#462-05 (OAL Decision http://lawlibrary.rutgers.edu/oal/html/initial/edu05904-04_1.html)

ANGELO N. RAIMONDI,	:	
PETITIONER,	:	
V.	:	COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE WESTWOOD REGIONAL SCHOOL DISTRICT, BERGEN COUNTY,	:	DECISION
RESPONDENT.	:	

SYNOPSIS

Petitioner – formerly employed by respondent as board secretary and school business administrator – claims that his resignation was necessitated by respondent's elimination of his position in favor of an interlocal service agreement with the Board of Education of the Vocational Schools in the County of Bergen, which agreement petitioner alleges is in violation of *N.J.S.A.* 18A:17-24.1. Petitioner further contends that the Board's actions which resulted in his resignation were in retaliation for complaints he made in regard to Respondent's failure to balance the school budget; thus – under the Conscientious Employee Protection Act (CEPA) *N.J.S.A.* 34:19-1 to 8 – the petitioner claims entitlement to the position of shared business administrator by virtue of seniority and tenure rights.

The ALJ found that: the matter was ripe for summary judgment; the OAL has no jurisdiction to hear claims arising under the Conscientious Employee Protection Act (CEPA); and the petitioner's termination was not taken in bad faith. Accordingly, the ALJ granted summary decision in favor of respondent Board, and dismissed the petition.

Upon a full and independent review of the record, the Commissioner concurs with the grant of the Board's motion for summary decision, and dismissed the petition, finding that: the Interlocal Services Act, *N.J.S.A.* 40:8A-1 *et seq.*, governs the respondent Board's decision to subcontract board administrator services; the legislative history behind this statute makes clear that – for a district choosing subcontracting over sharing of a school business administrator – credit toward tenure acquisition accrues only in the primary district of employment; and the petitioner ended his employment by voluntarily tendering his resignation, thereby relinquishing any rights he may have had and eliminating any basis upon which relief could be granted with respect to other claims raised. Accordingly, the Initial Decision of the OAL granting Summary Decision to the respondent is adopted.

December 23, 2005

OAL DKT. NO. EDU 5904-04
AGENCY DKT. NO. 172-5/04

ANGELO N. RAIMONDI,	:	
PETITIONER,	:	
V.	:	COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE WESTWOOD REGIONAL SCHOOL DISTRICT, BERGEN COUNTY,	:	DECISION
RESPONDENT.	:	

The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. Petitioner's exceptions and the Westwood Regional School District Board of Education's (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 her determination.

Initially it is noted that there are no material facts in dispute in this case. The parties filed cross-motions for summary judgment, jointly stipulated to the facts in this matter and are in agreement that the only disputed issues are legal. As petitioner points out in his exceptions, the issues which the parties agreed by joint stipulation to submit to the Administrative Law Judge (ALJ) were:

> 1. Whether the Board was legally obligated to comply with the provisions of *N.J.S.A.* 18A:17-24.1 before it entered into an interlocal service[s] agreement with the Board of Education of [the] Vocational Schools of the County of Bergen pursuant to *N.J.S.A.* 40:8A-1 *et seq*., for the services of a school Business Administrator for the period beginning July 1, 2004 and ending June 30, 2006.

2. Whether Raimondi's tenure and years of service in the Westwood Regional School District entitle him to employment as school Business Administrator when the services of a school business administrator are provided by the Board of Education of the Vocational Schools in the County of Bergen under the terms of an interlocal service[s] agreement.

3. Whether the Commissioner of Education's (sic) [has] jurisdiction to hear a claim under the Conscientious Employee Protection Act, *N.J.S.A.* 34:19-1 *et seq*. (Petitioner's Exceptions at 3, Joint Stipulation of Facts at 1-2)

With respect to the first issue, petitioner contends that the ALJ did not discuss nor decide the primary issue placed before him by the parties, *i.e.*, the relationship between *N.J.S.A.* 18A:17-24.1 and *N.J.S.A.* 40:8A-3. (*Id.* at 5, 11-12) It is appropriate for the Commissioner to make this determination, petitioner reasons, because the Commissioner's concern with the provision of a thorough and efficient education permeates every aspect of school law and the running of a school district. (*Id*. at 5)

