New Jersey Commissioner of Education

Final Decision

Monika Vakulchik,

Petitioner,

v.

Board of Education of the Borough of Dunellen, Middlesex County,

Respondent.

Synopsis

Petitioner, a Speech Language Pathologist employed by the respondent Board from October 2016 through the 2019-2020 school year, received a summative performance report completed on May 1, 2020 by the school district's Director of Special Services which included a statement recommending that petitioner not be renewed for the 2020-2021 school year. Petitioner subsequently filed the within appeal, alleging that the Board failed to provide her with proper notice pursuant to *N.J.S.A.* 18A:27-10 that her non-tenured teaching staff position was recommended for non-renewal for the 2020-2021 school year. Based on her claim that she did not receive proper statutory notice of termination, petitioner requested that she be deemed renewed and issued a new employment contract. The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue in this case, and the matter is ripe for summary decision; despite the fact that the District failed to address why there was not strict compliance with the statutory requirements of *N.J.S.A.* 18A:27-10, the Board substantially complied with the statutory notice requirements for non-renewals; the petitioner was not prejudiced by receiving notice through her summative performance report rather than from the superintendent, as she acknowledged receiving the recommendation and asserted her rights to a statement of reasons and a *Donaldson* hearing; further, the Board's 4-3 vote to renew petitioner's contract following the *Donaldson* hearing failed because it did not constitute a majority vote of the full membership of the Board, which would consist of five out of nine votes. Accordingly, the ALJ granted the Board's motion for summary decision and dismissed the petition.

Upon review, the Commissioner concurred with the ALJ that summary decision is appropriate but disagreed with the ALJ that the Board substantially complied with the requirements of *N.J.S.A.* 18A:27-10. In so doing, the Commissioner found, *inter alia*, that the doctrine of substantial compliance requires, among other things, that the defaulting party provide a logical explanation for why there was not a strict compliance with the statute; here, the Board failed to provide written notice from the superintendent that petitioner's employment would be terminated and offered no explanation as to why this occurred, in violation of *N.J.S.A.* 18A:27-10. Therefore, by operation of *N.J.S.A.* 18A:27-11, petitioner's employment contract for 2020-2021 was renewed upon the same terms and conditions of her 2019-2020 contract. Accordingly, the Initial Decision of the OAL was reversed; petitioner's motion for summary decision was granted ; and the Board was directed to reinstate petitioner to her position and to pay her the salary that she was entitled to for the 2020-2021 school year, subject to mitigation. The petition was dismissed.

194-21

OAL Dkt. No. EDU 09348-20
Agency Dkt. No. 159-7/20

New Jersey Commissioner of Education

Final Decision

Monika Vakulchik,

Petitioner,

v.

Board of Education of the Borough of Dunellen, Middlesex County,

Respondent.

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

Petitioner was employed by the Board as a Speech Language Pathologist beginning on October 4, 2016. On May 1, 2020, her summative performance report, which had been completed by the district's Director of Special Services, included a statement that recommended that her contract not be renewed. On May 4, 2020, petitioner emailed the superintendent and the Board, indicating that she was notified of her non-reemployment for the 2020-2021 school year and requesting a written statement of reasons. On May 5, 2020, the Board voted on the superintendent's recommendations for renewals, and petitioner's name was not on the list of renewed staff. On May 18, 2020, petitioner wrote to the Board and superintendent, indicating that – because she had not received written notice from the superintendent of her non-renewal by May 15 – she was accepting the Board's offer of

employment for the 2020-2021 school year. The superintendent responded and indicated that petitioner was aware that her contract was not being renewed, and he subsequently provided a statement of reasons. Petitioner then requested a *Donaldson* hearing,[1] after which the Board voted, with four members in favor of renewing her employment and three against; one member abstained, and one seat was vacant. The Board informed petitioner that the action did not pass, and petitioner appealed.

Following cross motions for summary decision, the ALJ found that the Board substantially complied with the statutory notice requirements for non-renewals and that petitioner was not prejudiced by receiving notice through her summative performance report rather than from the superintendent, as she acknowledged receiving the recommendation and asserted her rights to a statement of reasons and a *Donaldson* hearing. The ALJ further found that the Board's 4-3 vote to renew petitioner's contract failed because it was not by a majority vote of the full membership of the Board, which would consist of five out of nine votes. Accordingly, the ALJ granted the Board's motion for summary decision.

In her exceptions, petitioner argues that the Board cannot prevail based on the doctrine of substantial compliance because it has failed to provide any explanation for its noncompliance with the statutory requirements, and the fact that she was not prejudiced is due solely to her own diligence in following up and is insufficient on its own to support a finding of substantial compliance. Petitioner claims that it would be reasonable for her, or other teaching staff members in similar circumstances, to interpret a recommendation in an evaluation as solely a recommendation and not a notice of non-renewal, and that the loss of time to seek new employment that would result from such an interpretation has a great possibility for prejudice. Petitioner also contends that the

[1] A *Donaldson* hearing is the colloquial name for the informal appearance before the Board during which a teaching staff member may discuss the statement of reasons for non-renewal and attempt to persuade the Board to renew the staff member's contract.

statute does not require a majority vote of the full membership of the Board following a *Donaldson* hearing.

