

#177-12 (OAL Decision: Not yet available online)

MIKE LEWICKI, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE : DECISION

ESSEX COUNTY VOCATIONAL : SCHOOL DISTRICT, ESSEX COUNTY, :

RESPONDENT. :

SYNOPSIS

Petitioner – formerly employed by the respondent Board as a non-tenured director of building and grounds – alleged that his employment was improperly terminated and that the actions of the Board were arbitrary, capricious and unreasonable. The Board contends that petitioner’s appeal should be dismissed as it raises contract claims that fall outside of the Commissioner’s jurisdiction, and filed a motion for summary decision.

The ALJ found, *inter alia*, that: the Commissioner’s jurisdiction is defined by statute, and is limited to “controversies and disputes arising under the school laws,” *N.J.S.A.* 18A:6-9; it is well established that contractual claims by non-tenured school employees do not invoke the Commissioner’s jurisdiction as such claims do not require an interpretation of the school laws; petitioner’s claims in the instant matter arise squarely under his contract of employment and consequently do not raise claims under the school laws; and there are no material facts in dispute, and the matter is ripe for summary decision. Accordingly, the ALJ granted the Board’s motion for summary decision and dismissed the petition.

The Commissioner concurred with the ALJ and adopted the Initial Decision as the final decision in this matter. Summary decision to respondent Board was granted, and the petition was dismissed for lack of jurisdiction.

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.

May 3, 2012

OAL DKT. NO. EDU 12004-11
AGENCY DKT. NO. 252-9/11

MIKE LEWICKI, :
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 PETITIONER, :
 : COMMISSIONER OF EDUCATION
 V. :
 : DECISION
 BOARD OF EDUCATION OF THE :
 ESSEX COUNTY VOCATIONAL :
 SCHOOL DISTRICT, ESSEX COUNTY, :
 :
 RESPONDENT. :

Upon review of the record and Initial Decision of the Office of Administrative Law, the Commissioner concurs with the Administrative Law Judge (ALJ) that jurisdiction over the instant controversy does not lie with the Commissioner. Petitioner served in an uncertificated, untenured position when he was suspended mid-contract and ultimately terminated. His separation from service implicates neither the tenure statutes nor any other school law.

Petitioner’s contention – in his exceptions to the ALJ’s grant of summary disposition to respondent – that the statutes and regulations concerning non-renewals of teaching staff contracts apply to this matter is contrary to established precedent. In such cases as *Winthrop McGriff v. Board of Education of the Township of Orange, Essex County*, Commissioner Decision No. 420-09M (December 30, 2009), *aff’d* Superior Court, Appellate Division, Docket No. A-3186-09T2 (January 12, 2011), and *Peter Lachenauer v. State-Operated School District of the City of Newark, Essex County*, Commissioner Decision No. 94-09, (March 18, 2009), the Commissioner has distinguished between non-renewals – which are

actions taken outside the four corners of an employment contract – and mid-contract terminations. While the former employment actions are clearly governed by school law, *i.e.*, *N.J.S.A. 18A:27-4.1*, the latter are not. Nor were there any circumstances relating to petitioner’s termination that would require the educational expertise of the Commissioner. Any complaints about arbitrariness in respondent’s performance of its duties under its contract with petitioner may be addressed in Superior Court.¹

Accordingly, the Initial Decision is adopted, summary disposition is granted to respondent and the petition is dismissed.

IT IS SO ORDERED.²

ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 3, 2012

Date of Mailing: May 4, 2012

¹ Petitioner also urged, in his exceptions, that respondent’s motion for summary disposition should be denied because it was untimely filed. However, the motion was filed on or before the date allowed by the ALJ and was therefore timely, pursuant to *N.J.A.C. 1:1-12.5(a)*.

² 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*).