With regard to this issue, petitioner sets forth his position that the Board should have complied with the provisions of *N.J.S.A.* 18A:17-24.1 when entering into an interlocal services agreement, and argues that while it may indeed be the case that the interlocal services agreement at issue may have satisfied the dictates of the Interlocal Services Act, that fact is immaterial since Westwood is a school district and the purpose of the interlocal service agreement in this matter was to share the services of a school business administrator. (*Ibid*.) In that *N.J.S.A.* 18A:17-24.1 deals specifically and only with boards of education and only with boards sharing either a superintendent or business administrator or both, at minimum, petitioner claims, the Board was also obligated to comply with the requirements of *N.J.S.A.* 18A:17-24.1 before entering into the interlocal services agreement because -- where there is a conflict between two statutes -- the courts have held that specific statutes take precedence over general statutes. (*Id.* at 6). Moreover, petitioner asserts, it is

possible to interpret the two statutes so that there is no conflict by concluding that the Board is mandated to comply with both statutes. (*Id.* at 7)

Petitioner further notes that *N.J.S.A.*18A: 17-24.1 -- the more recent of the two statutes -- states that "the decision to share a school business administrator shall be made jointly by the boards of education of the districts, in consultation with the superintendents of the respective districts, subject to the final approval of the Commissioner of Education." (*Id*. at 8) Thus, petitioner asserts, it is clear that Title 18A must govern herein. (*Ibid*.) However, the agreement between the two districts in this case was not prepared and submitted for the Commissioner's approval as required by *N.J.S.A.*18A: 17-24.1. (*Ibid*.) Petitioner therefore, concludes that the actions taken by the Board were *ultra vire*s and, thus, *void ab initio*. (*Ibid*.)

Turning to the issue of whether petitioner's tenure and years of service entitle him to employment as the school business administrator when the services are provided under the terms of an interlocal service agreement, petitioner argues that -- assuming the interlocal services agreement is valid -- the Board was required to appoint him as the school business administrator because whenever a tenured employee's position is reduced or eliminated, that employee's ranking gives him preference for the new position within the school district. (*Id*. at 9) Since petitioner is tenured and has more seniority than the business administrator in the other district, petitioner argues, the Board was required to apply his seniority when appointing the business administrator for the shared school district. (*Id.* at 10)

With respect to petitioner's contention that the Commissioner has jurisdiction to hear a claim arising under the Conscientious Employee Protection Act (CEPA), petitioner submits that the Commissioner clearly has primary and exclusive jurisdiction to determine the relationship between the Title 40A statute and the Title 18A statute and that his termination, as a tenured

employee, involves a matter arising under the school laws. (*Ibid*.) Moreover, petitioner asserts that his termination was in retaliation for complaints he made with regard to the Board's failure to balance the budget and that issues of budget appropriation have been found to be under the Commissioner's jurisdiction. (*Id*. at 10-11) Noting that the court found that the Commissioner had jurisdiction to hear and decide a matter arising under the law against discrimination in *Balsey v. North Huntingdon Regional Board of Education*, 117 *N.J.* 434 (1990), a case where a female high school student challenged the school district's refusal to allow her to try out for the football team, petitioner reasons that, as long as an issue is appropriately before the Commissioner – in this instance, petitioner's tenure rights and the relationship between *N.J.S.A.* 18A:17-24.1 and *N.J.S.A.* 40:8A-3 -- the Commissioner must exercise jurisdiction on all aspects of the matter. (*Id*. at 11) Petitioner additionally asserts that the ALJ's reliance on *Picogna v. Board of Education of the Township of Cherry Hill*, 249 *N.J. Super*. 332 (App. Div. 1991), is misplaced because he is a tenured employee and the court's reasoning that the Commissioner did not have jurisdiction to hear a CEPA claim in *Picogna* -- *i.e.*, '[t]he contract claim of a non-tenured school employee does not arise under the school laws simply because its outcome may later enable him to obtain tenure under the school laws" (*Picogna, supra* at 335) -- differs from the situation herein because Picogna was a non-tenured employee. (*Id.* at 10)

Finally, petitioner objects to the ALJ's finding that there was no evidence of bad faith by the Board, pointing out that the issue of bad faith was not before the ALJ. (*Id.* at 12) As a practical matter, petitioner muses, it is difficult to envisage a fashion in which an issue of bad faith could be determined on cross motions for summary judgment. (*Ibid.*)

In reply, the Board submits that what petitioner fails to recognize is the distinction between sharing a business administrator's services and subcontracting those services, which is

significant, because different statutes authorize such actions and there are separate and distinct requirements governing each arrangement. (Board's Reply Brief at 5) The Board contends, *inter alia*, that *N.J.S.A.* 18A:17-24.1 applies only to districts that have determined to share a school business administrator through a joint decision made between two boards of education, in consultation with their respective superintendents, subject to final approval by the Commissioner. (*Id.* at 5-6) In further support of its contention, the Board notes that, "[n]otwithstanding the existence of this statutorily prescribed procedure, the Legislature also stated in the same statutory scheme that:

> Nothing in *N.J.S.A.* 18A:17-24.1 shall prohibit a school district from subcontracting its school business administrator to another school district pursuant to the provisions of [the Interlocal Services Act], … the provisions of *N.J.S.A.* 18A:17-24.1 concerning the arrangement to share a school business administrator by two or more districts shall not apply when a school district subcontracts its school business administrator to another school district. [*N.J.S.A.* 18A:17-14.1]" (*Id.* at 6)

The Board thus contends that the clear language in the statutes eliminates any doubt that the requirements in *N.J.S.A.* 18A:17-24.1 apply only where two or more districts agree to share a school business administrator and is not applicable to subcontracting such services. (*Ibid*.)

Instead, the Board claims, a decision to subcontract the services of its school business administrator is governed by the Interlocal Services Act, which provides, in part:

> Any local unit of this State may enter into a contract with any other local unit or units for the joint provision within their several jurisdictions of any service, including services incidental to the primary purposes of the local unit which any party to the agreement is empowered to render within its own jurisdiction. [*N.J.S.A.* 40:8A-3] (*Id.* at 6-7)

In this regard, the Board points out that when one district subcontracts the services of a business administrator from another district, there is no employment relationship between the school business

administrator and the subcontracting district, and the district which receives the services pursuant to an interlocal services agreement has no authority over employment decisions as it would if it were sharing the school business administrator pursuant to *N.J.S.A.* 18A:17-24.1. (*Id.* at 7) Moreover, when interpreting statutes, the Board avers that, absent legislative intent, the plain and ordinary meaning of that language should be used, and -- based on the unambiguous language in *N.J.S.A.* 18A:17-24.1 -- it cannot be disputed that the requirements in that statute apply only where two or more districts agree to share a school business administrator, since the Legislature explicitly stated:

> When boards of educations of two or more school districts determine to share a school business administrator, the appointment shall comply with the provisions of section 4 of *P.L.* 1996, *c.* 111 (C. 18A:24-1) . . . The provisions of *P.L.* 1996, c. 111 concerning the arrangement to share a school business administrator by two or more school districts shall not apply when a school district subcontracts its school business administrator to another school district. (*Ibid.*)

Moreover, the Board argues that the Senate Education Commission's Statement on Assembly Bill 1397 (N.J. 1996), which would become PL. 1996, c. 111, provided that:

> The bill would not affect the ability of a school district to subcontract the services of its school business administrator to another school district. The bill makes it clear that should a district choose subcontracting of a school business administrator over sharing, credit towards tenure acquisition accrues only in the primary district of employment. (*Id.* at 8)

Thus, the Board argues, the Legislature recognized the distinction between subcontracting for services and the sharing of services, authorizing either action by different statutes and imposing separate and distinct requirements governing such arrangements. (*Ibid.*)

Contrary to petitioner's argument that *N.J.S.A.* 18A:17-24.1 must be considered an exception to the Title 40 statute and the Board was, thus obligated to abide by the more specific

statute, the Board posits, "*N.J.S.A.* 18A:17-24.1 cannot be considered an 'exception' to the Act where *N.J.S.A.* 18A:17-24.9 specifically acknowledges the provision of the Act and the interrelationship between the two statutory schemes." *(Id*. at 9) Moreover, the Board contends, an analysis under general rules of statutory construction argued by petitioner is not applicable in this instance because the Legislature set forth which statutory provision shall control in *N.J.S.A.* 18A:17-24.9, which explicitly states that:

> The provisions of *N.J.S.A.* 18A:17-24.1 shall govern the sharing of a superintendent or school business administrator by two or more boards of education and shall not be deemed inconsistent with the provisions of the Interlocal Services Act insofar as that act may authorize the subcontracting of school district administrative services. (*Id.* at 10)