In reply, the Board argues that the purpose of the statutory scheme is to provide teachers with timely notice that they are not going to be reemployed so that they may seek other employment, and so they can seek a statement of reasons and a *Donaldson* hearing. The Board contends that the reason it did not strictly comply with the written notice requirement was that petitioner was clearly aware that her employment was not being renewed, as she wrote to the superintendent stating as much when she requested a statement of reasons. According to the Board, sending petitioner a letter informing her of something she already knew would be illogical. The Board also notes that petitioner's arguments regarding the voting requirements merely restate arguments raised below and properly addressed and rejected by the ALJ.

Upon review, the Commissioner concurs with the ALJ that summary decision is appropriate but disagrees with the ALJ that the Board substantially complied with the requirements of *N.J.S.A.* 18A:27-10. The doctrine of substantial compliance requires, among other things, that the defaulting party provide "a reasonable explanation why there was not a strict compliance with the statute." *Bernstein v. Bd. of Trustees of Teachers' Pension & Annuity Fund*, 151 *N.J. Super*. 71, 76-77 (App. Div. 1997). Here, the Board failed to provide any explanation throughout the proceedings,[2] until a conclusory assertion in its reply to petitioner's exceptions that it would be "illogical" to provide written notice to petitioner when she already was apparently aware of the non-renewal. The Board is not permitted to introduce new evidence in its reply to petitioner's exceptions, and this statement is therefore inappropriate.[3]

[2] As the ALJ noted, "the District has not addressed why there was not strict compliance with the statute." Initial Decision, page 12.

[3] The statement does not even rise to the level of evidence, as it is unsupported by any documentation, testimony, or certification or affidavit.

Moreover, even if the Board's late explanation were to be accepted, the Commissioner does not find the Board's explanation to be reasonable. While the Board claims that petitioner was on notice of her non-renewal prior to the statutory deadline, petitioner's characterization of the recommendation in her evaluation as a notice of non-renewal is not the determining factor for whether that notice was sufficient. The requirements of a notice are clearly set forth in *N.J.S.A.* 18A:27-10, and they include that the notice be "from the chief school administrator" and indicate that "employment will not be offered." A mere recommendation from an individual other than the superintendent meets neither of these criteria, and it would not be "illogical" for the Board to follow the evaluation with a formal notification that provided definitive information and was compliant with the statute. Nor should petitioner's diligence in requesting a written statement of reasons and a *Donaldson* hearing be used to her detriment. In enacting the notice statute and establishing renewal as the Board's failure to comply with it, the Legislature chose to place the burden of notification on the Board, not on teaching staff members.

Another requirement of the substantial compliance doctrine is that the defending party took a series of steps to comply with the statute. *Bernstein, supra*. The ALJ found that the Board met this requirement because it provided petitioner with her summative report and held a virtual meeting to discuss the report. But the requirement of the statute is written notice from the superintendent, and these steps do not demonstrate any attempt to comply with the statute.

The cases cited by the ALJ and the Board to the contrary are distinguishable. Both *Nissman v. Bd. of Educ. of the Twp. of Long Beach Island, Ocean Cty.*, 272 *N.J. Super.* 373 (App. Div. 1994), and *Jordan v. Bd. of Educ.*, 2017 *N.J. Super. Unpub.* LEXIS 1865 (App. Div. 2017), address the question of what notice is sufficient to trigger the 90-day time limitation for a

non-renewed employee to file a petition of appeal. In both matters, the court notes that the test is when the employee knew or should have known that she was not going to be offered a new contract. *Nissman, supra*, at 379; *Jordan, supra*, at *6-7. Any reliance on this proposition to support the Board's position in this case is misplaced. The standard for determining whether notice is sufficient to trigger the limitations period is distinct from notice sufficient to comply with the Board's statutory obligations. Contrary to a long history of cases about the filing limitations period that discuss the "knew or should have known" standard – which was applied in *Nissman* and *Jordan* because they were both about the limitations period – there is no comparable case history, nor anything in the notice statute, that suggests that petitioner's knowledge is in any way relevant to whether the Board has met its burden of providing notice.

The Commissioner further notes that the facts of these two cases are distinguishable, as Ms. Nissman received notice that complied with the version of *N.J.S.A.* 18A:27-10 that was in effect at the time, and the alleged technical defect in the notice provided to Ms. Jordan was only that it was signed by the district's director of human resources. However, it was written on the superintendent's letterhead, advised Ms. Jordan that at the upcoming board of education meeting, the superintendent would recommend that the board not renew her employment, and stated that her employment would terminate effective June 30. The form and substance of this notice are significantly closer to the requirements of *N.J.S.A.* 18A:27-10 than the "notice" petitioner received here, which was a short statement at the end of her summative evaluation stating that she was recommended for non-renewal, signed by the district's Director of Special Services. Petitioner's evaluation does not purport to be issued by the superintendent. It does not indicate to petitioner what recommendation the superintendent would make to the Board. It does not provide an end date for petitioner's termination.

Accordingly, the Commissioner concludes that the Board is not entitled to the same finding of compliance as in *Jordan.*

Because the Board failed to provide the required written notice from the superintendent, by operation of *N.J.S.A.* 18A:27-11, petitioner's employment contract for the 2020-2021 school year was renewed upon the same terms and conditions of petitioner's 2019-2020 contract, with any increases in salary as may be required by law or policies of the board of education. [4]

Accordingly, the Initial Decision of the OAL is reversed, and petitioner's motion for summary decision is granted. The Board is directed to reinstate petitioner to her position and to pay to petitioner the salary to which she would have been entitled during the 2020-2021 school year, subject to mitigation from other earnings.

