

PATRICIA OSMAN,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE	:	
TOWNSHIP OF DELRAN,	:	DECISION
BURLINGTON COUNTY,	:	
	:	
RESPONDENT.	:	
	:	
_____	:	

SYNOPSIS

Petitioner, teaching staff member who possessed a standard NJ Instructional Certificate with two endorsements: Elementary School Teacher and Teacher of Reading, alleged that the Board improperly terminated her employment. Board contended petition was filed untimely.

The ALJ concluded that petitioner did obtain tenure in the District in the position title “teacher” at the commencement of the 1998-99 school year. The ALJ noted, however, when the Board discovered that petitioner did not possess a valid endorsement for her then current assignment, it had two choices: to reassign her to another assignment within the scope of her Elementary Education endorsement or her Reading endorsement or to file tenure charges to remove her pursuant to *N.J.S.A. 18A:6-10*. Instead, the Board summarily dismissed her and waited to see whether the N.J. State Board of Examiners would take action against her valid instructional certificate/endorsements. The ALJ found that when the Board purported to terminate petitioner’s employment without complying with the requirements of the tenure law, petitioner had 90 days within which to challenge the Board’s action. Thus, the ALJ concluded that the petition of appeal was time-barred. The ALJ ordered both the petition and the counterclaim dismissed with prejudice.

The Commissioner adopted findings and determination in Initial Decision as his own.

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner’s exceptions are duly noted as submitted in accordance with *N.J.A.C.* 1:1-18.4, and were considered by the Commissioner in rendering the within decision.

Upon careful and independent review of the record in this matter, the Commissioner concurs with the ALJ that the within petition is time-barred, and rejects petitioner’s contention that only “after she was cleared of any wrongdoing, could [she] assert her claim that she has the right of reinstatement in her tenured position with the Delran Board of Education \*\*\*.” (Petitioner’s Exceptions at p. 2) Rather, like the ALJ, the Commissioner determines that petitioner can fairly be charged, as of January 13, 1997, the date the Board terminated her employment as a tenured teacher (see Initial Decision at pp. 6, 7), absent the statutory protections afforded her by *N.J.S.A.* 18A:6-10, with knowledge of “the existence of facts that might equate in law with a cause of action \*\*\*,” thereby triggering the 90-day filing period of *N.J.A.C.* 6:24-1.2(c). (at p. 4) *Susan Beshaw v. Board of Education of the Borough of Oakland, Bergen County*, State Board decision, February 4, 1998, *aff’d* Appellate Division

March 23, 1999, A-3985-97T5) Indeed, the within Petition of Appeal recognizes that “[o]n January 13, 1997, respondent terminated, unilaterally, petitioner’s *tenured employment* purportedly pursuant to *N.J.S.A. 18A:27-2\*\*\*.*” (emphasis added) (Petition of Appeal at p. 2)

As the ALJ stated:

The basis for petitioner’s claim, herein \*\*\* is her assertion that she acquired tenure in respondent’s district and therefore could not be removed except pursuant to *N.J.S.A. 18A:6-10.* That claim was not in any way affected by the September 24, 1998 determination of the Board of Examiners. If petitioner was a tenured teacher in respondent’s district in January 1997 when it purported to terminate her employment, it was because she had taught for the requisite period of time pursuant to one of her valid endorsement. (Initial Decision at p. 6)

Even *if* the State Board of Examiners suspended or revoked petitioner’s remaining endorsements on September 28, 1998, such action *could* not have affected petitioner’s valid claim to employment in the District, based on her tenure rights, from January 13, 1997, until the date the State Board of Examiners took action.<sup>1</sup>

Accordingly, the Initial decision of the ALJ is adopted for the reasons expressed therein. The within Petition of Appeal and respondent’s counterclaim are dismissed, pursuant to *N.J.A.C. 6:24-1.2.(c)*<sup>2</sup>

IT IS SO ORDERED.<sup>3</sup>

COMMISSIONER OF EDUCATION

December 20, 1999

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<sup>1</sup> Here, the Commissioner notes that the record demonstrates that the Board’s receipt of a copy of correspondence dated January 9, 1997 from Ida B. Graham, Director of the Office of Licensing and Credentials, to the then Burlington County Superintendent of Schools indicated, in part, that “\*\*\*Ms. Osman is permitted to continue teaching under her *two legitimate certificates until such time as the Board takes action against her certificates.*\*\*\* (Supplemental Certification in Lieu of Affidavit of Dr. Carl Johnson, Superintendent of Schools, at p. 4 and Exhibit N) (emphasis added)

<sup>2</sup> Petitioner does not argue that this matter warrants the Commissioner’s relaxation of the 90-day rule, pursuant to his authority under *N.J.A.C. 6:24-1.15*

<sup>3</sup> 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.