

#185-05 (OAL Decision not yet available)

ADAM DRAPCZUK, :  
PETITIONER, :  
V. : COMMISSIONER OF EDUCATION  
BOARD OF EDUCATION OF THE : DECISION  
TOWNSHIP OF WINFIELD, UNION :  
COUNTY, :  
RESPONDENT. :

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SYNOPSIS

Petitioner contended that the Board violated *N.J.S.A. 18A:17-15, et seq.*, by giving untimely notice of nonrenewal of the petitioner's employment contract as Chief School Administrator with the Winfield Township Board of Education, and maintained that, by virtue of the Board's improper non-renewal action, he was reemployed for the period from July 1, 2002 through June 30, 2006.

The ALJ identified the pivotal question in this matter to be what constitutes a "final order, ruling or other action by the district board of education" as contemplated by N.J.A.C. 6A:3-1.3(d), and therefore whether either the respondent Board's action by letter dated April 24, 2001, or by formal board resolution on September 18, 2001, commenced the 90-day period for petitioner to appeal the Board's action to not renew his employment contract. The ALJ found that respondent Board provided adequate notice to petitioner, by letter dated April 24, 2001, that the Board intended not to renew his contract, and that the Board's resolution in September was a formality that confirmed their prior action. The ALJ concluded that: there are no disputed facts; the 90-day period for petitioner to appeal the Board's action commenced on April 24, 2001; and the petitioner's appeal exceeded the 90-day period for filing. The ALJ granted summary decision to respondent Board, and dismissed the instant petition.

Upon a thorough and independent review of the record, the Commissioner rejects the ALJ's conclusion that the petition was untimely filed, and finds that: the petitioner had no cause of action to pursue a claim in this matter prior to July 1, 2001; the 90-day appeal period must be calculated from that date; and the instant petition was timely filed. In so determining, the Commissioner emphasizes that the underlying issue is not whether the April letter constituted "sufficient notice," but whether the Board did, in fact, make a lawful determination of nonrenewal. Accordingly, the Commissioner remands the matter to the OAL for an expedited hearing to consider testimony surrounding the issuance of the April 2001 letter and the event or action which prompted the Board's ratification of the contents of that letter in September 2001, and for a legal determination as to whether the Board's actions in this matter constituted formal action in conformity with the Open Public Meetings Act, *N.J.S.A. 18A:17-20.1*, and other applicable education law so as to constitute a lawful determination of nonrenewal of which petitioner was duly noticed.

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| <p>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.</p> |
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OAL DKT. NO. EDU 8101-01  
AGENCY DKT. NO. 133-4/01

ADAM DRAPCZUK, :  
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner's exceptions and the Winfield Township Board of Education's (Board) reply thereto were submitted in accordance with *N.J.A.C.* 1:1-18.4 and were duly considered by the Commissioner in reaching his determination.

Upon a thorough and independent review of the record in this matter, the Commissioner rejects the Administrative Law Judge's conclusion that the within appeal was untimely filed. In so concluding, the Commissioner finds that petitioner had no cause of action to pursue a claim in this matter prior to July 1, 2001 for the reasons set forth below.

Assuming, *arguendo*, that the April 24, 2001 letter from the president and vice-president of the Board constituted official Board action in conformity with the Open Public Meetings Act, *N.J.S.A.* 18A:17-20.1 and applicable education law, the sole claim which could be triggered by that letter would be one of wrongful termination on statutorily or constitutionally proscribed grounds. That, however, is not the claim which has been asserted herein. Rather,

petitioner asserts that, notwithstanding the letter of April 24, 2001, no formal action was taken to determine to nonrenew his employment. As stated by petitioner in his certification:

I was notified by letter from the Board President and Vice-President, that I should expect that my contract would not be renewed beyond its June 30, 2002 expiration date; however, I waited for the full Board to take action on this matter. On many occasions the Board President had issued directives to me, that other board members were not aware of, and had assumed authority over matters that were not authorized by the Board. \*\*\* (Petitioner's Certification at 1, No. 2)

Because the Board could have acted at any time prior to and including June 30, 2001 to correct any alleged deficiencies in its notification or determination of nonrenewal, the Commissioner finds that the earliest date that petitioner could have asserted a viable claim that his contract was renewed by operation of *N.J.S.A.* 18A:17-20.1 was July 1, 2001.<sup>1</sup> In that petitioner's appeal was filed on September 28, 2001, well within the 90-day time limitation set forth in *N.J.A.C.* 6A:3-1.3(d), therefore, the Commissioner concludes that the petition of appeal in this matter was timely filed. In so determining, the Commissioner emphasizes that the underlying issue in this matter is not whether the April 24, 2001 letter constituted "sufficient notice," but whether -- in the sense discussed in the *Kaprow* decision upon which the Board and the ALJ so heavily rely -- the Board did, in fact, make a *lawful determination* of nonrenewal.

Accordingly, this matter is hereby remanded to the OAL for an expedited hearing for consideration of testimony surrounding both the issuance of the April 24, 2001 letter and the event or action which prompted the Board to ratify the contents of the April 24 letter on September 18, 2001, and for a legal determination as to whether the Board's actions in this

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<sup>1</sup> The Commissioner observes there is nothing in the record explaining what event or action prompted the Board to adopt a resolution on September 18, 2001 ratifying the contents of the April 14, 2001 letter.

matter constituted formal action in conformity with the Open Public Meetings Act, *N.J.S.A.* 18A:17-20.1, and other applicable education law so as to constitute a lawful determination of nonrenewal of which petitioner was duly noticed.

IT IS SO ORDERED.<sup>2</sup>

COMMISSIONER OF EDUCATION

Date of Decision: May 20, 2005

Date of Mailing: May 23, 2005

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<sup>2</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*