IT IS SO ORDERED.[5]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 16, 2021
Date of Mailing: September 16, 2021

[4] Because the Commissioner has concluded that the contract was renewed by operation of *N.J.S.A.* 18A:27-11, it is unnecessary to reach the issue of whether the Board's vote following petitioner's *Donaldson* hearing was effective.

[5] This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A.* 18A:6-9.1. Under *N.J.Ct.R.* 2:4-1(b), a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION
SUMMARY DECISION
OAL DKT. NO. EDU 09348-20
AGENCY DKT. NO. 159-7/20

MONIKA VAKULCHIK,
Petitioner,
v.
BOARD OF EDUCATION OF THE BOROUGH OF DUNELLEN, MIDDLESEX COUNTY,
Respondent.

Craig A. Long, Esquire, for petitioner (Zazzali, Fagella, Nowak, Kleinbaum & Friedman, attorneys)

Marc H. Zitomer, Esquire, for respondent (Schenck, Price, Smith & King, LLP, attorneys)

Record Closed: May 10, 2021 Decided: June 22, 2021

BEFORE **DEAN J. BUONO**, ALJ:

STATEMENT OF THE CASE

Petitioner Monika Vakulchik ("Vakulchik") alleges that respondent Dunellen Board of Education (the "Board") failed to provide her with proper notice pursuant to N.J.S.A. 18A:27-10 that her non-tenured teaching staff member position was recommended for non-renewal for the ensuing school year. Accordingly, because Vakulchik claims that she did not receive proper statutory notice, she asks that she be deemed renewed and offered a new teaching contract. Vakulchik further argues that, even if this court finds that she received sufficient notice of non-renewal, the Board subsequently voted to reemploy Vakulchik by a vote of 4-3, with one abstention, and one vacancy, on a nine-member board. Accordingly, Vakulchik argues that a plain reading of N.J.S.A. 18A:27-11 requires the Board to reemploy her and issue a new contract of employment. At issue is whether (1) Vakulchik's summative performance evaluation signed by Dunellen's Director of Special Services constituted proper written notice by the "chief school administrator" that Vakulchik's employment would not be offered for the following school year, and if so, whether (2) the Board's vote of 4-3 to reemploy Vakulchik was effective to reemploy Vakulchik, when there was one abstention, and one vacancy on the nine-member board at the time of the vote.

PROCEDURAL HISTORY

Petitioner filed the instant petition with the New Jersey Commissioner of Education, which was received on July 17, 2020,by the Division of Controversies and Disputes, Department of Education (Department). The matter was transmitted as a contested case on September 16, 2020, to the Office of Administrative Law (OAL).

After several telephone conferences the parties represented that the matter was ripe for decision on a motion for summary decision. The parties filed motions and cross-motions for summary decision. The parties did not request oral argument as the written submissions were sufficient to dispose of the matter.

STIPULATIONS OF FACT

The parties agreed to certain facts that could be stipulated. As such **I FIND AS FACT** the following:

I. Respondent Dunellen Board of Education ("Board") is a pre-K to 12 District located in Middlesex County, New Jersey.

2. Petitioner Monika Vakulchik (hereinafter "petitioner") commenced employment with respondent on or about October 4, 2016, in the position of Speech Language Pathologist, and served in that position until June 30, 2020.

3. On May I, 2020, petitioner was given her 2019-20 Summative Performance Report signed by Amanda Lamoglia, Director of Special Services for Dunellen Schools. The overall score on said report was 3.333. (Exhibit A.)

4. The summative report concluded with the following statement, "Recommended for Dismissal/Non-renewal. The teacher has failed to make progress on a Corrective Action Plan, or the teacher consistently performs below the established standards, or in a manner that is inconsistent with the school's mission and goal." Id.

5. On May I, 2020, petitioner submitted a response to the summative evaluation report which is incorporated therein. Id.

6. On May 1, 2020, petitioner participated in a virtual meeting over Google Meet, in which she, the Director of Special Services and her Principal, together with a union representative, discussed her summative evaluation.

7. Petitioner signed the aforesaid Summative Performance report on May 8, 2020. Id.

8. On May 4, 2020, petitioner emailed Mr. Mosley, Superintendent of Schools, and copied the Board of Education. In that email she stated, “On 05/01/2020, I was notified of non-reemployment for the 2020-2021 school year. I am requesting a written statement of reasons for non-reemployment”. (Exhibit B).

9. On May 5, 2020, the Board voted on the Superintendent's recommendations for staff renewals for the 2020-21 school year. Petitioner's name was not on the list of staff which was renewed. (Exhibit C).

10. Petitioner was not provided with written notification from the Superintendent by May 15, 2020, that her contract was not being renewed for the 2020-21 school year.

11. On May 18, 2020, petitioner wrote to the Board and copied the Superintendent and stated, “Insofar as I have not received notice from the chief school administrator in accordance with N.J.S.A. l8A:27-l0; 27-11 that employment for the succeeding school year will not be offered, I hereby accept your offer of employment.” (Exhibit D).

