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OAL DKT. NO. EDU 6588-03 (http://lawlibrary.rutgers.edu/oal/html/initial/edu06588-03_1.html)
AGENCY DKT. NO. 287-8/03

ROBIN SKIDMORE, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE TOWNSHIP : DECISION
 OF WASHINGTON, MERCER COUNTY, :
 :
 RESPONDENT. :
 _____ :

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Primary exceptions of both parties and reply exceptions of the Board, filed in accordance with *N.J.A.C.* 1:1-18.4, were fully considered by the Commissioner in reaching his determination herein.¹

Petitioner excepts solely to that portion of the Initial Decision which found the 60-day termination clause applicable and, notwithstanding the renewal of petitioner’s contract pursuant to *N.J.S.A.* 18A:27-10 through 12, permitted the Board to terminate her employment. In this regard, petitioner again contends, as she did below, that acceptance of this outcome operates to frustrate the clear language and intent of the renewal/nonrenewal statutes and she, therefore, urges that “the provisions of *N.J.S.A.* 18A:27-10 through 12 should apply here to the exclusion of the termination provision.” (Petitioner’s Exceptions at 1-2)

¹ It is noted that during the course of the Commissioner’s review of the instant recommended Initial Decision, Melissa R. Vance, Esq. filed a motion to participate in this matter, on behalf of the New Jersey Association of School Administrators. Although there is regulatory authorization for an individual or entity to intervene in a case prior to its initial transmission to the OAL (*N.J.A.C.* 6A:3-1.8), or during hearing of the matter at the OAL (*N.J.A.C.* 1:1-16.1), there is no such authority for intervention at this late stage in the proceedings. Counsel’s motion, therefore, was denied.

The Board's exceptions charge that the Administrative Law Judge (ALJ) erred in his factual interpretation and application of law in holding that the Board failed to notify petitioner of the nonrenewal of her contract as required by *N.J.S.A.* 18A:27-10(b). In so finding, it avers, he failed to recognize that when petitioner received the final copy of her year-end evaluation on May 7, 2003, indicating that the Superintendent recommended nonrenewal of her employment, her contract was, pursuant to *N.J.S.A.* 18A:27-4.1(b), deemed nonrenewed. (Board's Exceptions at 1) The Board proffers that the "crux" of the ALJ's analysis in this regard is that the Board failed to take "formal" action to accept the Superintendent's recommendation of nonrenewal of petitioner's employment and did not inform petitioner whether it was accepting or rejecting the Superintendent's recommendation. What such an analysis fails to recognize, it avers, is that the Board is not legally required to take such actions. (*Id.* at 6) Specifically, it advances:

N.J.S.A. 18A:27-10 states that on or before May 15 of each year non-tenured teachers must receive either a written offer of a contract for employment or a written notice from the chief school administrator (*i.e.* the superintendent; *see N.J.A.C.* 6:3-2.1) that such employment will not be offered. A non-tenured teacher who is not recommended for renewal by the chief school administrator is deemed non-renewed. *N.J.S.A.* 18A:27-4.1(b). Thus, once a non-tenured teacher is notified that the chief school administrator has recommended non-renewal, that teacher's contract is deemed non-renewed by operation of law.

Upon receiving notification that the teacher's contract will not be renewed, the teacher may request in writing a statement of reasons for non-renewal from the board of education. *See N.J.S.A.* 18A:27-4.1(b) and *N.J.A.C.* 6:3-3-4.2. *See also N.J.S.A.* 18A:27-3.2. After requesting and receiving the statement of reasons, the teacher may request in writing an informal appearance before the board of education, whereby the teacher can present witnesses in support of renewal. *Id.* The board of education is required to notify a teacher of its final determination only after the teacher has requested and participated in the informal appearance known as a *Donaldson* hearing. *N.J.A.C.* 6:3-4.2 *See also Donaldson v.*

Board of Education of North Wildwood, 65 N.J. 236 (1974). The board of education is not required to notify the teacher of non-renewal if the teacher never requests and participates in a *Donaldson* hearing. If a *Donaldson* hearing is not requested, once the teacher is notified that the chief school administrator has recommended non-renewal of the teacher's contract, that teacher, as a matter of law, is on notice that the teacher's contract will not be renewed since a chief school administrator's recommendation of non-renewal is deemed non-renewal. Additionally, regardless of whether or not the teacher requests a *Donaldson* hearing, the board of education is never required to take formal action to accept or reject the chief school administrator's recommendation of non-renewal. See *Velasquez v. Board of Education of the Borough of Brielle*, EDU #8276-95 (State Board of Ed., April 4, 1996). (Board's Exceptions at 6-7)

