

VICTORIA CARRELLE, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE TOWNSHIP : DECISION
 OF BLOOMFIELD, ESSEX COUNTY, :
 :
 RESPONDENT. :
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SYNOPSIS

Petitioning nontenured teacher alleged the Board unilaterally changed the date of her resignation in violation of her contractual rights and school law.

The ALJ concluded that the Board, having adopted a resolution accepting petitioner's offer of resignation on the date chosen by her, failed to adopt a second resolution changing the dates of petitioner's employment as required by *N.J.S.A. 18A:27-4.1*. Although petitioner's contract specified that termination may be accomplished by either party giving the other 60 days' notice in writing, the ALJ noted that the Commissioner lacks jurisdiction over subject matter concerning alleged breach of contract. The ALJ ordered the Board to pay petitioner her full salary for the month of December 2002 minus two days' pay.

The Commissioner agreed with and adopted the ALJ's determination that the Board impermissibly accelerated petitioner's resignation date thereby depriving petitioner of her full salary for the month of December 2002. The Commissioner, however, modified the Initial Decision, clarifying that *N.J.S.A. 18A:28-8* governing the notice required of any tenured teaching staff member desiring to relinquish his or her position was inapplicable herein; *N.J.S.A. 18A:26-10* governing notice requirements for nontenured individuals is the applicable statute. The Commissioner found that this statute, in conjunction with the parties' employment contract, which required the party wishing to terminate employment to give the other party 60 days' notice of such intent, required that petitioner be compensated for the full notice period. Although the Commissioner lacks jurisdiction over disputes that are solely contractual in nature, he does have jurisdiction over contractual claims which are incidental to his obligation to resolve education claims that are the subject of litigation. (*B.P., on behalf of B.P.* State Board decision) The Commissioner directed the Board to pay petitioner her full salary for the month of December 2002, less the two days' compensation she previously received.

<p>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.</p>

February 9, 2004

OAL DKT. NO. EDU. 1852-03
AGENCY DKT. NO. 8-1/03

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The Board’s exceptions and petitioner’s reply thereto were filed in accordance with the provisions of *N.J.A.C.* 1:1-18.4.

The Board’s exceptions first concur with the Administrative Law Judge (ALJ) that the Board’s compelling interest of ensuring that no disruption in its students’ education occurred was sufficient to allow him to conclude that the Board’s actions here were not violative of *N.J.S.A.* 18A:28-8, “despite other decisions to the contrary.” (Board’s Exceptions at 1) However, it strenuously disagrees with the ALJ’s conclusion that, because the Board’s alteration of petitioner’s resignation date was not ratified or adopted by the Board, such an action was violative of *N.J.S.A.* 18A:27-4.1, necessitating that petitioner be compensated for lost salary in December 2002. The Board charges that the ALJ’s reliance on this statutory provision is misplaced as modification of petitioner’s cessation of employment date is not an action contemplated by this statute which, by its very terms, deals only with the appointment, transfer or removal of a teacher. (*Id.* At 2) Moreover, even if the characterization of its actions as ones

falling under the ambit of this provision were valid, this statute contains no penalty provision for noncompliance and, therefore, provides no authority for the monetary damages to petitioner ordered by the ALJ. As such, the Board urges the Commissioner to reverse the Initial Decision.

In reply, petitioner supports the correctness of the decision and advocates its adoption. She does, however, urge that the ALJ's dictum dealing with discussion of jurisdiction of the Commissioner over a contractual violation be ignored as she proposes that such discussion here is "clearly incorrect." Rather, she argues, "[t]he requirement that a non-tenured teacher give a certain period of notification of that teacher's desire to terminate his/her employment is authorized in Title 18A:27-4. Accordingly, the contract in Carrelle's case was authorized by the Education Laws and is enforceable before the Commissioner of Education." (Petitioner's Reply Exceptions at 1) Here, she argues, because the Board entered the contract and petitioner complied by providing the requisite notification of her intention to resign, as a matter of law, the Board was precluded from altering her termination date without her consent. (*Ibid.*)

Upon his full and independent review of the record, Initial Decision and the parties' exception arguments, while the Commissioner agrees with and adopts the ALJ's determination that the Board impermissibly accelerated petitioner's resignation date thereby improperly depriving petitioner of her full salary for the month of December 2002, he provides the following modification.

