

OAL DKT. NO. EDU 6708-03
AGENCY DKT. NO. 302-8/03
(OAL Decision: http://lawlibrary.rutgers.edu/oal/html/initial/edu06708-03_1.html)

CHARLES SORIANO, :
 :
 PETITIONER, :
 : COMMISSIONER OF EDUCATION
 V. :
 : DECISION
 BOARD OF EDUCATION OF THE :
 SOMERSET HILLS REGIONAL SCHOOL :
 DISTRICT, SOMERSET COUNTY, :
 :
 RESPONDENT. :
 _____ :
 :

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Timely exceptions were filed by petitioner pursuant to *N.J.A.C.* 1:1-18.4, to which the Board of Education (Board) duly replied. A further submission by petitioner in response to the Board’s reply exceptions is not considered herein, since operative procedural rules make no provision for such submissions.

Petitioner argues on exception that the Initial Decision entirely fails to consider his central claims that the Board had no authority to unilaterally change his proffered retirement date and that doing so additionally violated his tenure rights.¹ (Petitioner’s Exceptions at 3-8) Petitioner further objects to the Administrative Law Judge’s (ALJ) statements to the effect that petitioner acted improperly in obtaining approval for his vacation requests directly from the superintendent, who was, in fact, his ultimate supervisor, and that he was trying to “cheat” the Board by staying on the payroll

¹ In regard to these claims, petitioner substantially reiterates the arguments of his briefs before the OAL, relying in large measure on *Bloomfield Education Association v. Board of Education of the Township of Bloomfield*, decided by the Commissioner on November 18, 2003, and *Victoria Carrelle v. Board of Education of the Township of Bloomfield*, decided by the Commissioner on February 9, 2004.

while having no intention of providing services to the Board for the remainder of his employment. Petitioner contends that the record contains no factual basis whatsoever for the ALJ's "needless inflammatory conclusory statements" in these regards. (*Id.* at 9-10, quotation at 10)

The Board replies that the Initial Decision "resonates with clarity and reason" and is "entirely and simply correct." Contrary to petitioner's assertions, the Board contends, this matter has nothing to do with tenure rights since petitioner was leaving the district of his own accord; nor are quasi-contractual arguments relevant, since the cited prior case law deals with situations where the respondent board had previously accepted the complainant's proffered resignation, which did not occur in this instance. Instead, as the ALJ recognized, all the Board did was refuse to accept a resignation date for which it would receive no benefit, causing petitioner no harm other than loss of his ability to take a lengthy paid vacation at the Board's expense. (Board's Reply at 1-4, quotations at 1-2)

Upon review, the Deputy Commissioner, to whom this matter has been delegated for hearing pursuant to N.J.S.A. 18A:4-34, has no alternative but to reverse the decision of the ALJ. The record provides ample explanation as to why the Board (and the ALJ) took a heated view of the circumstances herein, where petitioner, who had already accepted employment in a new district along with the Board's outgoing superintendent, submitted his resignation with an effective date that enabled him to invoke the negotiated agreement's provision for immediate accrual of 28 vacation days upon July 1, 2003, then requested leave for the period from July 2, 2003 through the effective date of his proffered resignation. However, regardless of whether this outcome was the result of outrageous connivance, as contended by the Board, or merely a collateral consequence of the 60-day

resignation notice required by *N.J.S.A.* 18A:28-8, as suggested by petitioner, the fact remains that, by unilaterally changing petitioner's proffered resignation date to an earlier one more to the Board's liking, the Board forced petitioner's premature resignation and terminated his employment without consent. Quite apart from the fact that resignation under any circumstances is a voluntary act with which the employee must be in agreement, here, in view of petitioner's undisputed tenure status, unilateral termination of his employment could not be lawfully accomplished in the absence of proceedings pursuant to *N.J.S.A.* 18A:6-10. *Bloomfield, supra* (Note 1) Simply put, whatever its feelings may have been about the fairness to the district of petitioner's actions, the Board had no authority to do what it did, and petitioner must prevail on his appeal herein as a matter of law. As petitioner correctly notes, in the context of the claim he has made, other considerations are immaterial and no findings with regard to them can be made on the stipulated facts.

Accordingly, the Initial Decision of the OAL dismissing the Petition of Appeal is rejected for the reasons set forth herein. The Board is directed to compensate petitioner consistent with the terms of his collective bargaining agreement, less mitigation, for the period between the effective date of his unlawful termination and his proffered resignation date of August 22, 2003.

IT IS SO ORDERED.²

DEPUTY COMMISSIONER OF EDUCATION

Date of Decision: September 24, 2004

Date of Mailing: September 24, 2004

² This decision 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.*