

CARTERET EDUCATION ASSOCIATION, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE BOROUGH : DECISION
OF CARTERET, MIDDLESEX COUNTY
AND NILKANTH PATEL, :

RESPONDENTS. :

SYNOPSIS

Petitioning education association challenged preferential treatment allegedly accorded the school business administrator/board secretary (SBA) with respect to payment for accumulated sick leave, in violation of statute and district policy. Respondent board denied the allegations; asserted that petitioner failed to comply with the 90-day rule of limitation set forth at *N.J.A.C. 6A:3-1.3(i)*; and filed motion for summary judgment.

The ALJ found: the November 2003 public Board meeting, attended by the president of the Carteret Education Association (CEA), to be the triggering event for the 90-day notice period; petitioner did not exercise reasonable diligence in the filing of the petition; the assertion of the CEA president that he had no reason to learn the existence of an “individual” contract for the SBA until November 2004 is not supported in the record. The ALJ granted respondent’s motion for summary decision and dismissed the petitioner’s appeal.

The Commissioner disagrees with the ALJ’s conclusion that the appeal is appropriately dismissed as time barred, noting that when a petitioner’s cause of action is dismissed on procedural grounds pursuant to *N.J.A.C. 6A:3-1.3*, it is essential to ensure that the requirements of so doing have been fully satisfied in light of the provision’s underlying purpose. The Commissioner finds that: with respect to its approval of Mr. Patel’s contract at the November 2003 meeting, petitioner had every reason to rely on respondent’s compliance with statutory requirements; petitioner first became aware of questionable aspects in connection with the SBA contract in November 2004, and was not provided with a copy of said contract until January 2005; “adequate notice” arose upon receipt of that document by the CEA; therefore, the instant petition – filed in March 2005 – was timely. Accordingly, the Initial Decision is rejected, and the matter is remanded to the OAL for hearing on its merits.

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

Petitioner's exceptions charge that the Administrative Law Judge's (ALJ) determination that the November 12, 2003 Board meeting was the triggering event for the filing of a petition in this matter is erroneous. Petitioner points out that the governing provision with respect to timeliness of a petition, *N.J.A.C.* 6A:3-1.3(i), in applicable part provides:

The petitioner shall file a petition no later than the 90th day from the date of receipt of the notice of a final order, ruling or other action by the district board of education, individual party, or agency, which is the subject of the requested contested case hearing.***

¹ The Board did not file reply exceptions.

While conceding that Carteret Education Association (CET) President, Robert Cowan, was in attendance at the November 12, 2003 meeting and, therefore, was aware of the Board's appointment of Mr. Patel to the position of Business Administrator/Board Secretary, both the resolution which was adopted in this regard and the meeting minutes subsequently issued clearly and unambiguously discussed only: 1) that a contract was being entered with Mr. Patel; 2) the salary to be paid; and 3) the effective date of the contract. As such, it argues, neither Mr. Cohen nor petitioner had any reason to believe – nor did the Board's action provide any reason to suggest – that Mr. Patel's contract accorded him accumulated sick leave benefits over and above those granted to all other District employees. (Petitioner's Exceptions dated May 8, 2006)

Moreover, petitioner argues, *N.J.S.A.* 18A:30-3.2 sets forth the requirements which must be fulfilled in order to grant an individual credit for unused sick leave earned in another district:

Whenever a board of education employs any person who has an unused accumulation of sick leave days from another school district in New Jersey, the employing board may grant, not later than the end of the first year of employment, part or full credit therefore. The amount of such credit shall be fixed by resolution of the board uniformly applicable to all employees and subject to the provisions of this chapter. *Id.* at 8

Here it is undisputed that the Board did not take the requisite public action at its November 12, 2003 meeting and, therefore, petitioner proposes, absent public notice of the Board's action, there is no way petitioner could have or should have known that Mr. Patel's contract granted him benefits of this nature. (*Ibid.*) Petitioner professes that it first became aware that Mr. Patel's contract might be other than standard in nature in November 2004, at which time it requested a copy of this contract – which was not provided until late January 2005. Petitioner advances that it was at this point in time that it learned that Mr. Patel had accumulated

sick leave benefits “that had never been publicly disclosed or separately voted upon in public,” (*Id.* at 2) and it filed the instant Petition of Appeal within the requisite 90 days of this discovery. Petitioner, therefore, urges that the decision of the ALJ dismissing this matter as untimely be rejected.

