

#239-12 (OAL Decision: Not yet available online)

IN THE MATTER OF THE SUSPENSION OF :
THE TEACHING CERTIFICATE : COMMISSIONER OF EDUCATION
OF SUZANNE CARRENO, :
BERGEN COUNTY VOCATIONAL : DECISION
SCHOOL DISTRICT, BERGEN COUNTY. :

SYNOPSIS

In October 2010, an Order to Show Cause was served upon respondent – a non-tenured teacher of mathematics – requiring her to show cause why her teaching certificate should not be suspended for unprofessional conduct pursuant to *N.J.S.A. 18A:26-10* for allegedly resigning her position with inadequate notice. The respondent – who was employed under contract by the petitioning school district for the 2009-2010 school year – was not offered a contract for the following school year until August 2010, by which time she was actively pursuing an employment opportunity elsewhere and declined to return to employment with the petitioner.

The ALJ found that: no express contract existed between the parties regarding respondent’s employment as a teacher for the 2010-2011 school year; respondent never signed the employment contract for the 2010-2011 school year, which she received in early August 2010; there is no evidence of any implied contract between the parties regarding respondent’s service as a teacher for the 2010-2011 school year; respondent did not cease to perform her duties before the expiration of the term of her employment because she departed the district after her 2009-2010 contract expired and before an employment contract existed between the parties for the next school year; and if the Board desired to impose a commitment upon the respondent to teach during the 2010-2011 school year, it could have done so by requiring her to take action to either accept or decline a written contract of employment before August 2010. The ALJ concluded that the evidence failed to demonstrate that respondent is guilty of unprofessional conduct within the meaning of *N.J.S.A. 18A:26-10* so as to justify the suspension of her teaching certificate, and accordingly denied the Board’s petition.

Upon independent review of the record, the Commissioner concurred with the findings of the ALJ, and adopted the Initial Decision as the final decision 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.
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June 14, 2012

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Before the Commissioner is petitioner's application for the one year suspension of respondent's teaching certificate. Petitioner maintains that the suspension is warranted by the respondent's alleged resignation on short notice. Upon review of the record,¹ Initial Decision of the Office of Administrative Law (OAL), and petitioner's exceptions, the Commissioner concurs with the Administrative Law Judge (ALJ) that a suspension of respondent's certificate is unwarranted.

It appears undisputed that respondent served as an untenured mathematics teacher during the 2009-2010 school year. No contract was offered to her for the following school year until August 2010, at which time she was in the process of applying for a private school position that better fit her family's tenuous financial situation. The ALJ's account of the evidence indicates that in the last week of August respondent verbally advised her principal that family circumstances precluded her return to employment in petitioner's district. On August 31st she confirmed this fact in an email.

The ALJ concluded that there had been no contract between petitioner and respondent when respondent advised petitioner that she would not return for the 2010-2011 school year. Consequently, there was no basis to suspend respondent's teaching certificate.

In its exceptions, petitioner argues to the contrary, relying on *N.J.S.A. 18A:27-10*, which provides:

¹ Neither party submitted a transcript of the April 28, 2011 hearing in the Office of Administrative Law.

On or before May 15 in each year, each nontenured teaching staff member continuously employed by a board of education since the preceding September 30 shall receive either

a. A written offer of a contract for employment from the board of education for the next succeeding year providing for at least the same terms and conditions of employment but with such increases in salary as may be required by law or policies of the board of education,

or

b. A written notice from the chief school administrator that such employment will not be offered.

Petitioner posits that the foregoing statute describes two ways of offering reemployment to nontenured teachers:

[T]he law provides the Board with two (2) options by which it may renew the employment of nontenured teachers such as Carreno. The first option was for the Board to offer a contract of employment for the upcoming year by May 15. There is no question that the Board did not extend a contract of employment to Carreno by May 15. However, there can be no credible dispute that the Board was not required to do so.

Rather the renewal of Carreno's employment was accomplished via the second prong of *N.J.S.A. 18A:27-10* which allows the Board, through its chief school administrator, to notify the employee that employment will not be offered. Consistent with the statute, the renewal of the employment non-tenured [sic] teaching staff member is effectuated via the omission of the individual's name from a "list of staff members whose employment will not being [sic] renewed"

Petitioner's Exceptions at 7-8.

