

RAYMOND D. GUALTIERI, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE : DECISION
 SOMERSET HILLS REGIONAL SCHOOL :
 DISTRICT, SOMERSET COUNTY :
 :
 RESPONDENT. :
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SYNOPSIS

Petitioner – formerly employed as Superintendent of Schools by the Somerset Hills Regional School District – claims that his tenure rights were violated when the respondent Board terminated his employment by unilaterally changing the date of his resignation in violation of his contractual rights and school law. Respondent Board argues that petitioner breached his contract by failing to provide the required 90-day notice of his intended resignation.

The ALJ found that: the matter is ripe for summary judgment; the respondent Board’s unilateral action in accelerating the effective date of petitioner’s resignation violated his statutory rights; and the facts in this matter are virtually identical to those in *Charles Soriano v. Board of Education of the Somerset Hills Regional School District*, decided by the Commissioner September 24, 2004, *aff’d*. State Board of Education March 2, 2005, wherein the Commissioner found that the Board forced petitioner’s premature resignation and terminated his employment without consent. The ALJ concluded that petitioner’s motion for summary decision should be granted, and that respondent should be directed to compensate petitioner consistent with the terms of his employment contract, less mitigation, for the period between the effective date of his unlawful termination and his proffered resignation date of September 2, 2003.

Upon a full and independent review of the record, the Commissioner concurs with ALJ for the reasons clearly presented in his Initial Decision. Accordingly, the Initial Decision of the OAL granting Summary Decision to the petitioner is adopted. The Commissioner declines to grant petitioner’s request for pre-judgment interest in this matter.

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.

December 16, 2005

OAL DKT. NO. EDU. 6707-03
AGENCY DKT. No. 297-8/03

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Exceptions of both petitioner and the Board, and petitioner's reply exceptions -- filed in accordance with the requirements of *N.J.A.C. 1:1-18.4* -- were fully considered by the Commissioner in reaching her determination in this matter.

On exception, the Board essentially recasts and reiterates its arguments advanced below. As the Commissioner determines that a reasoned reading of the Administrative Law Judge's (ALJ) Initial Decision evidences that all material aspects of the Board's proffered contentions have been effectively addressed and resolved, they will not be revisited herein.

Petitioner excepts to the ALJ's failure to award him pre-judgment interest on his damages in light of "the Board's blatant violation of [his] tenure rights in the face of established precedent." (Petitioner's exceptions at 6)

Upon a full and independent review of the record, the Commissioner concurs with the Administrative Law Judge (ALJ), for the reasons clearly presented in his Initial Decision,

that the Board's unilateral acceleration of petitioner's resignation date violated his rights pursuant to *N.J.S.A. 18A:17-20.2*. The Commissioner is in full agreement with the ALJ that this matter is essentially factually identical to the situation which existed in *Charles Soriano v. Board of Education of the Somerset Hills Regional School District*, decided by the Commissioner September 24, 2004, *aff'd*. State Board of Education March 2, 2005, and she emphasizes her acceptance of the applicability of the analysis utilized by the Commissioner in that decision, as modified by the ALJ in his Initial Decision to the situation existing in this matter. Specifically,

***regardless of whether this outcome was the result of outrageous connivance, as contended by the Board, or merely a collateral consequence of the [90-day resignation notice required by the contract of employment], as suggested by petitioner, the fact remains that, by unilaterally changing petitioner's proffered resignation date to an earlier one more to the Board's liking, the Board forced petitioner's premature resignation and terminated his employment without consent. Quite apart from the fact that resignation under any circumstances is a voluntary act with which the employee must be in agreement, here, in view of petitioner's undisputed tenure status, unilateral termination of his employment could not be lawfully accomplished in the absence of proceedings pursuant to *N.J.S.A. 18A:6-10*. Simply put, whatever its feelings may have been about the fairness to the district of petitioner's actions, the Board had no authority to do what it did, and petitioner must prevail on his appeal herein as a matter of law. As petitioner correctly notes, in the context of the claim he has made, other considerations are immaterial and no findings with regard to them can be made on the stipulated facts. (*Soriano, supra* at 3)
(Initial Decision at 8-9)

Finally, the Commissioner declines to grant petitioner's request for pre-judgment interest in this matter, in that the record before her does not support a finding that respondent's actions were taken in bad faith or in deliberate violation of the law. (*N.J.A.C. 6A:3-1.17(c) 1*).

Accordingly, the Initial Decision of the OAL granting Summary Decision to petitioner is adopted. The Board is hereby directed to compensate petitioner consistent with the

terms of his contract of employment, less mitigation, for the period between the effective date of his unlawful termination and his proffered resignation date of September 2, 2003.

IT IS SO ORDERED.¹

ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 16, 2005

Date of Mailing: December 21, 2005

¹ 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.*