

#151-12 (OAL Decision: Not yet available online)

LARRY PLUMMER, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE : DECISION

CITY OF LINDEN, UNION COUNTY AND :

ROCCO G. TOMAZIC, SUPERINTENDENT : OF SCHOOLS,

RESPONDENTS. :

SYNOPSIS

Petitioner – a vice principal employed by the respondent Board – asserted that the Board and its superintendent of schools violated his rights by appointing a Board attorney to investigate a grievance the petitioner filed after being denied a promotion. Petitioner’s grievance claimed racial and gender discrimination, as well as improper favoritism by the superintendent, and was filed with the Board’s affirmative action officer – who recused herself from investigating this matter because she had served on the interview committees that had rejected the petitioner for promotion to the position of principal. The Board contends that its actions in appointing a Board attorney to investigate petitioner’s claims were a proper exercise of its discretionary authority. The parties filed cross motions for summary decision.

The ALJ found that: the matter was ripe for summary decision as there were no material facts in dispute; *N.J.A.C. 6A:7-1.5(a)(2)(iii)* confers upon a district affirmative action officer the responsibility to ensure that district grievance procedures are followed, including the conducting of investigations and reporting of information; the regulations do not require that the affirmative action officer personally conduct any grievance investigation; in the absence of any regulatory guidance regarding how grievance investigations should take place, the superintendent and the affirmative action officer retain the discretion to discharge their duties relative to local grievance procedures in any way that they deem appropriate; if the internal review process is unsatisfactory to a grievant, the appropriate forum to file a formal complaint is with the Division of Civil Rights, Equal Employment Opportunity Commission – as the petitioner in the instant matter rightfully did; and under the facts presented, the Board’s actions were not arbitrary, capricious or unreasonable, and there is no basis upon which to interfere with the Board’s action in appointing its counsel to investigate petitioner’s allegations of discrimination. Accordingly, the ALJ determined that the petition should be dismissed.

The Commissioner concurred with the ALJ that this matter must be dismissed as he agrees that the Board’s actions were not arbitrary, capricious or unreasonable.

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.

April 20, 2012

OAL DKT. NO. EDU 13727-11
AGENCY DKT. NO. 325-10/11

LARRY PLUMMER, :
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 PETITIONER, :
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 V. : COMMISSIONER OF EDUCATION
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 BOARD OF EDUCATION OF THE : DECISION
 CITY OF LINDEN, UNION COUNTY AND :
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 _____ :

The Commissioner has reviewed the record of this matter and the Initial Decision of the Office of Administrative Law (OAL) on the parties' cross motions for summary decision. Petitioner (Plummer) filed exceptions as provided by *N.J.A.C. 1:1-18.4*. No exceptions were filed by respondents (Board and Tomazic).

In his exceptions, petitioner again asserts that he was denied a fair, impartial investigation when respondents selected an attorney from the firm representing the Board to determine if the hiring committee discriminated against him on the basis of racism, sexism, and bias – thereby depriving him of one of the available principal positions. He also contends that the ALJ erred by not applying the law accurately. He maintains that when there is a conflict between the New Jersey Law Against Discrimination (LAD) and *N.J.A.C. 6A:7-1.1 et seq.*, LAD supersedes the regulations. Plummer further advises that he has withdrawn his complaint before the Division on Civil Rights (DCR) and has chosen to pursue his claims in Superior Court instead since he believes this forum provides greater relief; however, he concludes that he has

had to unfairly relinquish his right to an investigation and believes that in doing so he will never know his employer's motives for denying him a principal position.

Upon review of the Initial Decision of the Office of Administrative Law, the cross-motions for summary decision and the record, the Commissioner concurs with the Administrative Law Judge (ALJ) that this matter is ripe for summary decision as there are no genuine issues of material fact to resolve. The Commissioner makes the following findings. The only issues in this matter are whether the Board properly exercised its discretion when it appointed the Board's attorney to investigate the petitioner's grievance, and if such action was in conformity with school law and policies. Since petitioner has voluntarily withdrawn his complaint from the Division on Civil Rights, he may not be heard to complain that he is deprived of the Division's investigative functions and expertise. Moreover, petitioner's concern that he will never receive the investigation he originally sought is misplaced. Discovery in the courts by way of admissions, interrogatories, depositions, *etc.*, will afford him the inquiry he complains that he has had to forego. Finally, the petitioner has failed to show that this exercise of the Board's discretionary power was improperly motivated or done in bad faith.

Based on the foregoing and for the reasons convincingly presented in the ALJ's decision, the Commissioner agrees that the Linden Board of Education and Dr. Tomazic did not act arbitrarily, capriciously or unreasonably in their appointment of the Board's attorney as proper designee to conduct the petitioner's grievance investigation.

The Commissioner adopts the Initial Decision as the final decision in this matter for the reasons set forth by the Administrative Law Judge (ALJ). He agrees with the ALJ's conclusions that the Board's actions were not arbitrary, capricious or unreasonable and that the respondents are entitled to a judgment as a matter of law.

Accordingly, summary disposition is granted to respondents; the petitioner's cross motion is denied; and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.¹

ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 20, 2012

Date of Mailing: April 20, 2012

¹ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36*. (*N.J.S.A. 18A:6-9.1*)