The Board’s reply exceptions support the correctness of the Initial Decision and urge its adoption by the Commissioner.

Upon careful and independent review of the record, the Commissioner determines to reject the Initial Decision, as she does not – under the circumstances presented in this matter – agree with the ALJ’s conclusion that this case is appropriately dismissed as time-barred pursuant to *N.J.A.C.* 6A:3-1.3. In so determining, the Commissioner was particularly mindful that when imposing the severe penalty of dismissing a petitioner’s cause of action on procedural grounds pursuant to this provision, it is essential to ensure that the requirements of so doing – in light of this provision’s underlying purpose – have been fully satisfied.

With this in mind, the Commissioner turns to consideration of the applicability of *N.J.A.C.* 6A:3-1.3(i) to the facts in this matter. This provision specifies:

[t]he petitioner shall file a petition no later than the 90th day from the date of receipt of the notice of a final order, ruling or other action by the district board of education, individual party, or agency, which is the subject of the requested contested case hearing. ***

Guidance as to what constitutes notice sufficient to trigger the running of this regulatory provision was provided by the Supreme Court in *Kaprow v. Board of Education of Berkeley Tp.*, 131 *N.J.* 572 (1993) wherein it examined the underlying purpose of both the limitations period and the concept of “adequate notice”. Essentially, the *Kaprow* Court found the limitations period begins to run when a party has adequate notice of a final order, ruling or action by a board of

education, adequate notice being defined as one which is “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.” *Kaprow* at 587. Moreover, it found that notice is “adequate” where it furthers the purpose of the 90-day limitations period,

[t]hat is, the notice requirement should effectuate concerns for individual justice by not triggering the limitations period until the [affected persons] have been alerted to the existence of facts that may equate in law with [their] cause of action***At the same time, [the notice] should further considerations of repose by establishing an objective event to trigger the limitations period in order “to enable the proper and efficient administration of the affairs of government.” *Id.*

The Commissioner observes that the instant record – with respect to the salient issue under consideration here – establishes that, at its public meeting of November 12, 2003, the Board voted to approve the employment contract of Nilkanth Patel, School Business Administrator/Board Secretary. Such action clearly set forth this individual’s salary and the effective date of the contract. It is uncontroverted that no further details with respect to this contract were presented at this meeting nor in the subsequently issued meeting minutes. It is similarly uncontroverted that at no time during this meeting did the Board fix by resolution, in accordance with *N.J.S.A. 18A:30-3.2*, the credit to be accorded Mr. Patel for unused accumulated sick leave days earned in his prior employment. Under these circumstances, it cannot reasonably be concluded that, on November 12, 2003, petitioner had notice of the existence of any facts which – under the concept of the exercise of “reasonable diligence” – would impose on it a duty to further investigate by inquiring as to the specific terms and conditions of Mr. Patel’s contract, or compel it to secure a copy of this document. Rather, given the absence of any indication to the contrary, petitioner had every reason to rely on the Board’s compliance with statutory requirements surrounding all aspects of Mr. Patel’s employment contract. Petitioner asserts that

it first became aware of potentially questionable aspects in connection with the Patel contract in November 2004 and immediately requested a copy, which it contends – and the Board does not refute – was ultimately provided in late January 2005. The Commissioner finds that the record of this matter amply supports that the “adequate notice” contemplated by *Kaprow, supra.* – serving to trigger the running of the 90-day filing timeline of *N.J.A.C. 6A:3-1.3(i)* – arose at the point in time when, upon receipt of this document, petitioner discovered that Mr. Patel had been granted accumulated sick leave benefits from prior employment absent public disclosure and the requisite public action. Consequently, she concludes that the instant Petition of Appeal, filed on March 24, 2005, was timely. The Commissioner, however, is compelled to clarify that this decision deals solely with the procedural issue of timeliness. It does not consider the substantive issues contained in the petition or any remedies which may be available to petitioner, if applicable.

Accordingly, the Initial Decision dismissing the instant Petition of Appeal as untimely is rejected. This matter is hereby remanded to the OAL for hearing on its merits.

IT IS SO ORDERED.²

ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 25, 2006

Date of Mailing: May 25, 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.*