

HIWATHA GREEN-JANVIER,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE CITY OF	:	DECISION
ATLANTIC CITY, ATLANTIC COUNTY,	:	
BERT LOPEZ, PRESIDENT, JAMES HERZOG,	:	
DANIEL GALLAGHER AND WILLIAM	:	
STEELE, PRINCIPAL, individually and	:	
jointly,	:	
	:	
RESPONDENTS.	:	
_____	:	

SYNOPSIS

Petitioner challenged the Board’s action to eliminate her nontenured position as Chief of Center for Safety and Security.

The ALJ found that the Board was in a financial crisis in the 1997-98 school year and opted for a reduction in force. Thus, the ALJ determined that the Board’s action to terminate petitioner’s employment was not arbitrary and unreasonable and did not violate the New Jersey Law Against Discrimination. Moreover, the ALJ concluded that the Board properly terminated petitioner’s employment by the terms and conditions of the contract entered into by the parties. Petitioner had 30 days notice, ample time to exhaust her vacation days before the effective date of her termination. Petition was dismissed.

The Commissioner adopted the findings and determination in the Initial Decision as his own with modification. The Commissioner concurred with the ALJ that petitioner failed to show by a preponderance of credible evidence that the Board’s action to abolish her position was arbitrary and capricious, that there was discriminatory activity and that the Board failed to provide 30 days notice. The Commissioner, however, noted that by acknowledging that it awarded vacation days to petitioner as a 12-month employee, the Board conceded that it provided benefits to petitioner which were not specified in her contractual agreement. The Commissioner directed the Board to compensate petitioner for any unused vacation, sick or personal days, if so provided for in the policy or agreement applied to her.

December 11, 2000

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The record in this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner’s exceptions were submitted in accordance with *N.J.A.C.* 1:1-18.4, and were duly considered by the Commissioner in reaching his determination herein.<sup>1</sup>

In her exceptions, petitioner essentially restates her position that respondent’s action to terminate her employment for reasons of economy was unreasonable and in bad faith because the District’s budget crisis ended with the closing of the Albany Avenue School. Pointing out that the District completed the year with a surplus, that the acting superintendent recommended against abolishment of petitioner’s position and that petitioner’s position remained in respondent’s budget following cuts made by the City Council after the budget defeat, petitioner urges reversal of the Administrative Law Judge’s (ALJ) finding that respondent’s action was not arbitrary or capricious. (Petitioner’s Exceptions at 1-3) Petitioner also objects to

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<sup>1</sup> Respondent did not file exceptions to the Initial Decision, nor a reply to petitioner’s exceptions.

the ALJ's determination that she was not entitled to compensation for unused vacation, sick and compensatory days, stating that "[t]he ALJ's decision that petitioner should have taken the vacation days before her last day of work is just wrong." (*Id.* at 3)

Upon a thorough review, the Commissioner determines to affirm the decision of the ALJ with modification, as noted below. Initially, the Commissioner concurs that the record supports respondent's contention that the District was in a financial crisis and that its action to pursue a reduction in force was for reasons of economy. The Commissioner, therefore, determines, for the reasons expressed by the ALJ, that petitioner has failed to show by a preponderance of credible evidence that respondent's action to abolish her position was arbitrary or capricious. The Commissioner also agrees that there is absolutely no evidence that respondent engaged in discriminatory activity when it voted to abolish petitioner's position, and that petitioner has failed to establish a *prima facie* case to support her claim of a violation of the New Jersey Law Against Discrimination. Finally, the Commissioner finds that respondent properly exercised its rights, under the terms of the contract, in providing petitioner 30 days notice that her position had been abolished and her employment terminated.

With respect to petitioner's compensation claim, however, the Commissioner modifies the determination of the ALJ. The Commissioner notes that petitioner's contracts are silent as to any employment benefits she is to receive in addition to her annual salary. The supplemental stipulation entered into by the parties, however, states that:

1. Petitioner started work for the District in October 1997. *As a twelve month employee*, the petitioner was entitled to the accrual of vacation time at 1.6 per month (from November 1997 to June 1998) or 13.33 vacation days for the 1997-98 school year.
2. The respondent did not pay petitioner for her accumulated vacation days. (emphasis added) (Supplemental Stipulation)

By acknowledging that it awarded vacation days to petitioner *as a twelve-month employee*, respondent has conceded that it provided benefits to petitioner which were not specified in her contractual agreement, as both petitioner and the head of personnel testified at hearing. Although the record does not contain a copy of the policy or collective agreement which respondent applied in awarding petitioner 13.33 vacation days per year, respondent is obligated to adhere to the terms and conditions of the same policy or collective agreement it applied in awarding the vacation days with respect to compensation, if any, to petitioner for any unused vacation days. In the event that petitioner was also awarded sick or personal days under the twelve-month employee provision, petitioner is also entitled to compensation for any unused sick or personal days, if so provided for in the policy or agreement applied to her.

Accordingly, the Initial Decision of the OAL is affirmed for the reasons expressed therein, as modified above.

IT IS SO ORDERED.<sup>2</sup>

COMMISSIONER OF EDUCATION

Date of Decision: December 11, 2000

Date of Mailing: December 11, 2000

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<sup>2</sup> This decision, as the Commissioner's final determination, 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.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.