Additionally, the Board also points out that *N.J.S.A.* 18A:17-14.1 states that "Nothing in [*N.J.S.A.* 18A:17-24.1] shall prohibit a school district from subcontracting its school business administrator to another school district pursuant to the [Interlocal Services Act]." (*Ibid*.) Thus, the Board concludes, *N.J.S.A.* 18A:17-24.1 and *N.J.S.A.* 18A:17-14.1 *et seq*. resolved any ambiguities between the new procedure for sharing a business administrator and the existing provision for subcontracting for the services of a business administrator. (*Id.* at 11) Moreover, the Board argues, the two statutes at issue are not so clearly in conflict that they cannot reasonably stand together because they apply to different factual arrangements. (*Id.* at 12) Since it is undisputed that the Board complied with the provisions of the Interlocal Service Act and the Legislature specifically stated that the provisions of *N.J.S.A.* 18A:17-24.1 do not apply to an agreement to subcontract for the services of a school business administrator under that Act, the Board contends there is no legal support for petitioner's claim that the interlocal services agreement was *ultra vires* for failure to comply with provisions set forth in *N.J.S.A.* 18A:17-24.1. (*Id*. at 16)

With respect to petitioner's tenure rights to the abolished position, the Board sets forth its argument that neither the Interlocal Services Act nor *N.J.S.A.* 18A:17-24.1 provide for a right of employment to the position of school business administrator based on tenure or seniority. (*Id*. at 18) In support thereof, petitioner asserts that *N.J.S.A.* 18A:17-24.1 states that, in a sharing arrangement, tenure acquisition shall accrue only in the primary district of employment and in *N.J.S.A.* 18A:17-24.5, "[t]he statutory language is clear that 'in no event shall the districts be required to appoint a tenured individual from within any of the districts to fill a shared position.'" (*Id*. at 18-19) Moreover, the Board reasons, in that the Board's interlocal services agreement subcontracting the services of a school business administrator is governed by the Interlocal Services Act, only the provision of that Act would apply and N.J.S.A. 40:8A-5(b) clearly states:

> In the case of a contract for the joint provision of services by an officer or employee of a local unit who is required to comply with a State certification requirement as a condition of employment, the contract shall provide for the payment of a salary to the officer or employee and shall designate one of the local units as the primary employer for the purpose of that person's tenure rights. (*Id*. at 19)

Additionally, the Board asserts that it has the authority to effectuate a reduction in force for appropriate reasons -- such as economy -- and that once the Board abolished its position of business administrator, there was no position in the District for which petitioner had the right of employment based on tenure and seniority. (*Id.* at 21) Since petitioner did not have seniority or tenure rights with the Vocational Board because he was never employed by it, the Board posits, petitioner could not displace the Vocational Board's business administrator, even if he had more years of service that that individual. (*Ibid*.) Moreover, the Board points out that, even if it could be concluded that petitioner had tenure or seniority rights to the position of school business administrator provided through an interlocal services agreement, petitioner voluntarily resigned from his position for purposes of retirement and, thus, relinquished his rights. (*Id.* at 22)

With respect to the Commissioner's jurisdiction over petitioner's CEPA claim, the Board points to *Bd. of Ed. of East Brunswick v. Tp. Council East Brunswick*, 48 *N.J*. 94, 102-103 (1966) for the proposition that -- where the controversy or dispute does not arise under school laws, even though it may pertain to school personnel -- the Commissioner has no jurisdiction over the matter. (*Id*. at 23) The Board further argues that the Commissioner thus does not have jurisdiction over petitioner's CEPA claim because it was brought under CEPA, which is clearly not an integral part of Title 18A and, therefore, does not arise under the school laws. (*Id*. at 23) In addressing petitioner's claim that *Picogna, supra,* is distinguishable from the matter herein because petitioner had tenure in his position and *Picogna* dealt with a non-tenured employee, the Board avers that, at no time did the Appellate Division limit the prospective application of its holding solely to cases involving nontenured employees. (*Id*. at 24) Moreover, the Board contends the court distinguished cases involving tenured employees only to illustrate that even Picogna's alleged tenure claim was not sufficient to bring his CEPA claim within the Commissioner's jurisdiction. (*Ibid.*)

The Board further argues that, *inter alia*, while a balanced budget is within the jurisdiction of the Commissioner, whether the Board failed to balance its budget is not an issue in this case. (*Id.* at 25) Thus, the Board concludes, petitioner's assertion that the Commissioner has jurisdiction over his CEPA claim of alleged retaliatory conduct for complaints he made in regard to the Board's failure to balance the school budget does not make petitioner's CEPA claim a school law controversy over which the Commissioner has jurisdiction. (*Ibid.*)

Upon a careful and independent review of the record in this matter, the Commissioner concurs with the grant of the Board's motion for summary decision in that there are no material facts in dispute and the Board is entitled to prevail as a matter of law. See *N.J.A.C.* 1:1-12.5(b) and C*ontini, supra.* In so determining, the Commissioner finds that the

Board's decision to subcontract its board administrator services is governed by the Interlocal Services Act, *N.J.S.A.* 40:8A-1 *et seq.* Notwithstanding petitioner's assertion that the Board should have complied with the provisions of *N.J.S.A.* 18A:17-24.1 *et seq*. when entering into an interlocal services agreement, the Commissioner has concluded, for the reasons that follow, that *N.J.S.A.* 18A:17-24.1 *et seq*. is not applicable where -- as occurred herein -- a Board has decided to subcontract its business administrator services.