Applying this law to the facts of this matter, the Board submits the following: On March 14, 2003 petitioner was shown a copy of her year-end evaluation which indicated that non-renewal was recommended. She received a *Rice* notice² advising her that on March 18, 2003 the Board would be discussing her employment and petitioner attended this meeting. On May 7, 2003, petitioner received the final copy of her year-end evaluation, signed by the Superintendent, which stated that her nonrenewal was recommended. Notwithstanding that the ALJ properly recognized, it avers, that petitioner received notice that the Superintendent recommended non-renewal of her contract, he "failed to recognize that as of May 7, 2003, by operation of law, [petitioner] knew that her contract would not be renewed since a non-tenured teacher who is **not recommended** for renewal by the Superintendent is **deemed non-renewed** pursuant to *N.J.S.A.* 18A:27-4.1(b)." (Board's Exceptions at 7) (emphasis in text) The Board further asserts, while the ALJ was correct in stating that, irrespective of the Superintendent's

² If a board of education intends to discuss the nonrenewal of specific employees for performance or other reasons, it must issue a *Rice* notice to those employees. This requirement, which derives its name from *Rice v. Union Co. Regional High School Board. Of Education*, 155 N.J. Super. 64 (App. Div. 1977), cert. den. 76 N.J. 238 (1978) is not to be confused with a *Donaldson* hearing, which a non-tenured teaching staff member may request in writing, pursuant to *N.J.S.A.* 18A:27-3.2, subsequent to requesting and receiving a written statement of reasons for his/her non-reemployment.

recommendation, the Board could still offer re-employment to an individual recommended for nonrenewal, if that individual can convince the Board that he or she deserves a contract, the facts of this matter belie such a result here as this petitioner neither requested a statement of reasons for her nonrenewal nor did she request a *Donaldson* hearing with the Board, prerequisites to a written Board response indicating acceptance or rejection of the Superintendent's recommendation. Thus, the Board argues, contrary to the conclusion of the ALJ, under the applicable statute, the Board is never required to take any "formal" action to accept or reject the Superintendent's recommendation of nonrenewal. In fact, it proffers, the only time the Board would be required to take any action whatsoever with respect to the nonrenewal of petitioner's employment is if petitioner, upon receipt of notice of the recommendation of her nonrenewal by the Superintendent, had requested a statement of reasons and a *Donaldson* hearing, whereupon the Board would have been required to notify her of its decision in writing. (Board's Exceptions at 7-8) The Board, therefore, urges reversal of the ALJ's decision.

Upon his full and independent review of the record, Initial Decision and the parties' exception arguments, finding the Board's exception discussion of the applicable law and legal principles applicable to the factual circumstances here to be correct, the Commissioner is compelled to reject the Initial Decision.

Initially, the Commissioner rejects the ALJ's discussion and analysis, on pages 6-12 of his decision, with respect to the method or sufficiency of petitioner's notice of nonrenewal, the Board's failure to take action to formally nonrenew her contract and the chief school administrator's underlying role in the nonrenewal process. The Commissioner concludes that the ALJ's misinterpretation of the applicable statutes may, to some extent, be attributable to his

reliance on case law supporting his analysis which predated the creation/amendment of these statutory provisions in 1995.

The Commissioner observes that on June 19, 1995 the Governor signed into law P.L. 1995, c. 125 (*N.J.S.A.* 18A:27-4.1), a new provision intended to clarify the role of chief school administrators in employment decisions. This law, often referred to as the “Rotondo Bill,” was enacted in response to a decision of the New Jersey Superior Court, Appellate Division, *Rotondo v. Carlstadt-East Rutherford Regional High School District*, 276 *N.J. Super.* 36 (App. Div. 1994), which had the effect of rendering uncertain the role of these individuals in such decisions. Section a. of this new provision addressed the **appointment, transfer or removal** of employees and specifies:

A board of education shall appoint, transfer or remove³ 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.