12. On May 18, 2020, the Superintendent emailed p etitioner and stated, “You are well-aware that your contact was not renewed as evidenced by your email to the Board on May 4, 2020 where you stated, ‘On 05/01/2020, I was notified of non-reemployment for the 2020-2021 school year.’ This was well-before the May 15, 2020 date set forth in the statute that you cited. You will receive my response to your request for a statement of reasons for my decision shortly. However, to be clear, you do not have a contract for the 2020-2021 school year and your name did not appear on the May 7, 2020, Board of Education meeting agenda

renewal motions. I trust that I have clarified any confusion on your part." (Exhibit E.)

13. On May 28, 2020, the Superintendent provided petitioner with a statement of reasons for her non-renewal. (Exhibit F.)

14. Based upon the Superintendent's assertion that petitioner was not renewed, she asserted rights pursuant to N.J.S.A. 18A:27-3.2 and N.J.A.C. 6A:32-4.6 and requested an appearance before respondent ("Donaldson hearing"), which took place at the June 15, 2020, Board meeting.

15. At its meeting held on June 15, 2020, the Board, which, due to a vacancy, consisted of eight members, voted four members in favor of renewing petitioner's employment; three members opposed; and one member abstaining.

16. On June 16, 2020, the Board informed petitioner in writing that "the Board's action to reinstate you following your Donaldson hearing last evening did not pass[,]" and that petitioner's employment would end on June 30, 2020. (Exhibit G.)

17. Board Policy 3142 governs the non-renewal of teaching staff members. (Exhibit H.)

18. Respondent acknowledges that petitioner has reserved her rights to bring separate claims independently of, and unrelated to, the claims at issue in this proceeding, including but not limited to retaliation, wrongful termination, and discrimination. It is understood that petitioner is not making the aforesaid claims in this matter. Respondent reserves its rights to present evidence in those proceedings that petitioner's non-renewal of employment was premised on legitimate non-discriminatory business reasons.

STATEMENT OF FACTS

The following facts are derived from the parties' respective submissions. Some of the facts are repetitive from the Stipulations of Fact but are necessary for continuity of the explanation of the case and as such, **I FIND** them to be the **FACTS** of the case:

The Board is a pre-K to 12 District located in Middlesex County, New Jersey. Vakulchik commenced employment with the Board on or about October 4, 2016, in the position of Speech Language Pathologist, and served in that position until June 30, 2020. On May 1, 2020, Vakulchik was given her 2019-20 Summative Performance Report (the "Summative Report") signed by Amanda Lamoglia ("Lamoglia"), Director of Special Services for Dunellen Schools. The Summative Report reflected an overall score of 3.333 and concluded with the following statement, "Recommended for Dismissal/Non-renewal. The teacher has failed to make progress on a Corrective Action Plan, or the teacher consistently performs below the established standards, or in a manner that is inconsistent with the school's mission and goal."

On May 1, 2020, Vakulchik submitted a response to the Summative Report and participated in a virtual meeting over Google Meet, in which she, the Director of Special Services and her Principal, together with a union representative, discussed her Summative Report.

On May 4, 2020, Vakulchik emailed Mr. Mosley, Superintendent of Schools, and copied the Board of Education. In that email she stated, "On 05/01/2020, I was notified of non-reemployment for the 2020-2021 school year. I am requesting a written statement of reasons for non-reemployment." She signed the Summative Report on May 8, 2020.

In the interim, on May 5, 2020, the Board voted on the Superintendent's recommendations for staff renewals for the 2020-2021 school year. Vakulchik's name was not on the list of staff which was renewed. However, she did not receive a

separate written notification of her nonrenewal from the Superintendent by May 15, 2020.

On May 18, 2020, Vakulchik wrote to the Board and copied the Superintendent and stated, “Insofar as I have not received notice from the chief school administrator in accordance with [N.J.S.A. 18A:27-10 and 18A:27-11] that employment for the succeeding school year will not be offered, I hereby accept your offer of employment.” On the same day, the Superintendent responded to Vakulchik by email and stated, "You are well-aware that your contact was not renewed as evidenced by your email to the Board on May 4, 2020 where you stated, ‘On 05/01/2020, I was notified of non-reemployment for the 2020-2021 school year.’ This was well-before the May 15, 2020, date set forth in the statute that you cited. You will receive my response to your request for a statement of reasons for my decision shortly. However, to be clear, you do not have a contract for the 2020-2021 school year and your name did not appear on the May 7, 2020, Board of Education meeting agenda renewal motions. I trust that I have clarified any confusion on your part.” On May 28, 2020, the Superintendent provided Vakulchik with a statement of reasons for her non-renewal.

Based upon the Superintendent's assertion that Vakulchik was not renewed, she asserted rights pursuant to N.J.S.A. 18A:27-3.2 and N.J.A.C. 6A:32-4.6 and requested an appearance before the Board (“Donaldson hearing”) pursuant to Donaldson v. Board of Educ. of North Wildwood, 65 N.J. 236, 240-41 (1974). Vakuchik’s Donaldson hearing took place at the Board’s June 15, 2020, meeting. At the time of that meeting, due to a vacancy, the Board consisted of only eight members. The vote regarding renewal of Vakulchik’s employment, was four members in favor of renewal; three members opposed to renewal; and one member abstaining.

