

OAL DKT. NO. EDU 6404-02  
AGENCY DKT. NO. 242-8/02

THOMAS F. GRIGGS,	:	
	:	COMMISSIONER OF EDUCATION
PETITIONER,	:	
V.	:	DECISION
	:	
BOARD OF EDUCATION OF THE	:	
BOROUGH OF MAGNOLIA,	:	
CAMDEN COUNTY,	:	
	:	
RESPONDENT.	:	
_____	:	

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL), including the November 10, 2003 Order of the Administrative Law Judge (ALJ) incorporated into the Initial Decision by reference, have been reviewed. The Commissioner has additionally considered petitioner's exceptions to both the Initial Decision and the incorporated Order, as well as the replies to these filed by respondent (the Board).<sup>1</sup>

On exception, petitioner urges adoption of the ALJ's conclusions that 1) the terms of petitioner's 1999 written employment contract were carried forward by operation of law to the 2001-02 school year; 2) contractual notice provisions must be honored in the event of an abolishment of position; and 3) petitioner lawfully accepted continued employment for

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<sup>1</sup> The referenced Order was submitted to the Commissioner for immediate review, whereupon the parties duly filed exceptions and replies. However, by decision dated December 17, 2003, the Commissioner declined to review the Order on an immediate basis and elected instead to review it at the end of the contested case. See Initial Decision at 2.

the 2002-03 school year by virtue of his letter of acceptance faxed on May 28, 2002.<sup>2</sup> (Petitioner's Exceptions to Order at 3 and *passim*) Petitioner excepts, however, to the ALJ's conclusions as to the character and effect of the termination clause in petitioner's contract (*Id.* at 4-8), and as to whether the Board's action in abolishing petitioner's position was arbitrary, unreasonable or taken in bad faith (Petitioner's Exceptions to Initial Decision at 2-6).<sup>3</sup>

With respect to his contract's termination clause, petitioner contends that the ALJ erred in finding it "vague and unclear" (Order at 12), thus permitting termination of the contract "at will or after a reasonable time." (*Ibid.*) To the contrary, petitioner avers, the language in question is perfectly clear and its only reasonable interpretation is as a promise, in the event of termination by the Board, to reach a mutual agreement with petitioner as to length of notice to be provided. While the Board may no longer like this agreement, petitioner argues, it cannot avoid its obligation thereunder, and, while the ALJ or Commissioner might prefer a different arrangement, they may not use this proceeding to attempt to make a better contract or twist plain contractual language to create ambiguity where none exists. (Petitioner's Exceptions to Order at 4-7) Alternatively, if the Commissioner concurs with the ALJ that the contractual language is, in fact, vague and unclear, the Commissioner must not repeat the ALJ's error in failing to construe such ambiguity against the drafting party (the Board), and he must then award petitioner the

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<sup>2</sup> Petitioner withdraws his claim, as well as his prior objection to the ALJ's failure to include it in the November 10, 2003 Order, regarding payment for unused sick leave. Petitioner confirms that the Board has since made the required payment. (Petitioner's Exceptions to Initial Decision at 1)

<sup>3</sup> Petitioner also notes a non-material error in the Initial Decision's recitation of facts, clarifying that at no time did he serve as principal in an *acting* capacity. (Petitioner's Exceptions to Order at 9-10)

requested one year's compensation (less mitigation), rather than accepting as sufficient the 60-day notice provided by the Board. (*Id.* at 8-9)

With respect to his allegations that the Board acted arbitrarily and/or in bad faith in abolishing his position of Principal, petitioner contends that evidence on record, but ignored by the ALJ, amply demonstrates the truth of his claims. Petitioner points to evidence showing, among other things, that there was, in fact, no cost savings to the Board as a result of the reorganization notwithstanding that it was justified by claims of reducing administrative costs by 50%; that Dr. Gibson received at least \$10,000 in additional compensation for assuming the duties of Principal and retired one year after doing so, whereupon the Board restored the full-time Principal position; that Dr. Gibson recommended a teacher she had personally mentored for the restored principalship;<sup>4</sup> that the School Business Administrator's salary was doubled by extending his position to full-time, ostensibly to relieve Dr. Gibson of central office duties notwithstanding that he was not certified to supervise teaching staff or students, and, upon his indictment, the Board returned to the previous part-time structure; and that the only minutes of Board finance and personnel committees that purportedly made the decision to recommend elimination of petitioner's position surfaced after the hearing with the certification of Dr. Gibson. (Petitioner's Exceptions to Initial Decision at 3-6) Petitioner also reiterates that Dr. Gibson was annoyed with petitioner for requesting additional compensation for the many times he performed her duties in her absence, that the mayor and council did not recommend elimination of petitioner's position despite the budget defeat, and that the Board could have eliminated the

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<sup>4</sup> Petitioner notes a factual error in the ALJ's recitation of the testimony of Dr. Warren Pross at 9-10, which states that Dr. Pross elevated the teacher in question to the principalship, when, in fact, his testimony along with that of Kathleen Hovern establishes that this was done by his predecessor, Dr. Gibson. (Petitioner's Exceptions to Initial Decision at 2, referencing transcripts of 10/28/04 hearing at 115 and 10/27/04 hearing at 147).

