

DENIS WILBECK, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE : DECISION
 CITY OF BAYONNE, HUDSON :
 COUNTY, :
 :
 RESPONDENT. :

SYNOPSIS

Petitioner – a tenured vice principal in respondent’s school district – alleged that his transfer by the Board from a 12-month position as a high school vice principal to that of elementary school vice principal would result in a lesser salary than he had been receiving prior to transfer, and that such transfer was retaliatory and done in bad faith. Petitioner was advised of his reassignment to the elementary school post in a meeting with the superintendent on August 30, 2006, and he began work in his new assignment the next day.

The ALJ found that: petitioner’s appeal, filed in December 2006, is time barred by *N.J.A.C. 6A:3-1.3(i)*; the 90-day limitations period for filing began in late August 2006, when petitioner was indisputably aware of the Board’s action to reassign him to an elementary school; and petitioner’s contention that his transfer from a 12-month to a 10-month position amounts to a reduction in salary is simply not a basis for a contested action. The ALJ concluded that the petition is time-barred and dismissed the petition.

Upon a full and independent review, the Commissioner concurred with the ALJ’s determination that the petition was late filed. The Commissioner rejected the petitioner’s contention that the 90-day limitation period did not begin until he received his first paycheck for the 2007-2008 school year, stating that since the petitioner had previously served as an elementary vice principal in respondent’s district, he was aware in August that his transfer was to a 10-month position and that his future earnings could be affected; further, previous precedent establishes that future increases in salary or salary expectation are not appropriate factors to be considered when determining the validity of a transfer, since tenured employees have no vested right in any future increases in salary. The Commissioner dismissed the petition.

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.
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July 9, 2007

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The record of this matter, which was litigated by way of a motion for summary decision, and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. No exceptions were filed.

The undisputed facts set forth in the parties' affidavits show that although petitioner was advised by letter on August 24, 2006 that the terms and conditions of his employment would be discussed at a board of education meeting on August 29, 2006, he chose not to attend. The respondent board of education (respondent) took action at the meeting to reassign petitioner from the position of high school vice principal, a twelve-month position, to the position of elementary school vice principal, a ten month position. The superintendent met with petitioner on the following day, August 30, 2006, to advise him of his reassignment to serve as Vice Principal of Woodrow Wilson Elementary School.

Petitioner reported for work at the Woodrow Wilson School the next day, August 31, 2006, and on the same date the school's principal distributed a letter to the students' parents welcoming petitioner. On September 5, petitioner was welcomed at a faculty meeting.

Thus, petitioner knew of his reassignment as of August 30, 2006. He filed his petition with the Commissioner on December 6, 2006, ninety-eight days later.

Petitioner argued that the ninety-day limitations period set forth in *N.J.A.C. 6A:3-1.3(i)* for bringing petitions before the Commissioner should not be counted from the date upon which he learned of his reassignment. Rather, petitioner maintained that it should be triggered by the date upon which he learned that the reassignment would affect his salary increase expectancies. In his certification he suggested that “the cause of action in this case actually arises as soon as I receive my first paycheck for the 2007-2008 school year and the 90 day period for filing would not end until 90 days from the date that I receive such check.” (Certification of Denis Wilbeck dated April 3, 2007, # 10)

The Commissioner rejects that contention on both factual and legal grounds. First, the record indicates that petitioner had, prior to 2006, served as vice principal of an elementary school in respondent’s district and could be reasonably deemed to have been aware of the fact that elementary vice principalships are ten month positions. Consequently, he could be reasonably charged on August 30, 2006 with the knowledge of the “existence of the state of facts which might equate in law with a cause of action,” *Kaprow v. Board of Education of Berkeley Township*, 131 *N.J. Super.* 572. 589 (1993). That knowledge triggered the limitations period for filing his petition.

Second, the Commissioner agrees with the OAL that previous precedent has established that future increases in salary, or salary expectations, are not appropriate factors to be considered when determining the validity of a transfer, since tenured employees have no vested right in any future increases in salary. *Williams v. Board of Education of Plainfield*, 176 *N.J. Super.* 154, 162 (App. Div. 1980). Further, even if the future salary issue could serve as

a legitimate basis for an appeal, petitioner had the knowledge he needed to bring such a challenge on August 30, 2006. He waited until after the expiration of the period allowed by *N.J.A.C. 6A:3-1.3(i)* for challenges, and that limitations period has been strictly upheld by the Commissioner and the State Board of Education.

Accordingly, for the reasons articulated by the Administrative Law Judge (ALJ), the Commissioner adopts the Initial Decision as the final decision in this case. The petition is dismissed.

IT IS SO ORDERED.¹

COMMISSIONER OF EDUCATION

Date of Decision: July 9, 2007

Date of Mailing: July 9, 2007

¹ 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.*