On June 16, 2020, the Board informed Vakulchik in writing that “the Board's action to reinstate you following your Donaldson hearing last evening did not pass[,]” and that petitioner's employment would end on June 30, 2020.

LEGAL DISCUSSION

In the case at bar, both sides seek relief pursuant to N.J.A.C. 1:1-12.5, which provides that summary decision should 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." The regulation mirrors R. 4:46-2(c), which provides that "[t]he judgment or order sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, 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 a judgment or order as a matter of law." I **FIND** there is no issue of material fact in dispute with regard to the foregoing matter and I **CONCLUDE** the matter is ripe for summary decision.

Under the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1.1 to -21.6, "[a] party may move for summary decision upon all or any of the substantive issues in a contested case." N.J.A.C. 1:1-12.5(a). Such motion "shall be served with briefs and with or without supporting affidavits" and "[t]he decision sought 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." N.J.A.C. 1:1-12.5(b). When the motion "is made and supported, an adverse party in order to prevail must by responding affidavit set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding." Id.

Determining whether a genuine issue with respect to a material fact exists requires consideration of whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party. Brill v. Guardian Life Ins. Co. of Am. 142 N.J. 520, 540 (1995).

I. The Board's motion for summary decision should be granted because the Board substantially complied with the notice

requirements of N.J.S.A. 18A:27-10; although the Summative Report was not signed by the Superintendent, it provided Vakulchik with timely and adequate notice of non-renewal, and Vakulchik was not prejudiced.

The Board's motion for summary decision should be granted because there is no genuine issue of material fact with respect to whether the Board provided Valkuchik with timely, adequate notice that her contract would not be renewed for the 2020-2021 school year.

N.J.S.A. 18A:27-10 provides that [o]n or before May 15 in each year, each non-tenured 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."
>
> [emphasis added.]

When interpreting a statute, "we begin with its plain language, which is the "best indicator" of legislative intent." State v. Rodriguez, 238 N.J. 105, 113 (2019). A statute's plain language "must be construed 'in context with related provisions so as to give sense to the legislation as a whole.'" Id. (quoting Spade v. Select Comfort Corp., 232 N.J. 504, 515 (2018)). Unless the statutory language is "inconsistent with the manifest intent of the legislature, or 'another or different meaning is expressly indicated,' we ascribe to the Legislature's words and phrases 'their generally accepted meaning, according to the approved usage of the language.'" Finkelman v. Nat'l Football League, 236 N.J. 280, 289 (2019) (quoting N.J.S.A. 1:1-1).

Consequently, if the plain language "leads to a clear and unambiguous result, then our interpretive process is over." Johnson v. Roselle EZ Quick LLC, 226 N.J. 370,

386 (2016) (quoting Richardson v. PFRS, 192 N.J. 189, 195 (2007)). However, "if there is ambiguity in the statutory language that leads to more than one plausible interpretation, we may turn to extrinsic evidence, 'including legislative history, committee reports, and contemporaneous construction.'" DiProspero v. Penn, 183 N.J. 477, 492-93, 874 (2005).

Here, N.J.S.A. 18A:27-10(b) specifically requires that the "chief school administrator" provide written notice, on or before May 15, to the non-tenured teaching staff to inform them that employment will not be offered for the succeeding school year. "Chief school administrator" is defined in N.J.A.C. as "the superintendent of schools or the administrative principal if there is no superintendent." N.J.A.C. 6A:10-1.2. Further, the superintendent of schools has consistently been described as "the chief school administrator for the district." See e.g., Lenape Reg'l High Sch. Dist. Bd. of Educ. v. Lenape Dist. Support Staff Ass'n, 2010 N.J. Super. Unpub. LEXIS 304, *6.

Here, Vakulchik received the Summative Report on May 1, 2020, which was signed only by Lamoglia, the Director of Special Services. This Summative Report concluded with the following statement, "Recommended for Dismissal/Non-renewal." The first written notice that Vakulchik received directly from the Superintendent was on May 18, 2020, three days after the May 15 deadline, when the Superintendent responded to Vakulchik's email reiterating that her contract would not be renewed for the subsequent school year. When the Board voted on the Superintendent's recommendations for staff renewals for the 2020-2021 school year on May 5, 2020, Vakulchik's name was not on the list of staff that were renewed. However, the lack of inclusion on a "renewal list" of teaching staff members approved by the Board for reemployment at a regularly scheduled meeting is not determinative of a teacher's status with respect to employment for the following school year, nor is it sufficient notice of non-renewal to satisfy the statute. See Aitken v. Manalapan Twp. Bd. of Educ., 1974 S.L.D. 207, 210-12.

However, even if I find that the statute's technical requirements were not met, the doctrine of "substantial compliance" should nonetheless allow the Board to succeed on its motion for summary decision. The equitable doctrine of substantial compliance "has

deep roots in English common law and has received repeated recognition in [New Jersey's] own cases as well as in cases elsewhere." Galik v. Clara Maass Med. Ctr., 167 N.J. 341, 353 (2001) (internal citations omitted). Its purpose "is to avoid the harsh consequences that flow from technically inadequate actions that nonetheless meet a statute's underlying purpose." Anske v. Borough of Palisades Park, 139 N.J. Super. 342, 347 (App.Div.1976). It is a doctrine "based on justice and fairness, designed to avoid technical rejection of legitimate claims." Zamel v. Port of N.Y. Auth., 56 N.J. 1, 6 (1970).

