

#195-11 (OAL Decision: Not yet available online)

JILLIAN ALLEN, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
CITY OF ELIZABETH, UNION :
COUNTY, :
RESPONDENT. :

SYNOPSIS

On December 29, 2010, the petitioner – a non-tenured social studies teacher – filed an appeal charging that the respondent Board improperly terminated her employment contract for the 2010-2011 school year. She contends, *inter alia*, that because the Board never voted to terminate the contract, it is still operative – notwithstanding the fact that respondent’s director of human resources informed her by letter on August 14, 2010 that she had received the contract in error. Petitioner further argues that the Board’s action followed her July 2010 request for maternity leave and Family Medical Leave effective shortly after the school year would have begun – a request that was denied by the director of human resources. The Board filed a motion to dismiss the matter, asserting that the petition was not timely filed pursuant to *N.J.A.C.* 6A:3-1.3(i).

The ALJ found that: there are no material facts in dispute, and the matter is ripe for summary judgment; petitioner was employed by respondent Board for one year and four months; petitioner’s contract was renewed on or about June 24, 2010; on August 14, 2010, petitioner received a letter from the director of human resources informing her that she had received a contract for the 2010-2011 school year in error and that she should have been non-renewed as a result of the Board’s budgetary reduction in force; petitioner filed her appeal on December 29, 2010, well in excess of ninety-days after the receipt of the August 14, 2010 letter notifying her that she had received the contract for the 2010-2011 year in error. Accordingly, the ALJ concluded that the petition should be dismissed for failure to comply with the requirements of *N.J.A.C.* 6A:3-1.3(i), and granted the Board’s motion to dismiss the appeal.

Upon full consideration, the Commissioner concurred with the ALJ for the reasons detailed in the Initial Decision, and dismissed the petition.

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.
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May 23, 2011

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The record of this matter, Initial Decision of the Office of Administrative Law, and petitioner’s exceptions have been reviewed. For the reasons articulated by the Administrative Law Judge, the Commissioner is constrained to dismiss the petition.

Petitioner relies heavily on the fact that on or about June 29, 2010, the respondent Board offered – and petitioner accepted – a contract to teach from September 1, 2010 to June 30, 2011. She argues that since the respondent Board never voted to terminate the contract, it is still operative, notwithstanding that respondent’s Director of Human Resources, Karen Murray, did not allow petitioner to commence work on the starting date of the 2010-2011 school year. Petitioner further contends that as long as the contract has not been terminated by Board action, the Department of Education’s regulation limiting the time to file administrative appeals – *N.J.A.C. 6A:3-1.3(i)* – is not triggered.

The relief that petitioner demands is specific performance of a contract – a remedy that is generally sought in Superior Court. Petitioner, however, opted to prosecute an administrative action. Consequently, she is subject to the applicable administrative rules,

including the requirement in *N.J.A.C.* 6A:3-1.3(i) that a claimant file an appeal within ninety days of “notice of a final order, ruling or other action by the district board of education, individual party, or agency.” (Emphasis added.)

The alleged improper action in this case was the barring of petitioner from a position for which she had previously been given a contract. If the alleged violation is viewed as an *ultra vires* action by Board employee Murray, petitioner was obliged to file her appeal within ninety days of August 14, 2010, the date upon which petitioner acknowledges receiving a letter from Murray purporting to rescind petitioner’s employment contract. In the alternative, the alleged violation could be viewed as a breach of contract by the respondent board, which Board neither corrected Murray’s action nor paid petitioner the remuneration memorialized in the June 29, 2010 contract. The deadline for filing an appeal under this theory would have been November 30, 2010, ninety days after the 2010-1011 school year commenced – without petitioner.

The instant appeal was filed on or about December 29, 2010, substantially past the filing deadlines under either of the above scenarios. Accordingly, the petition was untimely and is hereby dismissed.

IT IS SO ORDERED.¹

ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 23, 2011

Date of Mailing: May 25, 2011

¹ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L.* 2008, *c.* 36. (*N.J.S.A.* 18A:6-9.1)