A review of the clear language of the statutes at issue, *N.J.S.A.* 40:8A-1 *et seq.* and *N.J.S.A.* 18A:17-24.1 *et seq.*, reveals that these two statutes govern two separate and distinct arrangements for the provision of business administrator services. *N.J.S.A.* 40:8A-1 *et seq.* sets forth the process for school districts wishing to *subcontract* for the services of a business administrator and *N.J.S.A.* 18A:17-24.1 *et seq*. sets forth the provisions for *sharing* the services of a business administrator with one or more other districts. In this instance, it is undisputed that the Board entered into a contract with the Vocational Schools of the County of Bergen for the purpose of subcontracting the services it required. Accordingly, the controlling statute in this matter is *N.J.S.A.* 40:8A-1 *et seq.*

The Commissioner is also not persuaded by petitioner's arguments that the Board should be compelled to abide by the provisions of both statutes. *N.J.S.A.* 18A:17-24.9 explicitly states that *N.J.S.A.* 18A:17-24.1 shall govern the sharing of a school business administrator and shall not be deemed inconsistent with the provisions of the Interlocal Services Act governing the subcontracting of such services. Moreover, in reviewing the legislative history for *N.J.S.A.* 18A:17-24.1 *et seq.,* enacted subsequent to *N.J.S.A.* 40:8A-1 *et seq.*, it is noted that the Senate Education Commission's Statement on the Assembly Bill explained that "the bill would not affect the ability of a school district to subcontract the services of its business administrator to

another school district" and the Statement also made clear that -- for a district choosing subcontracting over sharing of a school business administrator -- credit toward tenure acquisition would accrue only in the primary district of employment.

Additionally, as demonstrated by the Legislative references to *N.J.S.A.* 40:8A-1 *et seq.* above, when enacting *N.J.S.A.* 18A:17-24.1 *et seq.* the Legislature was clearly aware of the earlier enacted statute which provided for the subcontracting of services. If the Legislature had intended that boards of education subcontracting for the services of a business administrator be governed by the provisions of both statutes, *N.J.S.A.* 40:8A-1 *et seq.* and *N.J.S.A.* 18A:17-24.1 *et seq.,* as argued by petitioner, it is reasonably inferred that language dictating such dual compliance would be found in *N.J.S.A.* 18A:17-24.1 *et seq.* Instead, in the same legislation creating the provision for the sharing of business administrator services, *N.J.S.A.* 18A:17-24.1 *et seq.*, *P.L*. 1996, c. 111, the Legislature specifically addressed the relationship between the two statutes in an amendment to *N.J.A.C.* 18A:17-24.1:

> . . . The provisions of *P.L*. 1996, c. 111 (C. 18A:17-24.1 *et al*.) concerning the arrangement to share a school business administrator by two or more school districts *shall not apply when a school district subcontracts its school business administrator* to another school district. (emphasis added)

The Commissioner, therefore, concludes that the board was not required to comply with the requirements of *N.J.S.A.* 18A:17-24.1 *et seq.* when it subcontracted for the services of a business administrator.

Finally, the Commissioner observes that petitioner submitted his letter of resignation "for the purpose of retirement" on April 8, 2004, effective at the end of his 2003-04 contract. (Petitioner's Exhibit B) On April 8, 2004, the Board passed a resolution accepting petitioner's resignation for the purposes of retirement effective July 1, 2004. (Joint Stipulation at 3, No. 6)

There is no assertion that petitioner was pressured or coerced into resigning his position. In that petitioner ended his employment relationship with the Board by voluntarily tendering his resignation, thus relinquishing any rights he may have had, there is no basis upon which relief could be granted with respect to the other claims raised in his petition, and it is therefore unnecessary for the Commissioner to consider them.

Accordingly, for the reasons set forth above, the Board's motion is granted and the petition is hereby dismissed.

IT IS SO ORDERED.[*]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 23, 2005

Date of Mailing: December 27, 2005

[*] 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.*