In order to successfully invoke the doctrine, a party must demonstrate (1) lack of prejudice to the defending party; (2) a series of steps taken to comply with the statute involved; (3) a general compliance with the purpose of the statute; (4) a reasonable notice of petitioner's claim, and (5) a reasonable explanation why there was not a strict compliance with the statute. See Bernstein v. Board of Trustees of the Teachers' Pension and Annuity Fund, 151 N.J. Super. 71, 76 (App. Div. 1977).

The failure to provide notice in compliance with N.J.S.A. 18A:27-4.1, N.J.S.A. 18A:27-10, and N.J.S.A. 18A:27-11 did not prejudice Vakulchik. For example, under different circumstances, if a non-tenured staff member is unsure as to whether they have been recommended for non-renewal by the Superintendent, the staff member might fail to exercise their rights to an informal proceeding under N.J.S.A. 18A:27-4.1 or might do so untimely. Here, however, Vakulchik was not prejudiced. On May 1, 2020, the day she received the Summative Report, she e-mailed the Superintendent, and copied the Board, confirming that she was notified that she would be recommended for non-renewal for the 2020-2021 school year and requested a written statement of the reasons. The Superintendent provided her with a statement of the reasons on May 28, 2020. Finally, she asserted her rights pursuant to N.J.S.A. 18A:27-3.2 and N.J.A.C. 6A:32-4.6 and requested a Donaldson hearing before the Board, which took place at the June 15, 2020, Board meeting. Vakulchik was clearly put on notice that she would be recommended for non-renewal, was able to fully assert her rights, and was not prejudiced.

As to the second factor, the Board took a series of steps to comply with the statute. It provided Vakulchik with the Summative Report, signed by Lamoglia, the Director of Special Services, which included the specific language "recommended for non-renewal." Vakulchik also participated in a virtual meeting over Google Meet, in which she, Lamoglia, and her principal, together with a union representative, discussed her Summative Report.

The District was in general compliance with the purpose of the statute. The primary purpose is to provide teachers with timely notice when they are not going to be reemployed so that they may seek other employment. See Wachstein v. Burlington County Bd. of Educ., 1 976 S.L.D. 928, 931; see also Armstrong v. East Brunswick Twp. Bd. of Educ., 1975 S.L.D. 112, modified, St. Bd., 1975 S.L.D. 117 (modified to adjust amount of termination pay granted by Commissioner), aff'd., App. Div., 1976 S.L.D. 1104. The statute also works to ensure that a teacher has notice of a recommendation of non-renewal and can timely request a statement of reasons and a Donaldson hearing.

Here, while the notice Vakulchik received from the Superintendent was after the May 15 deadline, Vakulchik was nonetheless on notice that her contract would be recommended for non-renewal, as evinced by her May 4, 2020, email. As such, while the Board's actions did not conform to the technical requirements set forth in N.J.S.A. 18A:27-10, the primary purpose of the statute was met—Vakulchik was aware that her contract would be recommended for non-renewal, took the appropriate steps to request a list of the reasons and a Donaldson hearing, and had adequate time to seek alternate employment. The District gave Vakulchik "reasonable notice" and she was timely able to assert her rights. As to the final factor, curiously however, the District has not addressed why there was not strict compliance with the statute.

Where, as here, a staff member does not receive "[a] written notice from the chief school administrator that such employment will not be offered[,]" N.J.S.A. 18A:27-10, but the district has "substantially complied" with the underlying purpose of the statute, the staff member should be deemed to have received sufficient notice. For this reason, it is appropriate to grant the Board's motion for summary decision and find that

Vakulchik received timely notice of the Superintendent's recommendation for non-renewal. The failure of the District to comply with the technical requirements of N.J.S.A. 18A:27-10 should not be deemed an offer of continued employment for the next succeeding year (N.J.S.A. 18A:27-11) where, as here, the requirements were substantially met and the District's actions conformed to the statute's underlying purpose.

In Nissman v. Bd. of Educ. of the Township of Long Beach Island, 272 N.J. Super. 373 (App. Div.), certif. denied, 137 N.J. 315 (1994) the Court discussed the notice requirements of N.J.S.A. 18A:27-10 and determined that whether the employee "knew or should have known that [he or] she was not going to be offered a new contract for the following academic year" factored into whether or not a letter that the petitioner had received from the Board was a "final action." Id. at 379. The Board used Nissman to support its contention that, even if the Superintendent had not timely notified Vakulchik in writing that her contract would not be renewed, the fact that she was aware that her contract would not be renewed, as evinced by her May 4, 2020, email, is enough to meet its statutory burden.

While the facts in Nissman differ slightly from the facts of this case, the overarching purpose of the statute remains the same: to give a teaching staff member timely and adequate notice of non-renewal so they can seek new employment elsewhere. In Nissman, petitioner challenged the Board's resolution not to offer the petitioner a new contract or grant her tenure pursuant to N.J.S.A. 18A:27:10. The statute at the time of decision required notice from the local board of non-renewal, rather than the chief school administrator. Petitioner had timely and appropriately received the local board's adoption of a resolution that the petitioner's employment contract, expiring in August of that year, would not be renewed and that she would not be offered a new contract or granted tenure. Petitioner received the resolution and continued to work in her position as principal up to and including the last day of her contract. While the Court never questioned whether the notice requirements had been met, the question the Court answered was whether the board resolution operated as a "final action." The petitioner's knowledge that her contract would not be renewed was a primary factor in that calculus.

