

LESTER VINCENTI, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE ESSEX : DECISION
COUNTY EDUCATIONAL SERVICES :
COMMISSION *ET AL.*, :
RESPONDENTS. :
_____:

SYNOPSIS

Petitioning social studies teacher alleged that the Essex County Educational Services Commission Board's (ECESC) termination of his services in January 1999 was violative of school law and regulation and contrary to the terms of the parties' employment contract. Petitioner sought reinstatement with compensation.

The ALJ determined that petitioner had no legal right to the position held by Mr. Harold Morrison, the teacher that petitioner was replacing due to Mr. Morrison's unexplained absence. The ALJ found that petitioner's employment was not approved by the ECESC Board of Directors; petitioner never received nor executed a written contract of employment; and, during the entire time of petitioner's employment, Mr. Morrison was not terminated nor had he resigned, retired or died. Thus, the ALJ concluded that petitioner had no legal right to the position held by Mr. Morrison, notwithstanding his unexplained absence or the verbal promises made to petitioner granting him greater than substitute status.

The Commissioner adopted the findings and determination in the Initial Decision as his own. The Commissioner noted that by the explicit wording of *N.J.S.A. 18A:27-1*, no teaching staff member may be appointed except by a recorded roll call majority vote of the full membership of the board. This is true even as here where it was alleged that the Board's administrator provided assurances of employment to petitioner. (*Brennan; Fanago; Bolger*) Petition was dismissed.

LESTER VINCENTI, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE ESSEX : DECISION
COUNTY EDUCATIONAL SERVICES :
COMMISSION *ET AL.*, :
RESPONDENTS. :
_____:

The record and Initial Decision issued by the Office of Administrative Law (OAL) have been reviewed. On October 6, 2000, petitioner submitted a request for an extension of time within which to file exceptions due to his intent to secure transcripts of the hearing. Petitioner was granted an extension until October 16, 2000 to file exceptions. Subsequently, on October 19, 2000, petitioner requested that he be granted a “stay” for filing exceptions until he obtained the transcripts. Petitioner was granted a second extension for filing exceptions until December 2, 2000. As a result, an extension of the 45-day statutory period for the Commissioner’s review and issuance of a final decision, from November 9, 2000 until December 26, 2000, was requested by the Commissioner and granted by the OAL on November 2, 2000. On November 28, 2000, petitioner was granted a third extension to file exceptions until December 18, 2000 because he had not yet obtained the transcripts. This necessitated that the Commissioner seek another extension from the OAL for issuance of the final decision until January 25, 2001, which was granted on December 6, 2000. Petitioner

ultimately filed exceptions, dated January 17, 2001 and received by the Commissioner on January 19, 2001, on an untimely basis pursuant to the requirements of *N.J.A.C. 1:1-18.4*.^{1,2}

Upon thorough review of the record, the Commissioner agrees with and adopts as his own the recommendation of the Administrative Law Judge (ALJ) dismissing the Petition of Appeal. Even granting *arguendo* that petitioner's representation of the underlying facts is true, as a matter of law, he cannot prevail on the merit of his claims. The record clearly establishes, and the petitioner does not dispute, that *he was never approved for employment or otherwise appointed by the Board of Directors of the Essex County Educational Services Commission (ECESC) as a social studies teacher at the Essex Campus program to fill the teaching position held by Harold Morrison; nor did petitioner ever receive or execute a written employment contract with the ECESC.*

It is well established that the statutory authority to employ teaching staff members rests solely and exclusively with a board of education (*N.J.S.A. 18A:27-1* and *N.J.S.A. 18A:27-4.1*), or as herein, a board of directors of an educational services commission (*N.J.S.A. 18A:6-65*). By the explicit wording of *N.J.S.A. 18A:27-1*, no teaching staff member may be appointed

¹ In each of the letters to petitioner granting him an extension within which to file exceptions, he was informed of the date by which the exceptions had to be filed and that, pursuant to *N.J.A.C. 1:1-18.4*, any request for further extension had to be filed prior to the date the exceptions were due. No request for further extension was received prior to December 18, 2000, the last due date established for exceptions. A letter dated December 20, 2000 was filed by petitioner in which he states:

As usual, the OAL has failed to timely prepare and deliver the last requested materials for our use in this matter in preparing our exceptions to [the ALJ]'s absurd recommendations. It appears that that agency is incapable of administering their responsibilities herein with any degree of certainty or decency.

