

JAMES SCELBA, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF : DECISION
THE TOWNSHIP OF JACKSON,
OCEAN COUNTY, :
RESPONDENT. :
_____ :

SYNOPSIS

Petitioning tenured teaching staff member alleged that the Board's nonrenewal of his contract to be Head Golf Coach violated state law and regulation. Petitioner sought reinstatement with compensation.

ALJ determined that not only does a teaching staff member not accrue tenure status as a coach, but also, the Board is authorized to discontinue a coaching assignment at its discretion. *N.J.S.A.* 18A:27-10 did not apply to petitioner in his position as coach. ALJ concluded that the Board exercised its authority to terminate petitioner's assignment as coach at the conclusion of the 1997-98 school year and that the Board was in compliance with *N.J.S.A.* 18A:27-4.1 as evidenced by the Superintendent's July 1998 letter to petitioner stating the reasons why he would not be recommending petitioner for reappointment. Petition was dismissed.

Commissioner concurred with the ALJ that petitioner was not entitled to the relief he sought. Commissioner noted that petitioner could not assert that the protections afforded by *N.J.S.A.* 18A:27-10 *et seq.* were applicable to his coaching contract and he failed to demonstrate any infirmity in the Board's application of *N.J.S.A.* 18A:27-4.1 to the nonrenewal of his coaching contract. Commissioner ordered petition dismissed.

OAL DKT. NO. EDU 10340-98
AGENCY DKT. NO. 468-10/98

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The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. The parties did not file exceptions.

Upon careful and independent review of the record, the Commissioner concurs with the ALJ that petitioner is not entitled to the relief he seeks. Like the ALJ, the Commissioner is not persuaded that *N.J.S.A.* 18A:27-10, 11 and 12 apply to the circumstances herein, inasmuch as these statutes, enacted as *P.L.* 1971 *c.* 436, appear to apply to *potentially tenurable* staff members serving a probationary period prior to the acquisition of tenure. As the Supreme Court noted in *Donaldson v. Bd. of Ed. of No. Wildwood*, 65 *N.J.* 236 (1974), a board's discretion not to renew a teaching staff member's employment contract pursuant to *N.J.S.A.* 18A:27-10, and, consequently, *not to grant tenure* "need not be grounded on unsatisfactory classroom or professional performance for there are many unrelated but nonetheless equally valid reasons why a board, having had the benefits of observation during the probationary period, may conclude that tenure should not be granted." *Donaldson* at 241. As the

Court therein recognized, a newly hired teacher is fully aware that he/she serves in such a probationary period and that he/she may, ultimately, not acquire tenure. *Id.* at 245.

That there is an “inter-relationship” between 18A:27-10 and *N.J.S.A.* 18A:28-5, the statute defining the terms under which tenure is acquired, was also recognized by the Appellate Division when it examined a board’s responsibility to timely notify a nontenured employee of the nonrenewal of her contract, *N.J.S.A.* 18A:27-10, while still allowing the employee to perform her duties until the expiration of her contract, *N.J.S.A.* 18A:27-9, *without* incurring the tenure implications of service under *N.J.S.A.* 18A:28-5. *Nissman v. Bd. of Ed. of Twp. of Long Beach Island, Ocean County*, 272 *N.J. Super.* 373, 379, 382 (App. Div. 1994). There, the Court read the Legislature’s selection of the date identified in *N.J.S.A.* 18A:27-10 as providing local boards with sufficient time to fill a vacant position before the start of the next school year, *as well as* sufficient time for the terminated teaching staff member to secure other employment. *Id.* at 380.¹

Here, as the ALJ noted, it is well-settled that “tenure does not attach to a coaching position.” *Norcross v. Board of Education of the North Hunterdon Regional High School District, Hunterdon County*, 92 *N.J.A.R.* 2d (EDU) 176, 178, *aff’d* State Board at 181, *aff’d* App. Div. March 30, 1993, No. A-3533-91, *citing* *Furlong v. Kearny Bd. of Ed.*, 1980 *S.L.D.* 1420 and *Koslick v. Bd. of Ed. of the Twp. of Edison*, State Board April 3, 1987. Petitioner cannot assert, therefore, that the protections afforded by *N.J.S.A.* 18A:27-10 *et seq.* are

¹ In *Nissman*, the Court held that the petitioner’s appeal was untimely filed since her cause of action arose at the time of the board’s decision in April 1990 to terminate employment, rather than at the expiration of her contract in August 1990. *Nissman, supra*, at 382.

applicable to his coaching contract; neither can he credibly claim to be prejudiced by the Board's failure to notify him of the nonrenewal of his coaching contract by May 15, 1998.²

Moreover, the Commissioner cannot conclude that the Board violated *N.J.A.C.* 6:3-4.2, since that regulation, formerly found at *N.J.A.C.* 6:3-1.20, was specifically adopted to implement *Donaldson, supra*, pursuant to the Supreme Court's interpretation of *N.J.S.A.* 18A:27-10. See 8 *N.J.R.* 62(a); *Hicks v. Board of Education of the Township of Pemberton, Burlington County*, 1975 *S.L.D.* 332; *Jamison v. Morris Sch. Dist. Bd. of Educ.*, 198 *N.J. Super.* 411, 417 (App. Div. 1985); *Bd. of Ed., Tp. of Wyckoff v. Wyckoff Ed. Assoc.*, 168 *N.J. Super.* 497, 500, 501 (App. Div. 1979), *cert. denied*, 81 *N.J.* 349 (1979). Finally, the Commissioner determines that petitioner has failed to demonstrate any infirmity in the Board's application of *N.J.S.A.* 18A:27-4.1 to the nonrenewal of his coaching contract.

Accordingly, the Initial Decision of the ALJ is adopted for the reasons expressed therein, and amplified above. The within Petition of Appeal is dismissed.³

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

December 10, 1999

² The Commissioner also notes that petitioner's long-standing employment as a teacher in the District remains untouched by the Board's decision not to renew his coaching contract.

³ This decision, as the Commissioner's final determination in the instant matter, 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.* 6:2-1.1 *et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.