

344-18

GARY CORCORAN, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
QUEEN CITY ACADEMY CHARTER : DECISION
SCHOOL, UNION COUNTY, :
RESPONDENT. :
_____ :

SYNOPSIS

Petitioner challenged the respondent Queen City Academy Charter School's (Queen City) deduction of one personal day from his leave bank after he was absent on Columbus Day, a public holiday; petitioner alleged that respondent's action violated *N.J.S.A.* 18A:25-3. The parties filed opposing motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue here, and the matter is ripe for summary decision; Queen City follows the academic calendar of the Plainfield Public School District (Plainfield); the 2017 academic calendar of Plainfield called for a district-wide Professional Day to be held on October 9th, which was also Columbus Day; petitioner notified the director of Queen City in advance that he would be observing the Columbus Day holiday and therefore would not attend the Professional Day scheduled for October 9, 2017; he further requested that he not be charged one of his allocated personal days for his absence on Columbus Day, in accordance with the statutory provision in *N.J.S.A.* 18A:25-3; petitioner was subsequently charged one personal day for his absence on October 9, 2017; prior case law supports the position that any compensation, either salary or by way of a benefit such as a personal day, taken for use of a holiday as it relates to *N.J.S.A.* 18A:25-3 constitutes a violation of the statute; in passing *N.J.S.A.* 18A:25-3, the New Jersey Legislature clearly intended to remove barriers from individuals recognizing a public holiday, including Columbus Day; and the loss of a personal day is equivalent to a financial loss. The ALJ concluded that the respondent Queen City violated *N.J.S.A.* 18A:25-3 when it improperly withheld a personal day from petitioner. Accordingly, petitioner is entitled to restoration of a personal day or compensatory wages for the 2017 Columbus Day holiday.

Upon review, the Commissioner agreed with the findings and conclusion of the ALJ, and adopted the Initial Decision as the final decision in this matter. The petitioner is entitled to restoration of a personal day.

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.

November 2, 2018

OAL DKT. NO. EDU 02418-18
AGENCY DKT. NO. 3-1/18

GARY CORCORAN, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
QUEEN CITY ACADEMY CHARTER : DECISION
SCHOOL, UNION COUNTY, :
RESPONDENT. :
_____ :

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties did not file exceptions.

Upon such review, the Commissioner concurs with the Administrative Law Judge (ALJ) – for the reasons thoroughly set forth in the Initial Decision – that respondent violated *N.J.S.A.* 18A:25-3 when it deducted a personal day from petitioner due to his absence on Columbus Day. The Commissioner further agrees with the ALJ that the loss of a personal day is a loss in compensation equivalent to a day’s salary.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter. Petitioner is entitled to restoration of a personal day.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: November 2, 2018

Date of Mailing: November 2, 2018

* 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).



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDU 02418-18

AGENCY DKT. NO. 3-1/18

GARY CORCORAN,

Petitioner,

v.

QUEEN CITY ACADEMY CHARTER

SCHOOL, UNION COUNTY,

Respondent.

Michael T. Barrett, Esq., for petitioner (Bergman & Barrett, attorneys)

Shana Don, Esq., for respondent (Scarinci & Hollenbeck, attorneys)

Record Closed: September 11, 2018

Decided: September 20, 2018

BEFORE **ELISSA MAZZONE TESTA**, ALJ

PROCEDURAL HISTORY AND STATEMENT OF CASE

Petitioner, Gary Corcoran, challenges Respondent, Queen City Charter School's (Queen City) deduction of one personal day after he was absent from school on Columbus Day, a public holiday. Petitioner, an employee/teacher of the Respondent,

alleges that Respondent's action violated N.J.S.A. 18A:25-3. On February 2, 2018, this matter was transferred to the Office of Administrative Law (OAL) from the New Jersey Department of Education.