Section b. of this law deals specifically with the **renewal/nonrenewal** of non-tenured employees and specifies:

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

³ It is noted that the term “removal,” in the context of this provision, means dismissal by virtue of tenure charges for a tenured individual or termination of a non-tenured employee’s contract during the course of its term. This term is wholly distinguishable from nonrenewal which is explicitly addressed in section b. of this provision.

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. **The chief school administrator shall notify the officer or employee of the nonrenewal**, pursuant, where applicable, to the provisions of section 1 P.L. 1971, c.436 (C.18A:27-10). (emphasis supplied)

Also on June 19, 1995, *N.J.S.A.* 18A:27-10 was amended to reflect the above new addition to the law. Prior to amendment, *N.J.S.A.* 18A:27-10 specified:

1. On or before May 15 in each year, **every board of education** in this State **shall give to each nontenured teaching staff member** continuously employed by it since the preceding September 30 either
 - a. A written offer of a contract for employment for the next succeeding school year providing for at least the same terms and conditions of employment but with such increase in salary as may be required by law or policies of the board of education, or
 - b. A written notice that such employment will not be offered.

Subsequent to amendment, this provision, in pertinent part, specifies:

1. 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 school 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 supplied)

Thus, the Commissioner concludes that, with the advent of *N.J.S.A.* 18A:27-4.1 in June 1995, the process for the **renewal** of a non-tenured employee's contract is: Prior to May 15, 1) the

superintendent must recommend to the board that the employee be renewed; 2) the board must vote by a recorded roll majority vote of its full membership to renew the employee (the board may reject the superintendent's recommendation and decline to renew the employee, as long as it does not act in an arbitrary or capricious manner); and 3) the board must notify the employee of reemployment pursuant to *N.J.S.A.* 18A:27-10. In contrast, the procedure for **nonrenewal** is: Prior to May 15, 1) the superintendent must inform the board of his decision not to renew the employee; 2) the superintendent must provide the board with reasons for his nonrenewal recommendation; and 3) the superintendent must notify the employee, in writing, of the nonrenewal decision. The employee is then deemed nonrenewed by operation of law, and no formal board action is required.

With the requirements of the applicable law clearly in mind, the Commissioner finds, under the circumstances existing here, a conclusion that petitioner's contract of employment was not timely and appropriately nonrenewed is untenable. Rather, he finds and concludes that the facts in this matter confirm that the procedures dictated by the above applicable statute for the nonrenewal of non-tenured teaching staff members were followed and that petitioner's employment with the Board was appropriately terminated, by operation of law, as of June 30, 2003. To the extent petitioner may be challenging the Superintendent's notice to her via a signed, written evaluation form as insufficient to satisfy *N.J.S.A.* 18A:27-10, the Commissioner disagrees. As recognized by the ALJ, "[t]he primary purpose of [*N.J.S.A.* 18A:27-10] is to provide teachers with timely notice when they are not going to be reemployed so that they may seek other employment." (citation omitted) Initial Decision at 6. Although *N.J.S.A.* 18A:27-10 does not address the type of written notice which would constitute

“adequate” notice, guidance in this regard may be gleaned from the Supreme Court in *Kaprow v. Board of Education of Berkeley Tp.*, 131 N.J. 572 wherein the Court stated:

[a]dequate notice must be sufficient to inform an individual of some fact that he or she has a right to know and that the communicating party has a duty to communicate. (citations omitted) at 587

Here, the notice received by petitioner from the Superintendent on May 7, 2003 was unambiguous and unconditional in light of the clear language of *N.J.S.A.* 18A:27-4.1(b). At this point in time, petitioner could have no question as to her employment status. Because she chose not to exercise her statutory right to request a statement of reasons for her nonrenewal and a subsequent informal meeting with the Board to attempt to persuade them to overturn the Superintendent’s recommendation, the Commissioner finds and determines that petitioner received the full measure of the process due her.

Finally, given the Commissioner’s determination on the underlying merits of this matter as outlined above, he finds it unnecessary to reach to the ALJ’s discussion of the procedural question of untimeliness or the propriety of the Board’s subsequent termination of petitioner pursuant to the 60-day termination provision of her employment contract.

Accordingly, the Initial Decision of the OAL is rejected. Summary decision is granted to the Board and the instant Petition of Appeal is hereby dismissed.

IT IS SO ORDERED.⁴

COMMISSIONER OF EDUCATION

Date of Decision: December 1, 2004

Date of Mailing: December 2, 2004

⁴ 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.*