

NANCY T. SNOW, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE : DECISION
 TOWNSHIP OF MOORESTOWN, :
 BURLINGTON COUNTY, :
 :
 RESPONDENT. :

SYNOPSIS

Petitioner – a former teacher in respondent’s school district – alleged that the Board required her to submit a letter of resignation in order to continue her employment for the 2005-2006 school year, and that this requirement and the Board’s subsequent refusal to allow her to withdraw her resignation before it took effect in May 2006 was arbitrary, capricious, and unreasonable. Respondent Board filed a motion for summary decision, based on petitioner’s failure to timely file her petition.

The ALJ found, *inter alia*, that: petitioner’s appeal, filed in July 2006, is time barred by *N.J.A.C. 6A:3-1.3(i)*; the 90-day limitations period for filing began with the Board’s acceptance of petitioner’s letter of resignation in August 2005; there is no genuine issue of material fact in this matter, and summary decision is appropriate. The ALJ concluded that the petition is time-barred; granted summary decision in favor of respondent; and dismissed the petition.

Upon a full and independent review, the Commissioner concurs with the ALJ’s grant of summary decision to the respondent, finding that the petition was filed well out of time. Accordingly, the Commissioner adopted the Initial Decision of the OAL dismissing the Petition of Appeal as the final decision in this matter.

<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>

April 20, 2007

OAL DKT. NO. EDU 6404-06
AGENCY DKT. NO. 255-7/06

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner’s exceptions and the Board’s reply thereto, filed in accordance with *N.J.A.C.* 1:1-18.4, were fully considered by the Commissioner in reaching her determination herein.

Petitioner’s exceptions – appending her Brief in Opposition to Motion for Summary Decision advanced below – essentially recast and reiterate her arguments made before the Administrative Law Judge (ALJ). Specifically, she first contends that the ALJ erred in concluding that her resignation was effective when it was accepted by the Board. Rather, she contends, because “she was induced by the Board for the unlawful purpose of circumventing the operation of the Tenure Law[,] [t]he agreement, thus entered into, between the Petitioner and the Board was therefore *void ab initio* and therefore it could not have been ‘binding’ as a matter of contract law at the time it was accepted by the Board.” (Petitioner’s Exceptions at pages 1-2). Further elaboration on this argument must be derived from petitioner’s appended brief which indicates that the essence of petitioner’s claim in this regard is that the agreement to resign –

irrespective of the benefits she may have derived from it – led to a situation where she was employed for the requisite period of time to obtain tenure status but, she argues, she did not receive that statutorily mandated status. Petitioner maintains the resignation letter the Board required her to sign as a condition of employment for the 2005-2006 school year – which was accepted by the Board in August of 2005 (but not effective until May of 2006) – contravened terms and conditions of employment dictated by the tenure statute which cannot legally be waived or bargained away and, therefore, she was entitled to rescind her resignation. (Petitioner’s Brief in Opposition to Motion for Summary Decision at 5) Petitioner argues that the Board did not have the legal authority “to make such an end run around the tenure law” and to permit it to do so “would allow local boards to endlessly delay the granting of tenure by the subterfuge of each year obtaining a resignation, effective in the future, before granting a new contract.” (*Id.* at 7)

Petitioner next excepts to the ALJ’s conclusion that her petition was time-barred, asserting that at the time her resignation was accepted by the Board, “it was not binding, because it was entered into for an unlawful purpose.” (Petitioner’s Exceptions at 2) Additionally, as argued in her brief below, she maintains that – due to the fact that there remained a possibility that the parties, by mutual consent, would agree to the withdrawal of petitioner’s resignation,¹ and because the resignation, by its own terms, did not become effective until May 22, 2006 – the 90-day time period for filing her Petition of Appeal began running on the effective date of her resignation rather than when the resignation was submitted and accepted. (Petitioner’s Brief in Opposition to Motion for Summary Decision at 14-15)

¹ Petitioner’s exceptions charge that it had been represented to her that “if she performed in an acceptable fashion, she might be permitted to rescind the resignation and enjoy continued employment with the district.” (Petitioner’s Exceptions at 2)

The Board's reply exceptions – which also appended its Brief in Support of Summary Decision, in addition to its Reply Brief to Petitioner's response and the ALJ's Initial Decision² – urge that the ALJ's holding that petitioner's resignation was effective and legally binding on her upon its acceptance by the Board at its regularly scheduled meeting on August 16, 2005³ is correct. It advances that there is no legal authority – either cited by petitioner, or otherwise – which would require the Board to permit petitioner to rescind her resignation some nine months after this time. (Board's Reply Exceptions at 1)

In response to petitioner's charge that agreements of the nature of the one involved in this matter are illegal, the Board points out:

[t]he material facts of this matter are undisputed – the Board agreed that in exchange for Petitioner's resignation, they would re-hire her so she could obtain her 25 years of service. Petitioner did so, and then attempted to circumvent the deal she proposed and agreed to by attempting to rescind her resignation. The agreement at issue did not violate the tenure laws, in fact, Petitioner later obtained tenure, worked for a few months past her tenure date, when her retirement became effective. The fact that she agreed to submit a letter of resignation prior to her obtaining tenure is of no consequence. (*Id.* at 2)

Finally, the Board charges that there is no authority for petitioner's "supposition" that the 90-day timeline for the filing of a petition in this matter did not begin to run until her last day of employment with the Board. Rather, it proposes – citing *Charles E. Willson III v. Board of Education of the Toms River Regional School District*, 96 N.J.A.R. 2d (EDU) 872 and *Blossom S. Nissman v. Board of Education of the Township of Long Beach Island*, 272 N.J. Super. 373, 380-81 (App. Div. 1994) – that this timeframe was triggered by the Board's acceptance of her letter of resignation. (Board's Reply Exceptions at 2) Moreover, it urges:

² The parties are advised that inclusion of their briefs filed below or the Initial Decision with their Exceptions is unnecessary as these materials are always contained in the record before the Commissioner.

