#137-11 (OAL Decision: http://lawlibrary.rutgers.edu/oal/html/initial/edu11522-10_2.html)

JOSE R. NEGRON,	:	
PETITIONER,	:	COMMISSIONER OF EDUCATION
V.	:	DECISION
BOARD OF EDUCATION OF THE BOROUGH OF SOUTH PLAINFIELD, MIDDLESEX COUNTY,	:	
RESPONDENT.	:	

SYNOPSIS

Petitioner – the Superintendent of the school district – alleged that his contract will automatically renew upon its expiration on June 30, 2011 because respondent Board did not take the necessary steps to terminate his employment. The Board contended that its June 29, 2010 motion to renew the Superintendent's contract for a period of one year – which motion was defeated by the Board – served to non-renew petitioner's employment, and filed a motion for summary decision.

The ALJ identified two main issues in this case: 1) whether an extension of a superintendent's contract must be supported by a majority vote of the full membership of the board to be binding and effective, and 2) whether a board of education is legally authorized to bind successor boards by approving an extension for a term that commences after the existing board has been replaced. The ALJ found, *inter alia,* that: a majority of the full membership of the board would be required to amend or extend petitioner's contract for one additional year, even if this is not expressly enumerated in the statute, and accordingly the June 29, 2010 resolution of the Board is neither effective nor binding; boards of education do not have the statutory authority to approve appointments or contractual extensions if they are to take effect at a date beyond the current board's natural lifetime; the contract extension in the instant case was to commence more than two months after the 2011 board was elected, and accordingly was void. The ALJ concluded that the petitioner's contract is not renewed; the one year extension is invalid; and petitioner's employment is terminated at the conclusion of his current contract.

Upon independent review and consideration, the Commissioner concurred with the ALJ that the June 2010 resolution extending petitioner's contract was not passed by a majority of the full board. Further, the Commissioner found, *inter alia*, that: even if the board did not expressly vote on his non-renewal, petitioner was not automatically reappointed pursuant to *N.J.S.A.* 18A:17-20.1; and, should the instant litigation continue, the ALJ was correct in concluding that the current board has no authority to authorize an employment action which would begin during the tenure of a different board. The Commissioner granted respondent Board's motion for summary decision and dismissed the petition, stipulating that petitioner's employment will terminate on June 30, 2011 unless the parties agree otherwise.

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.

March 28, 2011

OAL DKT. NO. EDU 11522-10
AGENCY DKT. NO. 567-9/10

JOSE R. NEGRON,	:	
PETITIONER,	:	
V.	:	COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE BOROUGH OF SOUTH PLAINFIELD, MIDDLESEX COUNTY,	:	DECISION
RESPONDENT.	:	

After review of the record, Initial Decision of the Office of Administrative Law (OAL) and parties' exceptions, the Commissioner concurs with the Administrative Law Judge (ALJ) that a June 29, 2010 resolution – proposing employment for petitioner from July 1, 2011 to June 30, 2012 and containing provisions differing from those set forth in his present contract – was not passed by the respondent board of education because the number of votes in favor of it was less than a majority of the full board. Nor can petitioner claim that, because respondent did not expressly vote on his non-renewal, he was automatically reappointed pursuant to *N.J.S.A.* 18A:17-20.1. Accordingly, the Commissioner grants respondent's motion for summary decision and dismisses the petition.

The facts are sufficiently set forth in the Initial Decision. Petitioner's first employment with respondent began on October 1, 2007 and, pursuant to his contract, was to continue until June 30, 2011. On June 29, 2010, resolutions concerning his employment were presented to the respondent board at a meeting which all nine board members attended. The

controversy centers around a resolution which proposed that the board approve an extra year of employment for petitioner, *i.e.* from July 1, 2011 to June 30, 2012, with terms that differed from those in his present contract. Of the nine board members present, four voted yes, two voted no and three abstained. Thus, the resolution did not receive approval from the majority of the board.[1]

For the reasons set forth in the Initial Decision, the Commissioner rejects petitioner's position that only a majority of a quorum of the board was needed to pass the resolution. Nor does petitioner's reliance – in his exceptions – on *Matawan Regional Teachers Association v. Matawan-Aberdeen Reg. School Dist. Bd. of Educ.*, 223 *N.J. Super*. 504 (App. Div. 1988) support his position. In that case the Appellate Division noted [in dictum] that *N.J.S.A.* 18A:11-1 – a statute addressing various general powers of boards of education – is silent about the number of votes needed to exercise such powers. The court concluded that, in the absence of express language about voting requirements, the common law rule would apply. That common law rule, articulated in such cases as *Barnert v. Paterson,* 48 *N.J.L.* 395 (Sup. Ct. 1886), instructs that when a board's charter and state law do not provide to the contrary,

> "a majority of the board . . . constitutes a quorum and the vote of a majority **of those present**, there being a quorum, is all that is required for the adoption or passage of a motion or doing any other act the board has the power to do."
> *Barnert v. Paterson, supra,* at 400. [Emphasis added.]