On February 7, 2018, Respondent filed a Motion to Dismiss in Lieu of an Answer in accordance with N.J.A.C. 6A:3-1.10 and N.J.A.C. 6A:3-1.5(g). On March 19, 2018, pursuant to a telephone conference held with the undersigned and counsel for the parties, it was agreed that there are no disputed facts with respect to this matter, and Respondent's Motion to Dismiss in Lieu of an Answer was converted to a Motion for Summary Decision. On April 24, 2018, Petitioner filed a Letter Memorandum asserting the legal arguments for a Summary Decision. On May 4, 2018, Respondent filed Opposition and a Cross-Motion for Summary Decision. On August 10, 2018, Oral Argument was held on the Summary Decision Motions and on September 11, 2018, the final responsive papers were submitted, and the record closed.

FACTUAL DISCUSSION

The following facts are undisputed and I therefore **FIND** them to be the **FACTS** of the case:

On October 9, 2017, the academic calendar of the Plainfield Public School District (Plainfield) called for a district-wide Professional Day to take place. This Professional Day coincided with Columbus Day, which is declared a public holiday pursuant to N.J.S.A. 36:1-1. Queen City follows the academic calendar of the Plainfield. On or around October 2, 2017, Petitioner informed Danielle West, the Director of Queen City, that he would be observing the Columbus Day holiday and therefore, would not be reporting for the Professional Day scheduled for October 9, 2017. Petitioner requested that one of his allocated personal days not be used in accordance with the statutory provision in N.J.S.A. 18A:25-3. The Respondent did not compel Petitioner to report to work on this day. As discussed, Petitioner did not report to school on October 9, 2017. West then classified Petitioner's planned absence on Columbus Day as a personal day and accordingly deducted one personal day available for his use during the school year.

Queen City and Petitioner signed the 2017-2018 Academic Year Teacher Employee Contract (the "Contract"). Under the Contract provisions for the 2017-2018 school year, Corcoran was allocated two (2) personal days and ten (10) sick days. The Contract stipulated that the employee must work 193 days during the Contract term. The Contract further provides that the employee will not receive vacation days because the employment term is ten months. Following Petitioner's Columbus Day absence, he had only one remaining personal day for the 2017-2018 academic year.

LEGAL ANALYSIS AND CONCLUSION

A party may move for summary decision under N.J.A.C. 1:1-12.5(b), which "may be rendered if the papers and discovery, which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." This Motion shares similarities with the summary judgment rule established in New Jersey Court Rules, R. 4:46-2. See Judson v. People's Bank and Trust Co. of Westfield, 17 N.J. 67, 74 (1954). Pursuant to this standard, all inferences of doubt are drawn against the movant and in favor of the party against whom the motion is directed. Id. at 75. Here, both the Respondent and the Petitioner are moving parties. Summary Judgment is precluded when it is determined that "there exists a genuine issue of material fact." Brill v. Guardian Life Insurance Co., 142 N.J. 520 (1995).

Petitioner and Respondent agree that no genuine issues of material fact exist in this case. Therefore, the sole legal question to be determined is if Queen City was required to permit Corcoran to miss a work day to observe the Columbus Day public holiday without deducting a personal day pursuant to N.J.S.A. 18A:25-3 or if Queen City's deduction of a personal day due to Corcoran's planned Columbus Day absence is a valid action under the contract and not a violation of N.J.S.A. 18A:25-3.

N.J.S.A. 18A:25-3 provides the following:

No teaching staff member shall be required to perform his duties on any day declared by law to be a public holiday and no deduction shall be made from such member's salary by reason of the fact that such a public holiday happens to be a school day and any term of any contract made with any such member which is in violation of this section shall be void.

Corcoran contends that Respondent violated the statute because a personal day was deducted due to his absence on a public holiday. He does not contend that any pay was lost as a result of Respondent's action. Corcoran maintains that the Legislative intent of N.J.S.A. 18A:25-3 is clear. There are a set number of National holidays that are recognized as meaningful and important nationally. In passing the statute, the New Jersey Legislature wanted to remove all barriers from an individual recognizing the holiday in Piscataway Township Education Association v. Piscataway Board of Education, 307 N.J. Super. 263 (App. Div. 1998), the court determined that changes in school calendars are "impact issues [that] are indeed mandatorily negotiable unless negotiations would significantly interfere with the exercise of the related [managerial] prerogative." Id. at 265. Corcoran asserts that the personal day allocation in the Contract was a result of collective bargaining, and that the deduction of his personal day for absence during a National holiday deemed the negotiated days "valueless." Thus, the result of Respondent's action was to create a barrier that impeded Corcoran from recognizing the public holiday and hence violated N.J.S.A. 18A:25-3.