The Board also cited Jordan v. Board of Educ., 2017 N.J. Super. Unpub. LEXIS 1865, *6-7, 2017 WL 3091782 to support its position that the Summative Report that Vakulchik received, while not technically in compliance with N.J.S.A. 18A:27-10, was nonetheless adequate. In Jordan, the petitioner received a May 8, 2014, letter on the Superintendent's letterhead, signed by the Director of Human Resources at the high school where she taught,, informing her that at the local board meeting scheduled for May 13, 2014, the Superintendent would recommend that the board not renew petitioner's employment for the 2014-2015 school year. The letter further stated that petitioner's employment would terminate effective June 30, 2014. The Court held that the plain language of a May 8 letter simply did not support petitioner's interpretation that the letter merely *advised* her of the possibility that she would not be offered a new contract. Id. The Court found that "the letter clearly qualifies as written notice that plaintiff's employment will be terminated and [that] she will not be offered tenure." Id.

Similarly, here, Vakulchik was unambiguously aware that she was being recommended for non-renewal to the Board. Not only did her May 4, 2020, email reveal as much, but she also met with Lamoglia and her principal, together with a union representative, to discuss the Summative Evaluation, and signed it on May 8, 2020. As such, **I CONCLUDE** that Vakulchik had proper notice.

II. The Board's 4-3 vote in favor of renewing Vakulchik's contract failed and thus does not require the Board to issue a new contract of employment.

Since I found that Vakulchik did in fact receive proper notice, the Board's vote of 4-3 in favor of renewing Vakulchik's contract did not operate to renew her contract pursuant to N.J.S.A. 18A:27-4.1 because the vote was not by a majority vote of the full membership of the Board. N.J.S.A. 18A:27-4.1(b) states:

> A board of education shall renew the employment contract of a certificated or non-certificated officer or employee only upon the recommendation of the chief school

> administrator and by a recorded roll call majority vote of the full membership of the board. The board shall not withhold its approval for arbitrary and capricious reasons. A nontenured officer or employee who is not recommended for renewal by the chief school administrator shall be deemed nonrenewed. Prior to notifying the 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. An officer or employee whose employment contract is not renewed shall have the right to a written statement of reasons for nonrenewal pursuant to section 2 of P.L.1975, c.132 (C.18A:27-3.2) and to an informal appearance before the board. The purpose of the appearance shall be to permit the staff member to convince the members of the board to offer reemployment.
>
> [emphasis added.]

When all seats are filled in Dunellen, the Board is comprised of nine members. The majority of the full membership of the Board is five, regardless of the number of members who attend the meeting. However, the statute does not directly state whether a vote from the full membership of the Board after an informal appearance is required to offer reemployment to an employee whose contract is deemed not renewed by the chief school administrator.

Valkuchik argues that, save for N.J.S.A. 18A:27-4.1, none of the provisions cited by the Board that require a vote of the majority of the full membership of the Board (see Respondent's Brief at 8-9) contain the differentiating clause that permits the Board to conduct a vote following an "informal appearance" by the affected staff member. She argues that here, the Legislature declined to specify the number of votes required following an "informal appearance." In contrast, she argues, other scenarios cited by the Board require "the majority of the full membership" of the Board.

As discussed in Section II, the first step in statutory interpretation is to look to the plain language of the statute—if the plain language "leads to a clear and unambiguous result, then the interpretive process should end, without resort to extrinsic sources." State v. D.A., 191 N.J. 158, 164 (2007). Only when the meaning of a statute is not self-evident on its face—"when it is subject to varying plausible interpretations, or the strict application of the words will lead to an absurd result or one at odds with public policy or an overall statutory scheme—"is it appropriate for the Court to "turn to extrinsic sources, such as legislative history." Farmers Mut. Fire Ins. Co. of Salem v. New Jersey Property-Liability Ins. Guar. Ass'n, 215 N.J. 522, 536 (2013).

It is a fundamental rule of statutory interpretation that "no clause, sentence or word [in a statute] shall be superfluous, void, or insignificant." State v. Lefante, 12 N.J. 505, 517 (1953) (quoting Shack v. Dickenhorst, 99 N.J.L. 120 (1923) (emphasis added)). Therefore, a reviewing court should assume that the Legislature did not use "any unnecessary or meaningless language." Patel v. N.J. Motor Vehicle Comm'n, 200 N.J. 413, 418-19 (2009), and should instead "try to give effect to every word of [a] statute . . . [rather than] construe [a] statute to render part of it superfluous," Med. Soc'y of N.J. v. N.J. Dep't of Law & Pub. Safety, Div. of Consumer Affairs., 120 N.J. 18, 26-27(1990) (citations omitted). Every word of a statute must be given full effect. Serio v. Allstate Ins. Co., 210 N.J. Super. 167, 171 (App. Div. 1986)(citation omitted).

N.J.S.A. 18A:27-4.1 clearly states that "[t]he purpose of the appearance shall be to permit the staff member to convince the members of the board to offer reemployment." The Legislature did not qualify this statement to indicate that anything less than a majority vote by the full membership would be sufficient.

