

BLOOMFIELD EDUCATION ASSOCIATION, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE TOWNSHIP : DECISION
OF BLOOMFIELD, ESSEX COUNTY, :
RESPONDENT. :
_____ :

SYNOPSIS

Petitioning Education Association alleged the Board violated *N.J.S.A.* 18A:28-8 when it unilaterally changed the retirement/resignation date of one of its members, Benedict Salamone, from October 1, 2001 to September 4, 2001, thus depriving the member of his full salary for the month of September. Salamone had notified the Board well in advance of the 60-day written notification requirement.

The ALJ determined that there were no cases that specifically addressed the problem as factually laid out in this matter. Once formal action was taken by the Board to accept the retirement/resignation date, only very unusual circumstances would allow rescission. The ALJ concluded that by unilaterally altering the date on the basis of alleged educational continuity, the Board did deprive Salamone of his full salary for the month of September, in essence reducing his income by having him accept a pension payment in lieu of salary. The ALJ found as a matter of equity Salamone was entitled to the difference between his pension payment for the month of September 2001 and his full salary for the month from the Board.

The Commissioner adopted the Initial Decision with modification, finding resolution compelled as a matter of law. The Commissioner determined that unilaterally changing petitioner's termination of active employment date, thereby purporting to retire him prematurely and involuntarily, was tantamount to an unlawful discharge. The Commissioner noted that *N.J.S.A.* 18A:28-8, governing the resignation of tenured individuals, must be read *in pari materia* with *N.J.S.A.* 18A:6-10, which specifies the circumstances under which a tenured individual may be dismissed. The Commissioner directed the Board to pay Salamone his full salary for the month of September 2001, less the amount of pension payment received by him for that month.

<p>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.</p>

December 29, 2003

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The Board’s exceptions and petitioner’s reply thereto were filed in accordance with the provisions of *N.J.A.C.* 1:1-18.4.

The Board’s exceptions charge that the Administrative Law Judge’s (ALJ) determination in this matter was premised solely on “sympathy” for Mr. Salamone because he found the result here “inequitable and unfair.” (Board’s Exceptions at 1) However, as the ALJ recognized, there is no law, regulation or bargaining agreement which prohibited the Board’s actions in this regard. The Board argues that it is the responsibility of the OAL to interpret and apply the laws of the State. The Board’s actions here were not violative of any law or regulation. To the contrary, the Board asserts, *N.J.S.A.* 18A:28-8, which was enacted to protect boards of education by requiring teachers to provide sufficient notice of their intent to resign/retire so as to permit boards to secure replacements, specifically authorizes such action by a board.¹ As such, the Board urges the Commissioner to reverse the decision of the OAL. (*Id.* At 2)

¹ The Commissioner notes that *N.J.S.A.* 18A:28-8., **Notice of intention to resign required**, specifies:

In reply, petitioner contends that the fundamental issue to be resolved here “is the ability of a Board of Education to assign a termination date for a tenured teacher, without the teacher’s consent and without the filing of tenure charges.” (Petitioner’s Reply Exceptions at 2) Petitioner charges that the Board’s reliance on language in *N.J.S.A.* 18A:28-8 in support of its action is misplaced, professing

[c]learly the phrase indicating that the Board may approve release on shorter notice contemplates that the individual giving the notice must first have requested a period shorter than the 60 days set for[th] in the statute. It is the Board of Education’s prerogative to then “approve” a release on shorter notice if it so desires. If the Board does not so approve, it can seek to have the teacher’s certification suspended for up to one year. It must be emphasized that the statute does not give the Board of Education the right to “grant” release on shorter notice. In short, if the teacher makes a request to resign with shorter notice, the Board of Education has the right to either approve or not approve, but the statute in no way contemplates the Board of Education of its own accord giving a teacher a shorter period of notification than the teacher requested. (Petitioner’s Reply Exceptions at 2-3)

Here, petitioner argues, Mr. Salamone submitted notification of his intention to leave the District on October 1, 2001, by letter dated July 9, 2001, in full compliance with the requisite statutory notification period. The Board accepted such notification, pursuant to its terms, on July 17, 2001. At no time did Mr. Salamone request a reduced notification period but, rather, the Board, subsequently, unilaterally changed his termination date. Petitioner contends that the impropriety of such an action is readily apparent when *N.J.S.A.* 18A:28-8, which is solely applicable to tenured individuals, is read *in pari materia* with *N.J.S.A.* 18A:6-10, **Dismissal and**

Any teaching staff member, under tenure of service, desiring to relinquish his position shall give the employing board of education at least 60 days written notice of his intention, unless the board shall approve of a release on shorter notice and if he fails to give such notice he shall be deemed guilty of unprofessional conduct and the commissioner may suspend his certificate for not more than one year.

