

DREW BRADFORD, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF : DECISION
THE TOWNSHIP OF UNION,
UNION COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner – a former teacher in respondent’s district – alleged that the Board acted improperly in failing to renew his employment at the end of a one year contract that expired in June 2001. The petition in this matter was filed on August 17, 2006. Petitioner had previously filed a separate complaint in Superior Court that was largely based on allegations of discriminatory conduct and retaliation; he sought, but failed, to amend that complaint in March 2004 to include the substance of his current petition. Respondent Board filed a motion for summary judgment, asserting that petitioner’s appeal was untimely.

The ALJ found, *inter alia*, that: the circumstances of this matter do not meet the criteria for relaxation of the 90-day limitations period, as petitioner had knowledge of the alleged procedural violations and termination of his contract in 2001; petitioner’s claims in the instant matter are distinct from those made in his 2001 complaint in Superior Court; and petitioner’s assertion that Superior Court should have transferred his Title 18A action to the Commissioner under R1:13-4, the case transfer rule, is without merit. The ALJ concluded that summary decision is appropriate, and granted respondent’s motion to dismiss the petition.

Upon a full and independent review, the Commissioner adopted the Initial Decision with supplementation. More specifically, the Commissioner found that petitioner’s claims under *N.J.S.A.* 18A:27-3.1 were untimely, and the alleged violations of *N.J.S.A.* 18A:27-4.1 – even if true – could not serve as a basis for the relief petitioner seeks.

<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 14, 2007

OAL DKT. NO. EDU 10878-06
AGENCY DKT. NO. 288-8/06

DREW BRADFORD, :
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V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF : DECISION
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RESPONDENT. :

The record, Initial Decision, exceptions filed by petitioner on January 22, 2007, and respondent's reply to petitioner's exceptions have been reviewed.¹ The Commissioner adopts the Initial Decision of the Office of Administrative Law (OAL) as the final decision in this matter for the reasons articulated by the Administrative Law Judge (ALJ) and with the following supplementation.

By way of exception to the Initial Decision, petitioner argues that his claims pertaining to respondent's alleged violations of *N.J.S.A. 18A:27-3.1* and *N.J.S.A. 18A:27-4.1*, which claims were brought in Superior Court almost three years after the events of which they complain, are timely under the 90-day statute of limitations for instituting petitions under the school laws (*N.J.A.C. 6A:3-1.3(i)*). He contends that he first discovered the facts upon which the claims are based via his attorney after review of respondent's January 27, 2004 motion in Superior Court for summary judgment. Within 90 days he filed a motion to amend his Superior Court complaint to add the school law claims, and asserts that – pursuant to *R. 1:13-4* – the

¹ As the rules do not provide for sur-reply exceptions, the Commissioner did not consider petitioner's submission dated January 25, 2007.

Superior Court judge should have issued an order transferring his claims to the Commissioner of Education. For the following reasons, the Commissioner finds petitioner's exception without merit.

First, petitioner does not specifically identify the facts supporting his new (March 2004) allegations that he was not evaluated properly or notified in the correct sequence of his non-renewal. Second, as to petitioner's invocation of *N.J.S.A. 18A:27-3.1* – which requires observation and evaluation of non tenured teaching staff members three times per academic year – petitioner must be charged with having known whether and when an observer was in his classroom in the 2000-2001 school year, and whether and when he received evaluations. Thus, the claim under *N.J.S.A. 18A:27-3.1*, which petitioner filed in March 2004, was untimely.

Third, petitioner's invocation of *N.J.S.A. 18A:27-4.1* – even if deemed timely – cannot help him. Petitioner relies on the portion of the statute that states:

Prior to notifying the [nontenured] officer or employee of the nonrenewal, the chief school administrator shall notify the board of the recommendation not to renew the officer's or employee's contract and the reasons for the recommendation.

N.J.S.A. 18A:27-4.1(b).

However, there is nothing in the statute to indicate that the purpose of that sentence is for anyone's benefit other than the board's. More specifically, in light of the fact that an officer or employee whose contract is not renewed may ask for reasons and an informal appearance before the board, *N.J.S.A. 18A:27-4.1(b)*, it stands to reason that the board's timely awareness of the chief school administrator's recommendation is beneficial to the board. Nor does petitioner's early notice harm him in any way. Thus, even if petitioner had presented proofs that the Union Superintendent had advised him of his non-renewal before, instead of after advising the BOE – and even if petitioner had timely raised this fact – it does not follow that the remedy may be

petitioner's reinstatement. Reinstatement of an employee deemed unsuitable by the chief school administrator simply because the administrator allegedly switched the order of serving notice is neither called for in the statute nor sensible.

Finally, petitioner had notice via a nonrenewal letter dated May 1, 2001, and signed by petitioner on May 2, 2001, that the chief school administrator would not renew his employment. Consequently, the 90-day period to appeal his nonrenewal began on May 2, 2001. *Cordell Wise v. Board of Education of the City of Trenton, Mercer County*, Commissioner's Decision No. 301-00, decided September 11, 2000 (petitioner was required to file his petition within 90 days of the notice of his nonrenewal, not within 90 days of the exhaustion of other avenues and mechanisms).

Accordingly, summary judgment is granted in favor of respondent and the petition is dismissed.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: February 14, 2007

Date of Mailing: February 14, 2007

² 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.*