

NANCY SIMONS, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
TOWNSHIP OF HAMILTON, :
MERCER COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner – a non-tenured guidance counselor – challenged the determination of the respondent to rescind her contract for the 2003-2004 school year, arguing that her employment was secure based on her acceptance of a contract in April 2003. Respondent Board asserted that petitioner’s employment was duly terminated in accordance with the sixty-day termination at will clause in her contract.

The ALJ found, *inter alia*, that: the facts are essentially undisputed; contracts of non-tenured teachers which contain provisions for termination at will by either party upon a specified number of days notice may be terminated without the need to demonstrate good cause; petitioner has not offered proof that the decision to terminate her was arbitrary, capricious or unreasonable. Accordingly, the ALJ concluded that: petitioner’s termination was valid; petitioner is entitled to sixty days pay for the period from September 1, 2003 to October 30, 2003, minus nine weeks of unemployment compensation, together with interest calculated from September 1, 2003.

Upon a thorough and independent review of the record, the Commissioner concurs with the ALJ that respondent Board properly exercised its contractual right to terminate petitioner’s employment subject to a sixty-day notice period, which ran its course prior to the date upon which petitioner would have attained tenure. However, the Commissioner determined that since the notice period began on July 24, 2003 and ended on September 22, 2003, the petitioner is not entitled to salary for 38 of the 60 days, because she was apparently on a ten-month contract. Thus, the petitioner is only entitled to salary for the period from September 1 through 22, 2003, minus unemployment benefits. The Commissioner adopted the Initial Decision of the OAL with the above modification; noted that it was unnecessary to reach to the merits of petitioner’s performance; and dismissed the rest of petitioner’s claims.

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.

April 24, 2006

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The Initial Decision and record for this matter have been reviewed. No exceptions were filed.

For the reasons expressed in the Initial Decision, the Commissioner finds that respondent properly exercised its right, under its contract with petitioner, to terminate her employment subject to notice of sixty days. The resulting termination date brought petitioner's employment with respondent's district to a close short of the statutory period that would have been necessary for petitioner to earn tenure. The Commissioner accordingly adopts the Initial Decision as modified hereinafter.

If the entire sixty-day notice period had occurred during the school year while teachers were receiving paychecks, petitioner would have been entitled to sixty days of wages, in accordance with the compensation terms of her contract with respondent minus – as mitigation – any unemployment benefits that she received during that time. However, in the within matter, the sixty-day period ran from July 24, 2003 through September 22, 2003. Petitioner is consequently entitled to salary only for September 1 through 22, 2003, minus the unemployment benefits she received for that period of time.¹

The reasoning in *Bitzer v. Board of Education of the Town of Boonton, Morris County*, 1976 S.L.D. 370 (1976), upon which the ALJ herein relied to come to a different conclusion, was rejected

¹ A copy of this decision will be forwarded to the Department of Labor so as to facilitate prompt reimbursement by respondent of the offset unemployment benefits.

by the Appellate Division in *Patricia Fallon v. Board of Education of the Township of Mount Laurel*, 1977 S.L.D. 1287 (App. Div.), *certif. den.* 74 N.J. 275 (1977). The court in *Fallon* disagreed with and reversed the State Board's decision which had held that a notice of termination given after a new contract was deemed to have been granted pursuant to N.J.S.A. 18A:27-10 and 11 could not begin to run until the commencement date of the new school year. Consequently, in a later case entitled *New Jersey Education Association v. Essex County Educational Services Commission*, 1984 S.L.D. 439, *aff'd.* State Board of Education, 1985 S.L.D. 1976, *aff'd.* App. Div. A-3154-84 (April 30, 1986), the Commissioner relied on *Fallon, supra*, in holding that the sixty-day notice period began, in that case, to run on July 1, 1980 – the date on which the employees in that case received their notice – as opposed to the date of the first day of their employment responsibilities in September.

The Commissioner also notes that it is unnecessary to address the merits of petitioner's performance and, accordingly, she declines to do so.

Regarding the issue of interest, the Commissioner finds that because petitioner has not satisfied the requirements of N.J.A.C. 6A:3-1.17(a)(1) and N.J.A.C. 6A:3-1.17(c)(1), she is not entitled to prejudgment interest. The rest of petitioner's claims are dismissed.

IT IS SO ORDERED.²

ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 24, 2006

Date of Mailing: April 24, 2006

² 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.*