Director of Special Services position and assigned its duties to petitioner, who was qualified to perform them. (*Ibid.*)

In reply, while noting its continuing disagreement that petitioner's contract rolled over for the years 2000-02, the Board urges adoption of the ALJ's reasoning and determinations with respect to the contract's termination clause and the sufficiency of the notice provided by the Board. (Board's Reply to Petitioner's Exceptions to Order at 1-2) The Board further supports the ALJ's conclusions with respect to petitioner's allegations of arbitrariness and bad faith, noting that petitioner's exceptions reiterate argument and proposed fact-finding presented in post-hearing submissions which were rejected by the ALJ for the reasons cogently stated in the Initial Decision. (Board's Reply to Petitioner's Exceptions to Initial Decision at 1-2)

Having thoroughly reviewed the record and considered the arguments of the parties, the Commissioner determines to adopt the Initial Decision as clarified herein.

Initially, the Commissioner notes, and neither party disputes, that the Board had the authority to abolish petitioner's position so long as it did not do so for unlawful reasons.<sup>5</sup> In this instance, notwithstanding petitioner's contention to the contrary and his selective recitation of facts in support thereof, the record as a whole, including extensive testimony judged credible by the ALJ,<sup>6</sup> amply supports the conclusion that the Board acted lawfully and in good faith.<sup>7</sup>

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<sup>5</sup> The Commissioner here clarifies that it is not necessary, as the ALJ appears to assume in the Initial Decision at 14-15, to treat a staff member as though he or she is tenured in order to ascertain the legitimacy of a reduction in force.

<sup>6</sup> There is no basis in the record that would enable the Commissioner to disturb the ALJ's credibility determinations pursuant to *N.J.S.A. 52:14B-10(c)*.

<sup>7</sup> The Commissioner notes that the after-the-fact "finance and personnel committee minutes" referenced in petitioner's Exceptions are nothing more than Dr. Gibson's personal notes from an executive session where

As to the question of the notice due petitioner prior to termination of his contract, the Commissioner concurs with the ALJ that the contract is, indeed, vague and unclear with respect to the notice required upon termination of the contract by the Board. In fact, taken literally, the contract, which does not follow the standard model, makes no provision whatsoever for unilateral termination on the part of the Board, only for unilateral termination on the part of petitioner, or for termination by mutual agreement. In this regard it is clearly distinguishable from the precedent relied upon by petitioner, a matter specifically decided on “unique circumstances” where a standard notice clause was left blank *and* the contract’s general provisions expressly required the agreement to run for its full term in the absence of any provision for a definite number of days’ notice. (*Siegel, supra*, at 766; Order at 10-11)

Under these circumstances, where petitioner’s contract made no express provision for termination by the Board and where petitioner was notified before the end of the school year that he would not be employed for the following year,<sup>8</sup> the Commissioner also agrees with the ALJ that it was reasonable for the Board to apply the 60-day notice provision found in standard contracts, numerous school law decisions, and petitioner’s counter-obligation to the Board. In so holding, the Commissioner is not unmindful of the principle, cited by petitioner, that contractual ambiguities are to be construed against the drafter, *In re Miller, supra*; for the Commissioner to find, however, as petitioner would have

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administrative reorganization and reallocation of savings was discussed. These notes were entered into the record by certification under cover letter dated December 7, 2004, in response to testimony by Karen Sorbello (Transcript of 10/28/04 hearing at 200-201) to the effect that, although actual minutes of committee meetings were not taken, Dr. Gibson generally took personal notes as memory aids to prepare her various reports to the Board. (Certification of Frances Colon Gibson, November 13, 2004)

<sup>8</sup> Indeed, had the Board elected, or been in a position, to effectuate reorganization by nonrenewing petitioner’s contract pursuant to *N.J.S.A.* 18A:27-10 rather than by terminating it, petitioner’s May 15 notice of nonrenewal would have afforded him two weeks more notice than he actually received and would not have afforded him pay beyond the end of the school year on June 30.

him do, that this principle acts to prevent a board of education, during the life of a teaching staff member's individual employment contract, from terminating employment or ending the board's salary obligation following termination unless the employee first agrees to the length of notice to be provided, would compromise both boards' legitimate managerial authority and their discretion to adjust staffing for lawful reasons, as occurred in the present instance. Such a result is clearly contrary to law and sound public policy, and the Commissioner cannot countenance it herein.

Accordingly, the Initial Decision of the OAL, including the incorporated Order, is adopted as the final decision in this matter for the reasons expressed therein and clarified above. The Board is reminded, in view of what the record has revealed about its past contractual practices, of the need to review and reform such practices to any extent yet necessary to ensure that its contracts of employment are issued consistent with the requirements of law.

IT IS SO ORDERED.<sup>9</sup>

COMMISSIONER OF EDUCATION

Date of Decision: February 10, 2005

Date of Mailing: February 10, 2005

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<sup>9</sup> 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.*