Queen City reiterates that no pay was lost as a result of Respondent's use of his personal day to observe the Columbus Day holiday. The Director approved Corcoran's request for a planned absence on the Columbus Day holiday and did not compel him to attend work on Columbus Day. Petitioner's salary was not reduced due to his observance of the Columbus Day holiday and the use of one personal day did not result in any financial loss to Corcoran since he had not exhausted all of his personal days up to that point and had remaining personal days to use.

In Dohm v. Board of Education of West Milford, EDU 5286-82, Initial Decision (November 18, 1982), affirmed, Commissioner (January 6, 1983), a comparable controversy was brought before the OAL when a social studies teacher, Dohm, requested a planned absence on Lincoln's birthday. Lincoln's Birthday was a public holiday and also a scheduled school day in the district. Id. at *13. The employment contract negotiated by the school district and the Teacher's Association dictated that each teacher report for 185 working days. Id. at *16. While the district allowed Dohm to observe the holiday, it stipulated that if he was absent on Lincoln's Birthday, he would be required to report to work an additional day after the regularly scheduled academic year or his paycheck would be reduced by one day's compensation. Ibid.

Dohm reported to work on Lincoln's birthday and was therefore not required to report for a make-up day and did not have his paycheck reduced by one day's compensation. Id. at 21. Later, Dohm retroactively requested an additional day off from work of his choosing or an additional day's compensation because he attended work on Lincoln's Birthday. Id. at 13. The presiding Administrative Law Judge decreed that the district had not violated N.J.S.A. 18A:25-3 because it did not compel Dohm to report to work on Lincoln's Birthday and because Dohm was not required to work any days beyond the 185 work days stipulated in the employment contract. Id. at 22.

In Moldovan v. Board of Education of Township of Hamilton, 1971 S.L.D. 246, joint petitioners brought a claim against the Board of Education of Hamilton Township (Board) after the Board deducted one day's compensation from their salaries due to their absence on Columbus Day. The Commissioner of Education found that the actions of the Board were improper and in violation of N.J.S.A. 18A:25-3. Ibid. The Commissioner stated that it was "evident that this statute does not prohibit school sessions on public holidays, but instead protects the right of teaching staff members to be absent on public holidays without suffering financial loss." Id. at 253. In Moldovan, the joint petitioners were absent on a public holiday and did suffer a financial loss as a result; hence the school district clearly violated N.J.S.A. 18A:25-3.

There is no question that personal days or personal business days are creatures of contract and not specifically provided for in Title 18A or any statutory provision. Piscataway Township Education Association v. Piscataway Board of Education, 307 N.J. Super. 263 (App. Div. 1009). Further, to engage in collective bargaining, each side surrenders something of value in exchange for a benefit. In the case at hand, the question at issue becomes what constitutes a deduction in salary as per the statute or financial loss and/or compensation as per the case law. While the Petitioner in the instant case is a salaried employee pursuant to the “Contract” and he did not get a deduction in salary per se, I agree with Petitioner’s argument that he was required to forfeit the value of a personal day which, in all respects, is the equivalent value of a day’s pay. If Petitioner had in fact expended all of his contractual and statutory paid leave, then Respondent would have had to deduct or withhold one day of pay from Petitioner’s salary. Further, the “Contract” between Petitioner and Respondent sets forth a “package” which includes a salary with additional compensatory benefits, including but not limited to, personal days, sick days, professional days, health benefits and a pension. (Emphasis added). One would need to look at the entire compensatory package in order to determine whether to accept employment and to determine if, as a whole, it makes financial sense to the employee. Therefore, if any of the compensation, either salary or by way of a benefit, is taken for use of a holiday as it relates to N.J.S.A. 18A:25-3, then a violation of the statute has occurred.