Since, in the present case, "those present" were undisputedly nine in number, the common law rule required that on June 29, 2010, five members vote in favor of the proposed contract for it to pass.

[1] Abstentions are counted neither as 'yes votes' nor as 'no votes.'

Further, the Commissioner finds it significant that *N.J.S.A.* 18A:11-1 addresses "General mandatory powers and duties." As the ALJ thoroughly explained, *N.J.S.A.* 18A:17-15 and numerous other statutes relate more specifically to employment actions by the board, *e.g.* appointments, dismissals, renewals and transfers. Those statutes uniformly require action by a majority of the full board. There is no reason that a decision to employ petitioner for the 2011-2012 school year should deviate from that ubiquitous standard for personnel actions.

It appears that petitioner characterizes the proposal concerning his employment – set forth in the June 29, 2010 resolution – as a novation to his existing contract, as opposed to a new contract. He reasons that a novation may somehow avoid the scrutiny and consent of a majority of the respondent board that is mandated by *N.J.S.A.* 18A:17-15 – the statute which governs the appointment of superintendents. The Commissioner finds, however, that whether the proposal concerning petitioner's employment is regarded as a novation or as a discrete contract for a term less than the three to five years articulated in *N.J.S.A.* 18A:17-15, the purpose underlying the statute – *i.e.* careful scrutiny and consent by a majority of the full board to the employment of a top school administrator – would have been no less applicable to the June 29, 2010 employment proposal than to petitioner's first contract.

Nor is petitioner's reliance on *N.J.S.A.* 18A: 11-11 persuasive. That provision requires that the public be given adequate notice before certain school administrators' contracts are changed. (Petitioner does not dispute that respondent provided the required notice.) Nothing in the statute or legislative scheme suggests that the statute was meant to address anything other than notice. The Commissioner finds therefore that *N.J.S.A.* 18A:11-11 does not expressly or by implication govern voting requirements.

In his exceptions, petitioner also protests that the ALJ did not address his claim that even without the resolution, his employment continues past June 30, 2011 pursuant to *N.J.S.A.* 18A:17-20.1. That statute dictates that a superintendent's contract will be automatically renewed if the board does not give him or her notice of nonrenewal – in writing – prior to the expiration of the first contract term. In petitioner's case, the written notice would have had to be given 120 days before June 30, 2011, *i.e.* March 2, 2011.

Consideration of the record leads to the conclusion that petitioner had ample notice – in writing – of the nonrenewal of his employment. First, a resolution to extend his employment was rejected by the board, and petitioner concedes in his exceptions that he was so notified by respondent's Board Secretary. Second, the board passed two resolutions subsequent to June 29, 2010 that affirmed the nonrenewal.[2] The Commissioner will not ignore this obvious notice because it was framed as a denial of renewal rather than an affirmation of nonrenewal.

Finally, because the Commissioner has determined that the resolution to extend petitioner's employment failed and no automatic renewal occurred, the question of whether respondent's current board can authorize an employment action which would begin during the tenure of a different board need not be reached. Nonetheless, should the instant litigation continue, the Commissioner finds that the ALJ 1) was correct in concluding that the current board has no such authority, and 2) appropriately relied on *Gonzales v. Bd. of Educ. of the Elizabeth School Dist.,* 325 *N.J. Super.* 224 (App. Div. 1999).

[2] The record shows that on September 15, 2010 respondent voted 5 to 0, with two abstentions, in favor of a resolution clarifying that its June 29, 2010 action had failed to carry. On September 30, 2010 respondent voted 5 to 0, with two abstentions, to rescind the June 29, 2010 resolution in the event that four "yes" votes had been sufficient to pass it. In light of the Commissioner's findings, it is unnecessary to address these resolutions.

In sum, the Commissioner adopts the Initial Decision with the modifications set forth *supra*. Respondent's motion for summary decision is granted, the petition is dismissed, and petitioner's employment will terminate on June 30, 2011 unless the parties agree otherwise.

IT IS SO ORDERED.[3]

ACTING COMMISSIONER OF EDUCATION

Date of Decision: ____________

Date of Mailing: ____________

[3] This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L.* 2008, *c.* 36 (*N.J.S.A.* 18A:6-9.1).