The foregoing analysis is, however, flawed. It incorrectly equates the tendering or creation by default of an "offer" with the effectuation of a "renewal."

N.J.S.A. 18A:27-11 explains:

Should any board of education fail to give to any nontenured teaching staff member either an offer of contract for employment for the next succeeding year or a notice that such employment will not be offered,

all within the time and in the manner provided by this act [*i.e.* May 15], then said board of education shall be deemed to have **offered** to that teaching staff member continued employment for the next succeeding school year upon the same terms and conditions but with such increases in salary as may be required by law or policies of the board of education.
[Emphasis added.]

In other words, a nontenured employee may regard the absence of either a contract renewal letter or a nonrenewal letter as tantamount to an “offer” of employment. However, there is nothing in *N.J.S.A.* 18A:27-11 that requires the nontenured teacher to accept the offer. In the present case, respondent did not accept the implied offer, and petitioner waited until August to address the issue, *i.e.*, by sending respondent a contract to sign.

The only express statutory deadline for the acceptance – by nontenured teachers – of employment offers can be found in *N.J.S.A.* 18A:27-12. That statute requires that those nontenured employees who wish to accept employment offered to them on or before May 15, must accept in writing by June 1.² It appears undisputed that respondent did not do so. Thus, even acknowledging that the absence of a nonrenewal letter constituted an offer of employment to respondent, the fact remains that she did not timely accept said offer. Petitioner’s expectation that she would return to teach in the next school year was consequently unwarranted. Further, in the absence of a contract, respondent was not obligated to give sixty days’ notice of her decision not to return.³

² *N.J.S.A.* 18A:27-12 provides: “If the teaching staff member desires to accept such employment he shall notify the board of education of such acceptance, in writing, on or before June 1 in which event such employment shall continue as provided for herein. In the absence of such notice of acceptance the provisions of this article shall no longer be applicable.”

³ Petitioner’s reliance on *Board of Education of the Borough of Alpine v. Leonid Yuz*, Commissioner Decision No. 395-08 (September 23, 2008), *In the Matter of the Suspension of the Teaching Certificate of Melissa Van Pelt, Gray Charter School, Newark, Essex County*, 414 *N.J. Super.* 440, (App. Div. 2010) and *In the Matter of the Suspension of the Teaching Certificate of Danielle Ponti, Gray Charter School, Newark, Essex County*, Commissioner Decision No. 138-10 (May 12, 2010), *aff’d* Appellate Division, A-4951-09T3 (May 3, 2011) is misplaced, as the respondents in those cases had signed contracts of employment prior to resigning on short notice.

The Commissioner appreciates that the period of weeks which elapsed until a replacement for respondent was secured caused negative ramifications to the students of petitioner's school district. However, the parties had no contract, petitioner bears responsibility for that circumstance, and respondent explained the exigent circumstances which led her to seek employment with another school.⁴ Thus, the Commissioner cannot find that respondent violated *N.J.S.A. 18A:26-10*.

Accordingly, the petition is dismissed.

IT IS SO ORDERED.⁵

ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 14, 2012

Date of Mailing: June 14, 2012

⁴ The ALJ specifically found "respondent to be a candid and credible witness," who "presented sincere and persuasive testimony vis-à-vis the events that occurred during the pivotal period, which was corroborated in part by documentation introduced at the hearing and not materially discredited by counsel's thorough cross-examination." (Initial Decision at 2) The Commissioner must defer to such factual and credibility findings unless they prove to themselves be arbitrary, capricious or unreasonable. *See, e.g. N.J.S.A. 52:14B-10(c); D.L. and Z.Y. on behalf of minor children T.L. and K.L. v. Board of Education of the Princeton Regional School District*, 366 *N.J. Super.* 269, 273 (App. Div. 2004). The Commissioner does not have the hearing transcript before him, but the balance of the record reveals nothing that would suggest that the ALJ's factual and credibility findings were incongruous with same.

⁵ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36. (N.J.S.A. 18A:6-9.1)*