

81-01

CHARLOTTE WELLINS, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE CITY OF : DECISION
ATLANTIC CITY, ATLANTIC COUNTY, :
BERT LOPEZ, PRESIDENT, DANIEL :
GALLAGHER AND THERESA KELLEY, :
INDIVIDUALLY AND JOINTLY, :
RESPONDENTS. :
_____ :

SYNOPSIS

Petitioner, Organizational Development Specialist, challenged the elimination of her position by respondents and her termination, arguing that the elimination of the position and termination were arbitrary and capricious, contrary to the Law Against Discrimination and retaliatory. The Board argued that it properly eliminated petitioner's position because of a budget deficit, and that its action was a legal reduction in force.

The ALJ determined that the Board acted legally when it eliminated petitioner's position and dismissed the petition. The ALJ concluded that the Board's actions were motivated by a fiscal crisis, and were not arbitrary and capricious. However, the ALJ did conclude that petitioner was entitled to an additional days pay because an incorrect termination date was utilized by the Board.

The Commissioner affirmed the decision of the ALJ with modification, holding that petitioner may be entitled to compensation for unused sick or personal days if so provided for in the policy or agreement applied to her to reimburse her for unused vacation days.

March 7, 2001

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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 and the Board’s reply thereto 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.

In her exceptions, petitioner objects to the conclusions of the Administrative Law Judge (ALJ), stating that: 1) the ALJ failed to credit the testimony of the former superintendent regarding the Board’s authority to alter the Demonstrable Effective Program Aid (DEPA) budget without the County Superintendent’s prior approval; 2) it is unacceptable for a board to determine professional development programs without direction from the superintendent; and 3) the ALJ erroneously concluded that the Board’s decision to eliminate petitioner’s position was proper and in accordance with *N.J.S.A.* 18A:11-1 and *N.J.S.A.* 18A:28-9. (Petitioner’s Exceptions at 2) Noting that the District was in Level II Monitoring, with staff development identified as an area needing drastic improvement, petitioner avers that the Board was unaware

when it voted to eliminate both her position and the 4Mat training model for staff development from the budget that the District had already invested thousands of dollars in the 4Mat staff training model and had committed resources to future planned activities. (*Id.* at 2-3) Petitioner further asserts that the Board's action terminating her employment for reasons of economy was unreasonable and arbitrary because the District's budget crisis was resolved with the closing of the Albany Avenue School, saving the District a projected one million dollars. (*Id.* at 4) Therefore, the Board's assertion of fiscal instability is inaccurate, petitioner posits, because the crisis had ended, as demonstrated by the subsequent funding of an unbudgeted program, the Academic Achievement Academy, at a cost of \$36,000. (*Ibid.*)

In its reply, the Board asserts that the ALJ weighed all the evidence and gave weight to that which he found most credible. Agreeing that staff development was one of the issues under review as a result of the Level II Monitoring by the State, the Board contends that the 4Mat training model cannot be presumed to be any more appropriate for the District than any other training model. (Board's Reply Exceptions at 1) Moreover, the Board maintains that the District was in a financial crisis at the time it acted to terminate petitioner and the Board was, therefore, forced to eliminate the staff development program with which petitioner was involved, and find ways to address staff development internally in order to preserve funds for classroom instruction. (*Id.* at 2) The Board points out that the changes to the DEPA budget were ultimately approved by the County Superintendent, and that there was never an issue with the County or the State concerning the changes. (*Ibid.*)

Upon a thorough review, the Commissioner determines to affirm the decision of the ALJ, as modified below. Initially, the Commissioner concurs that the record supports the Board's contention that the District was in a financial crisis and that its actions to pursue a

reduction in force and a change in the method of delivery of staff development were 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 the Board's action to abolish her position was arbitrary or capricious. The Commissioner also agrees that there is no evidence that the Board 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. Moreover, since the Board took action to abolish petitioner's position on June 23, 1998, notifying her by letter of June 24, 1998 of such action, the Commissioner agrees that the Board was obligated to reimburse petitioner for services rendered through July 23, 1998, pursuant to the employment contract, which specifies that petitioner will be afforded "*thirty days notice, in writing,*" upon the Board's election to terminate the employment contract. (P-6 in Evidence, ¶3)

With respect to petitioner's compensation claim for unused vacation and sick time, the Commissioner observes that petitioner's contract is silent as to employment benefits she is to receive in addition to her annual salary. Although the ALJ states that "[p]etitioner presented no evidence that she was entitled to vacation time or that the Board had enacted a policy which compensates employees for unused sick time" (Initial Decision at 40), the Commissioner observes that petitioner testified that she received a check, dated August 5, 1998, for \$1,666.65 (Exhibit P-25) compensating her for five unused vacation days. (Tr. 4/7/99 at 86)

Accordingly, it appears that the Board provided benefits to petitioner which were not specified in her contractual agreement. Although the record does not contain a copy of the policy or collective agreement, if any, which the Board may have applied in awarding petitioner vacation days, the Board is obligated to adhere to the terms and conditions of the same policy or

collective agreement applied in awarding the vacation days and other employee benefits with respect to compensation to petitioner for any unused vacation days. In the event that petitioner was also awarded sick or personal days, 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.*

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 7, 2001

Date of Mailing: March 8, 2001

* 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.