

498-04

OAL DKT. NO. EDU 11428-03 ([http://lawlibrary.rutgers.edu/oal/html/initial/edu11428-03\\_1.html](http://lawlibrary.rutgers.edu/oal/html/initial/edu11428-03_1.html))  
AGENCY DKT. NO. 361-9/03

JODI BERKOWITZ,	:	
	:	
PETITIONER,	:	
V.	:	COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE	:	DECISION
CITY OF ELIZABETH,	:	
UNION COUNTY,	:	
RESPONDENT.	:	
_____	:	

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), and the parties’ submissions on exception, have been reviewed.

In her exceptions, petitioner urges the Commissioner to reject the analysis and conclusion of the Administrative Law Judge (ALJ). She argues:

Petitioner was forced to request a leave without pay because she had run out of sick days. The respondent requires employees who have run out of sick days to request a leave of absence and grants such a leave *without pay*. Petitioner was not on a long-term leave of absence, such as someone on a maternity leave. She worked until early June, 2003. As stated in petitioner's initial brief, she is paid on a yearly basis. She is paid an annual salary which is distributed in twenty equal installments over the course of a ten (10) month school year (N.J.S.A. 18A:27-6). The number of working days varies as to each such installment period, but the amount paid does not vary. The only exception is when a deduction of salary is required by virtue of an unauthorized absence on a day when work is scheduled. Therefore, petitioner requests that her pay be docked only for the days that she should have been at work and not for the entire month of June because her contract ran to June 30, 2003. The ALJ notes that, “If the school year had to be extended through June 30, 2003, the teachers would have been required to work until then.” (Initial Decision, page 6). However, that did not occur. In fact, as stated in the Stipulation of Facts, the last day of work for petitioner for the 2002-2003 school year was June 24, 2003. In spite of that fact, respondent withheld petitioner’s full pay of June 30, 2003\*\*\*even though she only missed seven days of work during that pay period.\*\*\*

(Petitioner’s Exceptions at 1-2, emphasis in text)

In reply, the Board of Education (Board) counters that petitioner's insistence on using the word "docked" (which has disciplinary connotations) is misplaced, and that the ALJ did, in fact, understand the issue correctly. It objects to petitioner's claim that she was "forced" to take unpaid leave, when in fact she exercised an option provided to employees in order to protect their pension and job status, and further disagrees with Petitioner's salary distribution argument, contending that where an employee does not work a full year and takes an *unpaid* leave, his or her salary distribution will be different from that of employees working a full year. The Board then states:

\*\*\*[Petitioner] argues that her contract ran through June 30, 2003 and, therefore, she should be paid for the days after the work year ended, after June 24, 2003, as the school year was not extended past June 24, and other teachers were not required to work after that date. However, unlike other employees who were paid through June 30, the Board could not have required her to work had the school year been extended because she was on leave.

[Petitioner] also argues that because the school year was not extended, it is insignificant that had the school year been extended through June 30, 2003, that teachers would have been required to work. However, it is significant because such an extension is always real in school districts and had it occurred, [petitioner], unlike other teachers, could not have been required to work because she made herself unavailable.\*\*\* [Petitioner] requested unpaid leave from June 16, 2003 through June 30, 2003. The Board agrees with the ALJ that she received exactly what she requested. [Petitioner] is not entitled to pay for a period in which she was unavailable to work and placed on an unpaid leave. (Board's Reply at 1-3)

Upon careful review and consideration, and consistent with his recent decision in the matter of *Christine Cuthbertson v. Board of Education of the City of Elizabeth, Union County*, decided November 3, 2004, and with his decision in *Dawn Rodriguez v. Board of Education of the City of Elizabeth, Union County*, decided concurrently with the instant matter, the Commissioner concurs with the ALJ that petitioner is not entitled to the relief she seeks. However petitioner attempts to characterize her situation, the fact remains that the

days for which she asks “not to be docked” occurred at a time during which she was on a *pre-arranged leave of absence*, unpaid because she had exhausted all of her accumulated leave. Petitioner’s status from June 16 onward by its very nature precluded any entitlement to or expectation of pay for the duration of her leave, which extended through the remainder of the school year (June 30); it is of no import whatsoever that events transpired so that active teachers, *i.e.*, those not on leave, were not required to report to work on three days falling within the unpaid leave period. In effect, with respect to the days at issue, petitioner is demanding that the Board treat her as an employee not on leave, which she clearly was not. *Cuthbertson, supra*

Accordingly, for the reasons expressed therein and above, the Initial Decision of the OAL dismissing the Petition of Appeal is adopted as the final decision in this matter.

IT IS SO ORDERED.\*

COMMISSIONER OF EDUCATION

Date of Decision: December 9, 2004

Date of Mailing: December 9, 2004

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\* 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.*