

#224-06

OAL Decision: http://lawlibrary.rutgers.edu/oal/html/initial/edu06722-05_1.html

TATIANA CHARAPOVA, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
TOWNSHIP OF EDISON, :
MIDDLESEX COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner, a non-tenured ESL teacher formerly employed by the Board, challenged the determination of the respondent to not renew her contract for the 2005-2006 school year. She asserted that the contract was not renewed due to discriminatory reasons.

The ALJ found, *inter alia*, that: the Board's nonrenewal letter dated April 19, 2005 was the cause of action in this matter, but the petition was not filed until August 4, 2005, 17 days after the 90-day period for filing had expired; there being no basis for relaxing the time requirement set forth in *N.J.A.C. 6A3-1.3(d)*, the petition was, therefore, untimely filed. The ALJ concluded that the respondent's motion for summary dismissal of the petition should be granted.

The Commissioner rejected the Initial Decision, finding that notwithstanding petitioner's receipt of the "blanket" nonrenewal letter sent to all nontenured staff, the earliest she could have made the allegations she did was sometime in May, when she became aware that similarly situated colleagues were being recalled to employment, while she was not; therefore, the petition was filed within applicable regulatory limitations. The Commissioner remanded the matter to the OAL for proceedings on the merits of petitioner's claim, noting that the instant decision neither expressed nor implied any opinion on the merits of such claim.

<p>This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.</p>

June 20, 2006

OAL DKT. NO. EDU 6722-05 (http://lawlibrary.rutgers.edu/oal/html/initial/edu06722-05_1.html)
AGENCY DKT. NO. 194-8/05

TATIANA CHARAPOVA,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE	:	DECISION
TOWNSHIP OF EDISON,	:	
MIDDLESEX 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; however, the Commissioner has not considered certain of the documents appended thereto, since these constitute evidence not presented at hearing in contravention of *N.J.A.C.* 1:1-18.4(c). The respondent Board of Education (Board) did not file a reply.

In her exceptions, petitioner objects to the Administrative Law Judge's (ALJ) assumption, expressed at pages 6-7 of the Initial Decision, that petitioner would have been advised by her education association representative of the deadline for filing a petition of appeal. Petitioner contends that, in fact, no such advice was given, and that, moreover, she was denied legal counsel. Therefore, according to petitioner, the Commissioner should set aside the Initial Decision and consider her claim on the merits in the interest of fundamental fairness. (Petitioner's Exceptions at 1-3)

Upon careful and independent review of the record, the Commissioner rejects the Initial Decision of the OAL, not for the reasons suggested by petitioner, but for the reasons set forth below.

While the Commissioner endorses much of the ALJ's discussion of the 90-day rule and its general application, the Commissioner cannot concur that petitioner's cause of action in this matter arose with her receipt of the Board's letter of April 19, 2005 advising her that she would not be offered a contract for the 2005-06 school year. That letter reads in its entirety as follows:

The total number of positions which will be needed for the operation of the Edison Township Public Schools for the 2005-06 school year cannot be determined at this time due to various factors, such as uncertainties with respect to the number of staff members who may be returning from various leaves of absence, enrollment trends, and financial constraints. Thus, you are hereby notified, in accordance with N.J.S.A. 18A:27-10, that you will not be offered a contract for employment by the Edison Township Board of Education for the 2005-06 school year.

Please feel free to contact my office if you have any questions on this subject. (Board's Brief in Support of Motion for Summary Decision, Exhibit A; Petitioner's Response to Board's Motion, Exhibit 4)

At the Board's April 18, 2005 meeting, the Board had adopted a resolution nonrenewing the contracts, for the reasons reiterated in the above-referenced letter, of no fewer than 177 nontenured staff members – approximately 95 of them certificated teachers, including petitioner and another ESL teacher. (Petitioner's Response to Board's Motion, Exhibit 2, pages 2-6) Within this context, the April 19 letter received by petitioner is clearly a "blanket" notice of the type routinely sent by boards of education during the annual budget process when reductions in staffing are anticipated, but their exact nature and extent is at that point uncertain; indeed, petitioner claims to have been

told exactly this when she received the letter via hand delivery along with other nontenured colleagues assigned to the same school and inquired about it. (Petitioner’s Response to Board’s Motion at 1; *Id.*, Exhibit 2, page 1; Board’s Brief, Exhibit B)¹

Although precise dates are difficult to determine,² it is apparent from petitioner’s papers that sometime during May she became aware of teaching positions – including ESL positions – being filled in the district, and that many teachers on the April 18 reduction in force (RIF) list were apparently being recalled; she was additionally under the impression that there had been no significant reduction in the number of ESL students. (Cover Letter to Petitioner’s Response to Board’s Motion at 1-2) Following discussions with her colleagues, petitioner began to believe that the Board might have acted in bad faith by using the April 18 RIF as a subterfuge to mask its true, discriminatory intent: to terminate her employment because of her age and national origin. (*Id.* At 2) On May 23, 2005, the Board approved the assignment of 85 teaching staff members “returning from reduction in force,” thus recalling a significant majority of the teachers on the April 18 nonrenewal list, including the other ESL teacher but not petitioner. (Petitioner’s Response to Board’s Motion, Exhibit 2, pages 7-9)