The Commissioner, initially, clarifies that *N.J.S.A.* 18A:28-8, governing the notice required of any *tenured* teaching staff member desiring to relinquish his or her position is wholly inapplicable in this matter. Rather, such notice requirements for *nontenured* individuals is contained in *N.J.S.A.* 18A:26-10, **Suspension of certificate for wrongful cessation of performance of duties**, which specifies:

Any teaching staff member employed by a board of education, who shall, without the consent of the board, cease to perform his duties before the expiration of the term of his employment, shall be deemed guilty of unprofessional conduct, and the commissioner may, upon receiving notice thereof, suspend his certificate for a period not exceeding one year.

It is well-grounded in education law that determination of the sufficiency of a term of notice pursuant to this statute is dictated by the terms of the parties' employment contract and any resignation or termination must be in accordance with the terms of such agreement. *See Ralph Boguszewski v. Board of Education of the Borough of Woodcliff Lake, Bergen County, 1979 S.L.D. 727, aff'd State Board 1980 S.L.D. 1477.* Here, petitioner's contract contained a provision which permitted either party to terminate their agreement by providing the other party with 60 days written notice of such intention. By letter dated November 1, 2002, petitioner provided written notice to the Board of her intent to resign effective January 1, 2003, in full satisfaction of her statutory responsibility under *N.J.S.A. 18A:26-10*. Such notice was accepted by a resolution of the Board on November 12, 2002. Under the circumstances existing in this case, unilateral acceleration of petitioner's resignation date without payment of salary for the full 60-day notice period, whether accomplished by a district administrator, as was the case here, or even by formal board action, pursuant to *N.J.S.A. 18A:27-4.1*, as suggested by the ALJ, is impermissible and tantamount to an improper termination. That the 60-day notice provision prescribed by *N.J.S.A. 18A:26-10* in conjunction with the parties' employment contract is equally applicable to both petitioner and the Board is clearly evidenced in *Boguszewski, supra*, which found:

Termination, which is equally available to both employee and employer in the instant matter, must follow the precise language of petitioner's contract. The sixty-day notice provision is intended to protect both parties. Certainly the Board would not countenance a teacher who is perhaps offered a better paying position elsewhere

to give sixty days' notice on a prescribed date and then disappear for the next sixty days thereby rendering no service to the children of the district with resulting disruption and detriment to the educational process. The Board would certainly expect the teacher to be on duty for the sixty days to better enable the Board to find an adequate replacement for the teacher while protecting the educative process for the children. Similarly, the sixty-day notice provision is intended to protect the teacher, to enable him to seek gainful employment elsewhere. The option of a shorter period of time is one that can be exercised only by mutual agreement of a board of education and the employee involved. (at 729)

The Commissioner, however, emphasizes that the entitlement possessed by this nontenured petitioner was that of compensation for the contractual term of her notice. The Board could have chosen to pay her salary without requiring performance of services. *Canfield v. Pine Hill Board of Education*, 51 N.J. 400 (1968), *rev'g* 97 N.J. Super. 483 (App. Div. 1967). *Also see N.J.S.A. 18A:27-9.*

Finally, while concurring with the general proposition of the ALJ that the Commissioner lacks jurisdiction over matters which are purely contractual in nature, such is not the case in this matter. The issue before the Commissioner here is whether the Board acted improperly or illegally with respect to its alteration of petitioner's resignation date given pursuant to N.J.S.A. 18A:28-10. As noted by the State Board in *B.P., on behalf of minor child, B. P. v. Board of Education of the Lenape Regional High School District, Burlington County*, decided by the State Board December 3, 2003:

[a]lthough the Commissioner does not have jurisdiction over disputes which are purely contractual in nature, he does have jurisdiction over contractual claims which are incidental to his obligation to resolve education claims that are the subject of litigation. (Slip opinion at 3-4, citations omitted)

Accordingly, the Initial Decision of the OAL is adopted as modified above. The Bloomfield Board of Education is hereby directed to pay petitioner her full salary for the month of December 2002, less the two days compensation she previously received.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: February 9, 2004

Date of Mailing: February 10, 2004

* 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.*