With this latest example of improper conduct on the part of the NJ OAL, we have determined to prepare our [exceptions] memorandum to your agency without awaiting the audiotapes we requested months ago. Same will be forthcoming shortly and we intend to raise as additional issues beyond those already raised, the interminable institutional bias and prejudice of the NJ OAL along with the continued misconduct of [the ALJ] and his cronies, respondents' counsel, including but not limited to the latest deprivations connected to [the ALJ]'s appointment to the Superior Court bench in Essex County, New Jersey.

² The Commissioner notes that the exceptions filed by petitioner, to the extent that they do not reiterate prior arguments and rely on prior submissions, contain a myriad of allegations against the OAL, such as "dormant animosity", "degradation and inappropriate conduct" on the part of OAL staff, matters which are properly raised before the OAL pursuant to *N.J.A.C. 1:1-3.2*.

except by a recorded roll call majority vote of the full membership of the board. This is true even in circumstances, such as herein, where it is alleged that a board's administrator(s) provided assurances of employment to an individual which were relied upon by that individual.

Therefore, as found by the ALJ, even accepting *arguendo* that petitioner's allegations are true, that Principal Watts offered him employment to fill Mr. Morrison's position and assured him that an employment contract would immediately be provided under the terms set forth in the Initial Decision, this would not entitle petitioner to the relief he seeks in this matter. Rather, the holding of the Commissioner in *Brennan v. Board of Education of the City of Pleasantville*, 1977 S.L.D. 1059, applies herein. That holding states, *inter alia*, that:

The Commissioner cannot agree that the Board is estopped from asserting that no contract of employment existed between it and petitioner. *The law is clear that boards alone can appoint teaching staff members.*

"No teaching staff member shall be appointed except by a recorded roll call majority vote of the full membership of the board of education appointing him." N.J.S.A. 18A:27-1

An examination of the record reveals that the Board committed itself not at all to petitioner, but that petitioner mistakenly relied on the opinions and assurances of the Board's administrators in concluding that a commitment had been made. Such reliance was misplaced, since opinions and assurances cannot stand in the stead of deliberate Board action. *The Board alone has the ultimate authority to decide the employment of teaching staff members.* *** (emphasis supplied) (at 1061-1062)

See also *Fanego v. State-Operated School District of the City of Jersey City*, Hudson County, decided by the Commissioner June 14, 1999; *Vernon v. Holmdel Board of Education*, 1990 S.L.D. 852; and *Cutler et al. v. Bd. of Ed. of Parsippany-Troy Hills*, 1990 S.L.D. 725, *aff'd* State Board 751; *Rotondo v. Carlstadt-East Rutherford Reg. High School District*, 276 N.J. Super. 36, 39 (App. Div. 1994).

Moreover, to be valid, an employment contract must be adopted by the board. *Bolger v. Board of Education of Keansburg*, 1979 S.L.D. 94, *aff'd* State Board 99, *aff'd*, N.J.

Superior Court, Appellate Division, 1980 *S.L.D.* 1478. *See also Fanego, supra*, a case in which it was held that the petitioner did not have an enforceable contract of employment because the state superintendent³ never approved the petitioner's appointment and the terms of a contract were never consummated.

Accordingly, for the reasons stated in the Initial Decision as amplified above, Petition of Appeal is hereby dismissed.

IT IS SO ORDERED.⁴

COMMISSIONER OF EDUCATION

Date of Decision: January 25, 2001

Date of Mailing: January 25, 2001

³ In a State-operated school district, the state superintendent assumes to the power of a board and makes all personnel determinations relative to the employment, transfer and removal of all officers and employees, professional and nonprofessional, subject to the approval of the Commissioner or his designee. (*N.J.S.A.* 18A:7A-42(3))

⁴ 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.