¹ This construction is further supported by the June 2, 2005 letter to the district superintendent from the education association president, wherein a new nonrenewal letter is requested on petitioner’s behalf so that it will be clear as she seeks employment for the upcoming school year that the reason she was not offered a position with respondent’s district was a “true” reduction in force, i.e., there was, in fact, no position for her once the uncertainties referenced in the April 19 letter were resolved. (Petitioner’s Response to Board’s Motion, Exhibit 9) Petitioner erroneously characterizes this letter as the association’s notice to the district that petitioner’s “reduction in force was not the case and the true reasons [for her nonrenewal] should be provided” (Petitioner’s Response to Board’s Motion at 2); the record does not include a response from the district, and petitioner contends none was given. (Cover Letter to Petitioner’s Response to Board’s Motion at 2)

² Petitioner’s papers reflect confusion about the exact dates of events in May, stating, for example that the association president’s meeting with the superintendent took place in “early May” and that his subsequent letter was dated “May 23” or, at another point, “May 25” (Cover Letter to Petitioner’s Response to Board’s Motion at 2, Petitioner’s Response to Board’s Motion at 2). The letter in question is dated June 2 and shows the meeting to have taken place on May 25 (see Note 1 above).

Under these circumstances – even in a climate where petitioner had been experiencing difficulty with the new principal of her assigned school prior to April 2005 – the Commissioner cannot find, given the nature of petitioner’s claim, that adequate notice for purposes of appeal was provided by her receipt of the Board’s “blanket” nonrenewal notice on April 19. *Kaprow, supra*. Rather, the Commissioner finds that petitioner could not have made the allegations that she did prior to having at least some awareness that once the Board’s budget and personnel uncertainties were settled, similarly situated colleagues were being recalled while she was not. *Eisenberg, supra*. Indeed, the ALJ implicitly recognizes this in the Initial Decision, wherein he states:

Finally, much like the petitioner in *Eisenberg v. Fort Lee Bd. of Educ.*, Ms. Charapova has also asserted that it was not until well after the Board’s final action on April 19, 2005, that she became aware of new information alerting her to the existence of an additional allegation. More specifically, she has alleged that with the passage of the new budget in May 2005, the Board “reinstated many if not all of the RIF’d personnel.” *Charapova Response, supra*. She believes that the only possible explanation for her not being rehired was that the Board must have discriminated against her. However, she did not submit any documentation supporting this allegation and, even if she had, unlike the situation in *Eisenberg*, the fact remains that she became aware of this information not one day but rather nearly two months before the 90-day period had run its course. With approximately 60 days remaining, she had more than ample time to file her petition. Accordingly, the April 19, 2005, decision must be considered the Board’s final decision amenable to review, making Ms. Charapova’s petition untimely. (Initial Decision at 7)

Where the Commissioner differs from the ALJ is in holding that: regardless of the facial merits of petitioner’s claim or how quickly she moved to file once she had the requisite awareness, petitioner is entitled to appeal to the Commissioner within 90 days from the point at which she became, or reasonably should have become, aware of a possible cause of action against the district. In the present instance, the

earliest that petitioner could have made the allegations that she did is sometime in early-to-mid-May; indeed, under the circumstances, her claim might arguably not have ripened until the Board acted on May 23 to offer reemployment to the great majority of nontenured teachers, including an ESL teacher other than petitioner, affected by the April 18 RIF. Even using the earlier date, however, petitioner's August 5 petition³ was filed within the required regulatory time frame, and, moreover, even if the 90-day rule were found to have been formally triggered when petitioner received her official notice of nonrenewal, the Commissioner would also find that, under the circumstances, relaxation of the rule would be warranted. *Eisenberg, supra*, at 8

In so holding, the Commissioner stresses that boards of education have every right to effectuate good faith reductions in force and to nonrenew the employment contracts of nontenured teachers for any reason that is not statutorily or constitutionally proscribed; indeed, throughout the present proceeding, the Board has maintained that this is precisely what it did with respect to petitioner. (Answer to Petition of Appeal at 1, 4-5; Board's Brief in Support of Motion for Summary Decision at 1) The Commissioner, therefore, emphasizes that the decision herein is limited solely to the timeliness of the petition, and that no opinion of any kind is expressed or implied as to the merits of petitioner's claims. The Commissioner additionally notes that, in further proceedings before the OAL, nothing herein is intended to preclude the Board from pursuing its defenses or to foreclose summary dismissal of the petition on grounds other than untimely filing.

³ The Initial Decision is corrected to note that, although dated August 4, 2005, the petition was actually filed on August 5. (*Cf.*, Initial Decision at 1, 2 and 6)

Accordingly, the Initial Decision of the OAL dismissing the Petition of Appeal on grounds of untimely filing is rejected for the reasons expressed herein, and this matter is hereby remanded to the OAL for proceedings, consistent with the parameters set forth above, on the merits of petitioner's claim.⁴

IT IS SO ORDERED.⁵

ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 20, 2006

Date of Mailing: June 20, 2006

⁴ Petitioner's papers suggest that related claims are pending before the U.S. Equal Employment Opportunity Commission and the New Jersey Division on Civil Rights. (Cover Letter to Petitioner's Response to Board's Motion at 1, undated letters to ALJ filed December 19, 2005 and January 23, 2006) If a related matter has been or will be transmitted to the OAL by the Division on Civil Rights, the present matter may be appropriately considered for consolidation and a determination of predominant interest pursuant to *N.J.A.C. 1:1-17.1 et seq.*

⁵ 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.*