reduction in compensation of persons under tenure in public school systems, which, in pertinent part, specifies:

[n]o person shall be dismissed or reduced in compensation [if he is tenured] except for inefficiency, incapacity, unbecoming conduct, or other just cause, and then only after a hearing held pursuant to the sub-article, by the Commissioner, or a person appointed by him to act in his behalf, after a written charge or charges, of the cause or causes of the complaint, shall be preferred against such person, signed by the person or persons making the same, who may or may not be a member or members of the Board of Education, and filed and then proceeded upon as in this sub-article provided.
(Petitioner's Reply Exceptions at 4)

Such an examination, petitioner opines, evidences that there are only two ways that a board of education and a tenured teacher can permanently sever their employment relationship, *i.e.*, the tenured teaching staff member can submit a letter of resignation pursuant to *N.J.S.A.* 18A:28-8 or the board can file tenure charges against the teaching staff member pursuant to *N.J.S.A.* 18A:6-10. (*Ibid.*) As it is undisputed that Mr. Salamone provided the requisite notice, the law is clear that the only way he could have been forced to leave his employment is by the filing of tenure charges, which never happened in this matter. (*Id.* At 7) Petitioner, therefore, submits that the decision of the ALJ should be affirmed.

Upon his full and independent review of the record, Initial Decision and the parties' exception arguments, while the Commissioner agrees with and adopts the ALJ's determination that the Board improperly deprived petitioner of his full salary for the month of September 2001, he provides the following modification. Notwithstanding that there is no statutory provision which specifically addresses the effect of retirement/resignation notifications and that prior case law deals with situations where individuals sought, under various circumstances, to rescind their retirement/resignation notification subsequent to acceptance of such notifications by their boards of education rather than the question of unilateral action by a

board as occurred here, the Commissioner concludes that foundational precepts contained in these prior decisions of the Commissioner compel the outcome of this case as a matter of law.

Initially, it is well-established in school law that in the absence of statutory provisions dealing with the effect of resignations and their rescission or modification, principles of contract law are applicable. *Cutro v. Hazlet Township Board of Education*, 94 N.J.A.R. 2d (EDU) 402, *affirmed with modification* by the State Board of Education, 97 N.J.A.R. 2d (EDU) 557. The provisions of N.J.S.A. 18A:28-8 require tenured teaching staff members desiring to relinquish their position to give the employing board of education written notice of their intent to resign at least 60 days prior to their intended departure date. It is by now well recognized that upon acceptance of that letter of resignation/retirement by the board the teaching staff member does not have a right to unilaterally rescind the resignation. *See F. Rupert Belles v. Wayne Township Board of Education*, 1938 S.L.D. 556; *Kozak v. Waterford Township Board of Education*, 1976 S.L.D. 633; *Cutler v. Board of Education of the Township of Parsippany-Troy Hills*, 1990 S.L.D. 725. Ordinary principles of contract law compel the conclusion that the Board is similarly bound by the accepted terms of the resignation. Thus, petitioner's tendered notification of retirement, by letter dated July 9, 2001, with an effective date of October 1, 2001, was legally binding on both parties upon acceptance of its proffered terms by the Board on July 17, 2001, and could not thereafter be unilaterally rescinded or modified. *See Cutro*, *supra*; *Lisette R. Delgado v. BOE of the City of Union, Hudson County*, 93 N.J.A.R. 2d (EDU) 744; *Ronald Fischer v. Board of Education of the City of East Orange, Essex County*, 1988 S.L.D. 31. Therefore, the Board's subsequent action on August 28, 2001, unilaterally changing petitioner's termination of active employment date, thereby purporting to retire him prematurely and involuntarily, was tantamount to an unlawful discharge.

The Commissioner specifically rejects the Board's contention that *N.J.S.A.* 18A:28-8 provided authorization for its August 28 action. Rather, he concurs with petitioner that *N.J.S.A.* 18A:28-8, governing the resignation of tenured individuals, must be read *in pari materia* with *N.J.S.A.* 18A:6-10, which specifies the circumstances under which a tenured individual may be dismissed. To find otherwise would render meaningless tendered notification of retirement/resignation and the Board's acceptance thereof, as the Board would be free to unilaterally alter the agreement prior to the effective date, thereby serving to eviscerate the tenure protections guaranteed these individuals by law.

Accordingly, the Initial Decision of the OAL is adopted as modified herein. The Board is hereby directed to pay Mr. Salamone his full salary for the month of September 2001, less the amount of pension payment received by him for that month.

IT IS SO ORDERED.²

ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 29, 2003
Date of Mailing: December 31, 2003

² This decision 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.* 6A:4-1.1 *et seq.*