Further, "statutes are considered to be in pari materia when they relate to the same person or thing, to the same class of persons or things, or have the same purpose or object." Marino v. Marino, 200 N.J. Super. 315, 330. Statutes "in pari materia are to be construed together when helpful in resolving doubts or uncertainties and the ascertainment of legislative intent." In re Return of Weapons to J.W.D., 149 N.J 108, 115 (1997). However, before undertaking an in pari materia analysis to discern

legislative intent, courts "must first decide whether the two statutes in question actually 'concern the same object.'" 2B Sutherland on Statutory Construction § 51:3 (7th ed. 2008). Considerations include whether the statutes are "designed to serve the same purpose and objective." Id.

N.J.S.A. 18A:27-1 states that "[n]o teaching staff member shall be appointed, except by a recorded roll call majority vote of the full membership of the board of education appointing him." This aligns with N.J.S.A. 18A:27-4.1(a) and (b), which state that a board may appoint or renew an employee "only upon the recommendation of the chief school administrator and by a recorded roll call majority vote of the full membership of the board." In sum, both N.J.S.A. 18A:27-1 and N.J.S.A. 18A:27-4.1 relate to the same purpose—personnel appointments by board approval—both with and without the recommendation of the Superintendent. Both require a recorded roll call majority vote of the full membership of the board and should be read in harmony with one another.

Vakulchik cites Matawan Regional Teachers Ass'n v. Matawan-Aberdeen Regional School Dist. Bd. of Educ., 223 N.J. Super. 504, 507 (App. Div. 1987) to stand for the proposition that where a statute "is silent with respect to the number of votes necessary to adopt rules and to govern and manage the district . . . [i]t must be assumed that by its silence the Legislature intended the common-law rule to apply." Id. More specifically, Vakulchik contends that "a majority vote of the members of the board constituting a quorum shall be sufficient."

However, the statute at issue in Matawan, N.J.S.A. 18A:11-1, is completely devoid of *any* discussion with respect to the number of board votes necessary to adopt rules and to govern and manage the district. Here, the statute is not silent. The entirety of N.J.S.A. 18A:27-4.1 (b) addresses the board's renewal votes based upon the recommendation or non-recommendation of the Superintendent—these votes require a recorded roll call majority vote of the full membership of the board.

Further, the differentiating characteristic of an informal appearance before the board is that it is not "an adversarial proceeding," but rather, takes place for "[t]he purpose of . . . provid[ing] the staff member the opportunity to convince [the] board . . . to offer reemployment." N.J.A.C. 6A:10-8.1(c) and (i). The non-tenured staff member *may* present witnesses on their behalf, who do not need to present testimony under oath and will not be cross-examined by the board. N.J.A.C. 6A:10-9.1. The differentiating aspect is not that it does not require a majority vote of the full membership board, but that it is an informal, non-adversarial appearance.

Finally, "[a]n absurd result must be avoided in interpreting a statute." Gallagher v. Irvington, 190 N.J. Super. 394, 397 (App. Div. 1983). Allowing an interpretation that permits the Board to renew a staff member against the recommendation of the Superintendent with a simple majority vote, while requiring five yes-votes of the full nine-member Board if the renewal recommendation comes from the Superintendent is untenable. A non-tenured staff member could be renewed with only three votes of a five-member quorum against the recommendation of the Superintendent but would require five votes if the recommendation comes from the Superintendent. See Negron v. Board of Educ., 2012 N.J. Super. Unpub. LEXIS 2634, *12. In Negron, the local board was faced with the vote on the reemployment of the Superintendent pursuant to N.J.S.A. 18A:11-11. Because it was the Superintendent up for the vote, it did not require the Superintendent's recommendation. The Court nonetheless determined that the re-employment decision required a recorded roll call majority vote of the full membership of the board of education. The Court noted that it "would indeed be an anomaly in a board of education's powers if a superintendent's contract could be extended for one or two years without an affirmative vote of the full board membership when so many employment decisions require such a majority vote." Such is the case here. I **CONCLUDE** that the Board's vote of 4-3 in favor of renewing Vakulchik's contract did not operate to renew her contract pursuant to N.J.S.A. 18A:27-4.1 because the vote was not by a majority of the full membership of the Board.

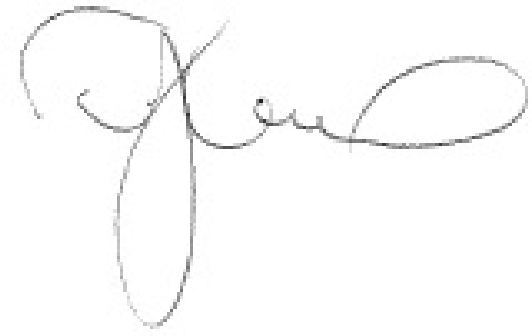
ORDER

It is hereby **ORDERED** that petitioner's motion for summary decision be **DISMISSED**. It is further **ORDERED** that respondent Dunellen Board of Education's motion for summary decision be **GRANTED**; it is further **ORDERED** that the foregoing petition of appeal is hereby **DISMISSED**.

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, PO 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.



June 22, 2021
DATE

DEAN J. BUONO, ALJ

Date Received at Agency: June 22, 2021

Date Mailed to Parties: June 22, 2021

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