Paul M. De Pascale v. State of New Jersey, 2011 N.J. Super. Unpub. Lexis 2626 (App. Div. 2011), best lays out the definitions of salary and compensation, which Legislature has deemed interchangeable. The definition of “salary” according to Black’s Law Dictionary is “an agreed **compensation** for services – esp. professional or semiprofessional services – usu. paid at regular intervals on a yearly basis, as distinguished from an hourly basis. Black’s Law Dictionary (8th ed. 2004) (emphasis Added). Turning to “compensation,” American Heritage defines the term as “something given or received as equivalent for services, debt, loss, injury, suffering, lack, etc.; indemnity.” American Heritage Dictionary of the English Language (4th ed. 2006) Black’s defines the term compensation as “[r]emuneration and other benefits received in

return for services, rendered; esp. salary or wages. Black's law Dictionary (8th ed. 2004); see DePascale at *28.

When a statute does not clearly set forth the definition of a pertinent term, in this case "member's salary", then one would need look at the intent of the Legislature. Courts look to case law that has interpreted the meaning of words. The New Jersey Court in Hyland v. Township of Lebanon, 419 N.J. Super. 375 (App. Div. 2011), addressed whether "salary" includes vacation, sick and person days for a public employee whose "salary is protected by Statute." In recognizing the relationship between the term salary and direct or indirect forms of compensation, the Appellate Division held,

Although the statutory bar applies specifically to "salary" rather than to "salaries, wages or compensation," there is no indication that the Legislature intended to limit statutory bar to base salary for the four named officers and to exclude from its scope other forms of compensation such as payments for vacation days, sick leave and personal time, particularly when such compensation directly relates to the amount of salary paid to these officers.

[Id. 384.]

I **CONCLUDE** that the in passing N.J.S.A. 18A:25-3, the New Jersey Legislature intended to remove all barriers from an individual recognizing the holiday. The conditional approval imposed on Petitioner in deciding to recognize Columbus Day and in turn, the loss of a personal day is one such barrier and is a direct contradiction of the Legislature's intent. Further, it is clear that a loss of a personal day is the equivalent to a financial loss.

This analysis is further supported by Middlesex County Educational Services Commission Education Association v. Board of Middlesex County Education Services Commission Board of Education, 1987 S.L.D. 262 which holds,

Essentially, N.J.S.A. 18 A:25-3 protects the right of teaching staff members to be absent on public holidays without financial loss. Moldovan v. Board of Education of the Township of Hamilton, 1971 S.L.D. 246. Thus, although a district board may determine that school will be open on a public holiday when it establishes its calendar, it may not require its teaching staff members to work that day. Ibid. Accordingly, if a member is absent on that day, the district board is prohibited from penalizing him by deducting an amount from his salary proportionate to his daily rate. Ibid.

Both Respondent and Petitioner relied on the above referenced case when presenting their arguments to the undersigned.

Therefore, having reviewed both parties' submissions, I **CONCLUDE** that no issues of material fact exist. I further **CONCLUDE** that Respondent is in violation of N.J.S.A. 18A:25-3 and Petitioner is entitled to restoration of a personal day or compensatory wages.

ORDER

It is therefore **ORDERED** that the Petitioner's Motion for Summary Decision be and hereby is **GRANTED**. It is further **ORDERED** that the Respondent's Motion for Summary Decision be and hereby is **DENIED**.

I hereby **FILE** this Initial Decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, P.O. Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.



September 20, 2018
DATE

ELISSA MIZZONE TESTA, ALJ

Date Received at Agency:

September 20, 2018

Date Mailed to Parties:
EMT/sej

BRIEFS RELIED ON

For Petitioner

Petitioner's Letter Memorandum in Support of Motion for Summary Decision
Reply to Respondent's August 15, 2018 submission

For Respondent

Respondent's Motion to Dismiss in Lieu of an Answer
Respondent's Opposition to Petitioner's Motion for Summary Decision and Cross-
Motion for Summary Decision
Respondent's submission dated August 15, 2018, with attached case law.