. Zisman v. Board of Education of the East Windsor Regional School District, Mercer County*, Agency Dkt. No. 153-4/04.

In this matter, petitioner alleges that, for no verifiable reason and without any warning or semblance of due process, he was “dismissed” as a substitute teacher at the respondent district’s Perry L. Drew School, where he has frequently worked and to which he has longstanding family and community ties. Petitioner seeks a number of reliefs, including: financial compensation for lost wages and future earnings and preservation of his option to seek additional compensation for emotional and psychological distress and damage to his professional reputation; exact accountings of the names, dates and allegations associated with the teacher complaints cited as the basis for his dismissal; investigations to determine whether he was dismissed in accordance with district policies and procedures or whether age or sex discrimination was involved in his termination, and whether it is appropriate, in the current environment of fiscal austerity, for the district to contest his complaint rather than negotiate a settlement; development of district policies and procedures as needed for dismissal of substitute teachers; implementation of a community relations program “to instruct District administrators on how to cultivate and improve communications and rapport with selected members of the community;” and administrative or disciplinary action against any person(s) found to have inaccurately reported his activities as a substitute teacher. (Petition of Appeal at 7-8)

In a Motion for Summary Decision with supporting affidavits, the respondent Board of Education (Board) counters that, although it did, in fact, remove petitioner’s name from its call-list of substitute teachers, it did so in accordance with established practice following

requests from two district principals that petitioner not be assigned to their schools due to teacher complaints about his work performance. The Board contends that petitioner's claim is without foundation because he is an at-will employee with no entitlement to rights and relief of the type he seeks.

Upon review, I must concur with the Board's position. Petitioner is a substitute teacher, serving the Board under a county substitute certificate authorizing nothing more than day-to-day substitution for regularly employed teaching staff members for limited periods of time. The only "employment relationship" petitioner has had with the Board is to have been included on its list of qualified persons who may be called on an as-needed basis to fill in for absent teachers. While the Board certainly cannot, as it readily concedes, decline to call petitioner for reasons rooted in prohibited discrimination or other unlawful basis, neither is it true, as petitioner contends, that he held a "position" from which he was "dismissed" or "terminated" without requisite notice and due process rights. As an on-call, day-to-day substitute, petitioner is not a teaching staff member; rather, he is an occasional, noncontractual, "at-will" employee with no basis on which to claim entitlement to current or past employment, and certainly not to an expectation of future employment. While petitioner may have enjoyed his work as a substitute teacher, and he may believe that the Board's decision not to continue using him in that capacity was unwarranted, in the absence of factually supported allegations that the Board's action was taken in violation of law, petitioner has no entitlement to a plenary hearing and there is not even a potential basis on which I could order the Board to reverse its decision. Although I recognize that petitioner has suggested the possibility of discrimination based on age or gender, I also note that he alleges no facts in support of this suggestion, and that, in requesting the Department to investigate the events surrounding his "termination" to ascertain whether such discrimination may have occurred, he misunderstands the nature and purpose of the contested case process and a petitioner's burden therein.

Accordingly, for the reasons set forth above, I hereby grant the Board's Motion for Summary Decision and dismiss the Petition of Appeal.

Sincerely,

William L. Librera, Ed.D.
Commissioner

c: County Superintendent