³ Respondent's exceptions mistakenly indicate the date as August 16, 2007.

[p]etitioner does not dispute that she understood the effect of her letter of resignation, nor does she dispute that she was aware the Board had accepted her resignation at the August 16, 2005 Board meeting. Yet she waited over 11 months to dispute the Board's ability to accept her voluntary letter of resignation. If Petitioner wished to challenge [the] Board's authority to do so, she had to file her Petition within 90 days of August 16, 2005. She failed to do so, and thus, her Petition was properly dismissed for being out of time. (*Ibid.*)

Upon a careful and independent review of the record in this matter, the Commissioner concurs with the ALJ's grant of summary decision to the Board, as she agrees that there are no material facts in dispute and the Board is entitled to prevail as a matter of law (*N.J.A.C.* 1:1-12.5(b)), because this matter was filed outside the 90-day limitation period set forth in *N.J.A.C.* 6A:3-1.3(i) and is, therefore, appropriately dismissed. In so determining, the Commissioner notes that the instant record reveals:

In late April or early May, 2005 petitioner was advised that her employment contract would not be renewed for the 2005-2006 school year.

The Board subsequently agreed to rehire petitioner for the 2005-2006 school year in order to allow her to attain 25 years of service, thereby qualifying her for certain additional pension and health benefits, with the express understanding that she immediately submit a letter of resignation effective after the vesting of these benefits.

By letter dated August 15, 2005, petitioner submitted her voluntary resignation – effective May 26, 2006⁴ – which was accepted by the Board at its regularly scheduled meeting of August 16, 2005.

By letter dated May 8, 2006 – subsequent to the vesting of her additional retirement benefits and less than three weeks before her scheduled resignation date – petitioner requested that the Board allow her to rescind her resignation.

⁴ Petitioner claims that her union representatives urged her to submit this letter and that they led her to believe that if she performed well during the 2005-2006 school year, the Board might change its mind and keep her. She does not, however, charge that her letter of resignation was coerced or resulted from any misrepresentation on the part of the Board.

The Board did not have a meeting in May 2006 and, therefore, petitioner's request was placed on the agenda for its June 20, 2006 meeting. At this time, the Board determined that since petitioner had resigned effective May 26, 2006, consideration of a request to rescind her resignation was a moot issue.

The instant Petition of Appeal was filed on July 20, 2006.

The Commissioner finds and concludes that, pursuant to the Supreme Court's decision in *Kaprow v. Board of Education of Berkeley*, 131 N.J. 572 (1993), petitioner's receipt of notice of the Board's "final action" on the subject of her resignation at its August 16, 2005 meeting triggered the running of *N.J.A.C. 6A:3-1.3(i)* and, consequently, any challenge to this action by petitioner was required to be filed before the Commissioner within 90-days of this time. (*See also Willson and Nissman*,⁵ *supra*) Neither the fact that petitioner continued in the Board's employ subsequent to its acceptance of her resignation nor petitioner's attempt to rescind her resignation by letter dated May 8, 2006 serve to preclude application of the 90-day rule. Therefore, the instant Petition of Appeal – filed in July 2006, some eleven months after the Board's final action – is clearly out of time.

Notwithstanding that the limitations rule of *N.J.A.C. 6A:3-1.3(i)* is to be strictly applied, the Commissioner recognizes that she may – pursuant to her authority under *N.J.A.C. 6A:3-1.16* – relax this rule under exceptional circumstances or if there is a compelling reason to do so. (*See Kaprow, supra; DeMaio v. New Providence Board of Education*, 96 N.J.A.R. 2d [EDU] 449, 453) Such authority, however, is rarely invoked unless strict adherence to the rule would be inappropriate, unnecessary or where injustice would occur (*DeMaio* at 453), or where the Commissioner finds the presence of a substantial constitutional issue or other issue of fundamental public interest beyond that of concern only to the parties

⁵ The focus of the 90-day rule is on "the date of the employer's wrongful act as the accrual date for a cause of action, rather than the date on which the consequences of the act is directly felt by the employee***." *Nissman* at 381

themselves. *Pacio v. Lakeland Regional High School District*, 1989 S.L.D. 2060, 2064. The instant matter presents no such compelling or exceptional circumstances – nor other sufficient reason – to warrant relaxation or waiver of the 90-day rule here.

Irrespective of the fact that untimeliness has barred consideration of the instant petition, the Commissioner is compelled to correct the ALJ’s statement on Page 12 of his Initial Decision that “[p]etitioner was specifically denied tenure***.” The petitioner in this matter was not prevented from acquiring tenure, as such status is statutory in nature and attaches automatically upon the fulfillment of the requisite conditions. However, the fact that petitioner may have acquired tenure at some point during the 2005-2006 school year has no bearing whatsoever in this matter. Petitioner resigned from the District – consequently, she voluntarily relinquished any rights which otherwise might have accrued to her by virtue of such status.

Accordingly, the Commissioner adopts the recommended decision of the OAL dismissing the instant Petition of Appeal as untimely pursuant to *N.J.A.C. 6A:3-1.3(i)*.

IT IS SO ORDERED.⁶

COMMISSIONER OF EDUCATION

Date of Decision: April 20, 2007

Date of Mailing: April 20, 2007

⁶ 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.*