

EDU #7806-92
C # 101-94
SB # 29-94

RALPH CUTRO, :
PETITIONER-APPELLANT, :
V. : STATE BOARD OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
TOWNSHIP OF HAZLET, MONMOUTH :
COUNTY, :
RESPONDENT-RESPONDENT. :

Decided by the Commissioner of Education, May 2, 1994

For the Petitioner-Appellant, Ralph Cutro, pro se

For the Respondent-Respondent, Kenney, Gross & McDonough
(Michael J. Gross, Esq., of Counsel)

As stipulated by the parties, Ralph Cutro (hereinafter "petitioner") was employed by the Board of Education of the Township of Hazlet (hereinafter "Board") as a teaching staff member from September 1969 through June 1992. During the course of his employment, petitioner accumulated 160 days of sick leave. On October 3, 1991, the Board and the Hazlet Township Teachers Association ("Association") signed a Memorandum of Agreement reflecting the terms of their collective bargaining agreement. That Memorandum contained a retirement incentive, included in the collective bargaining agreement, which allowed a teacher seeking to retire between

October 3, 1991 and June 30, 1992 to be paid \$150 per day for accumulated sick leave up to a maximum of fifty percent of the employee's last annual salary. In order to participate in this sick leave payout program, teachers were required to give notice of their retirement to the Board by December 31, 1991.

On December 1, 1991, petitioner submitted notice to the Board that he planned to retire at the end of the 1991-92 school year. The Board accepted petitioner's retirement on December 16, 1991.

Thereafter, the Board received a memorandum dated December 12, 1991 from the Director of the State Division of Pensions cautioning local employers that they were not authorized to offer early retirement incentive programs to their employees unless the programs were specifically authorized by state law. The counsel for the Board wrote to the Division of Pensions seeking clarification of that memorandum. In a letter dated March 25, 1992, the Executive Assistant at the Division of Pensions responded that, in the opinion of the Division, sick leave payout programs upon retirement were generally valid, but that programs paying significantly higher benefits to employees retiring within a specific time frame were invalid.

In response to that letter, the Board and the Association agreed in April 1992 to amend their collective bargaining agreement so as to extend the sick leave payout program to any teacher retiring during the term of that agreement.¹ They further agreed that teachers who had submitted letters of retirement to the Board for the 1991-92 school year would not be permitted to rescind their retirements and would be paid

¹ The collective bargaining agreement at issue was in effect from July 1, 1991 through June 30, 1994.

according to the terms of the original agreement, which had not been altered by the amendment.

On April 13, 1992, petitioner requested that he be permitted to rescind his retirement. In a letter dated May 26, 1992, the counsel for the Board responded that the Board had no legal obligation to accept petitioner's request. Upon retirement, petitioner received a check from the Board in excess of \$8,000 after deductions representing compensation for his accumulated sick days.

Petitioner filed a petition of appeal with the Commissioner of Education, challenging the Board's refusal to allow him to rescind his retirement. Petitioner submitted an affidavit in which he averred that if he had been permitted to rescind his retirement and to retire instead at the conclusion of the 1993-94 school year, his pension payments would have increased by \$2,725 per year as a result of an increase in his base salary between 1991-92 and 1993-94.

On March 18, 1994, the Administrative Law Judge ("ALJ") recommended dismissing the petition, stressing that rescission was an equitable remedy which was only available in limited circumstances. Citing Fair Lawn Ed. Assn. v. Fair Lawn Bd. of Education, 79 N.J. 574 (1979), the ALJ observed that local school boards were without power to authorize the payment of non-service related retirement benefits as an incentive for retirement. He concluded that, "[i]n the absence of a declaration of invalidity by a court of competent jurisdiction, or, in the alternative, by an administrative agency having subject matter jurisdiction, no authority resides in the Commissioner of Education to determine the invalidity of the collective bargaining agreement...." Initial Decision, slip op. at 9. In the absence of such a determination, the ALJ concluded that

petitioner had no entitlement to the relief sought. In so doing, the ALJ rejected petitioner's reliance on Hall v. Board of Educ., 125 N.J. 299 (1991) and Evaul v. Board of Education of City of Camden, 35 N.J. 244 (1961), in which the Court had permitted teaching staff members to rescind their retirements, finding that the facts in those cases were not analogous to this matter.

On May 2, 1994, the Commissioner adopted the findings and conclusions of the ALJ and dismissed the petition.

Petitioner, acting pro se, has filed the instant appeal to the State Board.

After a thorough review of the record, we affirm the ultimate determination of the Commissioner to dismiss the petition. However, we modify the Commissioner's analysis.

We reject the Commissioner's adoption of the ALJ's conclusion that, in the absence of a determination by a court or an administrative agency having subject matter jurisdiction that the sick leave payout program in effect at the time of his retirement had been "invalid," petitioner could have no entitlement to the relief sought. The issue herein is not whether the sick leave payout program in effect at the time petitioner exercised his rights thereunder would have been honored by the Division of Pensions, but, rather, whether the school laws provide petitioner with the entitlement to rescind his retirement under the particular circumstances in the record before us. While it is well settled that a tendered resignation is legally binding upon acceptance by a district board of education, and cannot thereafter be unilaterally rescinded or modified by the staff member, equitable circumstances may warrant rescission. Hall, supra; Evaul, supra.

In Hall, the Supreme Court, emphasizing the narrow scope of its decision, held that the district board therein was not entitled under the particular circumstances in that case to deny the staff member's request to change her intended retirement date. The majority's decision was predicated on an "ambiguous contractual provision" in the collective bargaining agreement and "a consistent, longstanding practice [by the district board] of permitting modification of an intended retirement date." Hall, supra, at 306.

In Evaul, a tenured teacher with 25 years of service in the district tendered her resignation at the end of an emotional day in which she had a tumultuous confrontation with her principal, superintendent and board president. Unbeknownst to the petitioner therein, the board had scheduled a special meeting for that evening, at which time her resignation was accepted. After learning of the meeting, she sent telegrams to the board, superintendent and board president attempting to rescind her resignation. The Court, in reinstating petitioner on equitable principles, viewed her resignation as "an impetuous act prompted by her understandably distraught condition." Evaul, supra, at 249.

We find nothing in the circumstances of the case before us that would obligate the Board to accept petitioner's proposed rescission of his retirement. The record reveals a negotiated agreement between the Board and the Teachers Association, subsequent to the Board's acceptance of petitioner's retirement, to amend their collective bargaining agreement so as to extend the sick leave payout program to any teachers retiring during the term of that agreement. Such amendment, as previously noted, was predicated on a general "opinion" offered by the Division of Pensions that sick leave payout programs paying significantly higher benefits to employees retiring

within a specific time frame were "invalid." There has been no determination that the particular sick leave payout program in effect at the time petitioner exercised his rights thereunder would not have been honored by the Division of Pensions. Nor did the amendment to the collective bargaining agreement modify the substance of that program or alter the benefits to which petitioner was entitled under the agreement upon retirement. The amendment simply extended the program for the duration of the agreement.

In this respect, we stress that the Hazlet Township Teachers Association, which was the recognized majority representative for all non-supervisory certificated teaching staff members employed by the Board, Stipulation of Facts, at 1, agreed to amend the collective bargaining agreement so as to include a provision that staff members who had submitted letters of retirement for the 1991-92 school year would not be permitted to rescind their retirements.

Under these circumstances, we find no basis under the education laws for directing the Board to release petitioner from his bargain.

Accordingly, under the particular facts in the record before us, we affirm, as modified herein, the decision of the Commissioner to dismiss the petition.

Exceptions are noted.

July 2, 1997

Date of mailing _____