

144-17 (OAL Decision: Not yet available online)

ROBERT REILLY, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
CITY OF EAST ORANGE,
ESSEX COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner appealed the decision of the respondent Board to terminate his employment as Athletic Trainer when the position was abolished due to a reduction in force (RIF) and the responsibilities of his former position were transferred to an outside vendor. Petitioner alleged that his tenure rights were violated, asserting that the Athletic Trainer position was not abolished and that the vendor was given the position without acknowledgment of the petitioner's recall rights. The RIF occurred following a period when petitioner had been suspended with pay pending the outcome of an IAIU investigation concerning allegations of child abuse, which ultimately determined that the allegations against petitioner were unfounded. Petitioner subsequently filed the within petition, and the parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: petitioner's motion for summary decision stated that there were no material facts in dispute; however, petitioner contradicted this in his opposition to the Board's motion for summary decision, where he stated that the Board's motives for outsourcing the position of Athletic Trainer were not based solely on reasons of efficiency and economy; further, petitioner alleged that his position was eliminated due to retaliation based on his filing a notice of claim and providing information that another employee had a criminal history; despite this allegation, petitioner failed to provide documents, statements of potential witnesses or anything else to support this position; respondent, on the other hand, has demonstrated that there was a clear economic reason for the Board to abolish the position of Athletic Trainer and to contract the services to an outside vendor, as petitioner's last salary was \$100,363, or \$40,000 more than the cost of contracting with the outside vendor to provide Athletic Trainer services. The ALJ concluded that petitioner failed to provide any evidence that the Board's abolition of the Athletic Trainer position was arbitrary, capricious or done in bad faith, and that the Board's contract with the outside vendor was undertaken for reasons of economy, resulting in a savings of \$40,000 for the school district. Accordingly, the ALJ denied petitioner's motion for summary decision and granted the Board's motion for summary decision, thereby dismissing the appeal.

Upon comprehensive review, the Commissioner concurred with the ALJ that the Board's decision to abolish the Athletic Trainer position was not arbitrary, capricious or unreasonable. Further, the Commissioner found that the Board's decision to contract with an outside vendor for economic reasons did not violate petitioner's seniority rights. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter and the petition was dismissed.

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.

May 22, 2017

ROBERT REILLY, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE : DECISION
 CITY OF EAST ORANGE, :
 ESSEX COUNTY, :
 :
 RESPONDENT. :

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by the petitioner, Robert Reilly, and the East Orange Board of Education’s (Board) reply thereto.¹

Upon a comprehensive review of the record in this matter, the Commissioner concurs with the ALJ – for the reasons set forth in the Initial Decision – that the Board’s decision to abolish the petitioner’s athletic trainer position as a result of a reduction in force was not arbitrary, capricious or unreasonable. The Commissioner also finds that the Board’s decision to contract the athletic trainer services to an outside vendor for economic reasons did not violate the petitioner’s seniority rights. See, *Gillian Impey v. Board of Educ. of the Borough of Shrewsbury*, 273 *N.J. Super* 429, 435 (May 24, 1994) (Unlike a scenario involving “the re-titling of the position ... in order to remove a tenured incumbent, this case involves a statutorily authorized administrative change in the method of providing

¹ The petitioner submitted a response to the Board’s reply exceptions that was not considered because there is no provision that authorizes a reply to reply exceptions.

an educational service for the sole purpose of saving money.”) Finally, the Commissioner is not persuaded that the exceptions submitted by the petitioner dictate a different result.²

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.³

ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 22, 2017

Date of Mailing: May 22, 2017

² Despite the fact that the petitioner filed a motion for summary decision at the OAL stating that there are no material facts in dispute, his exceptions suggest that this matter should not have been decided on summary decision and instead there should have been a hearing with witness testimony regarding the Board’s intent behind the elimination of his position. The petitioner also attempts to argue in his exceptions that his motion for summary decision only concerned his recall rights and what occurred after his position was abolished, not the Board’s conduct before his position was abolished.

³ Pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*, Commissioner decisions are appealable to the Superior Court, Appellate Division.