

#433-04

OAL DKT. NO. EDU 11296-03

Link to OAL Decision: http://lawlibrary.rutgers.edu/oal/html/initial/edu11296-03_1.html

AGENCY DKT. NO. 351-9/03

CHRISTINE CUTHBERTSON, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE : DECISION

CITY OF ELIZABETH, :

UNION COUNTY,¹ :

RESPONDENT. :

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), and the parties’ submissions on exception, have been reviewed.

In her exceptions, petitioner urges the Commissioner to reject the analysis and conclusion of the Administrative Law Judge (ALJ), taking issue with the ALJ’s characterization of her claim and stating that she is *not* asking to be *paid* for non-work days, but rather that she not be *docked* for non-work days. Petitioner explains:

***[Petitioner] is not claiming that she should be paid for the days in June that followed June 24 (the last day of school in the 2002-2003 school year). In fact, if petitioner were claiming that she should be paid for the non-work days remaining in June 2003, she would be requesting \$800 since there were four days in June 2003 that would normally be work days if school had not ended on June 24, 2003 -- that is, June 25, 26, 27 and 30. However, petitioner did not claim that she should be paid for non-work days. She is asserting that she should not be *docked* for non-work days. The ALJ saw this as “a distinction without a difference.” Petitioner asserts that there is a difference. She was forced to request a leave without pay because she had run out of sick days. The respondent requires

¹ The respondent is not a State-operated School District, as the caption of the Initial Decision erroneously states.

employees who have run out of sick days to request a leave of absence and grants such a leave *without* pay.

Petitioner was not on a long-term leave of absence, such as someone on a maternity leave. She had worked the entire year until her surgery on May 22, 2003. As stated in petitioner's initial brief, she is paid on a yearly basis. She is paid an annual salary which is distributed in twenty equal installments over the course of a ten (10) month school year (N.J.S.A. 18A:27-6). The number of working days varies as to each such installment period, but the amount paid does not vary. The only exception is when a deduction of salary is required by virtue of an unauthorized absence on a day when work is scheduled. Therefore, petitioner requests that her pay be docked only for the days that she should have been at work and not for the entire month of June because her contract ran to June 30, 2003. The ALJ notes that, "If the school year had to be extended through June 30, 2003, the teachers would have been required to work until then." (Initial Decision, page 8). However, that did not occur. In fact, as stated in the Stipulation of Facts, the last day of work for petitioner for the 2002-2003 school year was June 24, 2003.

(Petitioner's Exceptions at 1-3, emphasis in text)²

In reply, the Board of Education (Board) counters that petitioner's insistence on using the word "docked" (which has disciplinary connotations) is misplaced, and that the ALJ did, in fact, understand the issue correctly; indeed, in characterizing it as a claim by petitioner to be paid salary totaling \$600 for three days beyond the end of the work year, the ALJ has stated precisely what petitioner seeks. The Board also objects to petitioner's claim that she was "forced" to take unpaid leave, when the stipulated facts clearly show that, after being fully advised of her options upon exhaustion of her sick days, petitioner chose to take a leave in order to protect her pension benefits and job status. Finally, the Board objects to petitioner's attempt to argue

² Petitioner also notes an incorrect factual statement in the Initial Decision (at 3), pointing out that \$1,200 was withheld from petitioner's *June 15*, 2003 pay while her June 30, 2003 pay was withheld altogether. (Petitioner's Exceptions at 1) However, it is clear from the ALJ's Findings of Fact and Conclusions (at 8) that the ALJ's "misstatement" reflects nothing more than a lacuna in the transcription of Items 10 and 11 of the parties' joint Stipulation of Facts into the Initial Decision, and that the error had no impact on the ALJ's decision.

that she was not on a long-term leave of absence, noting that petitioner was absent approximately six weeks, an extended leave by any standard. The Board states:

***[Petitioner], like any employee on a maternity leave or other leave without pay was not paid for non-work days. As the ALJ noted, the Board was under no obligation to treat [petitioner] differently. [Petitioner] argues that her contract ran through June 30, 2003 and, therefore, she should be paid for the days after the work year ended, after June 24, 2003, as the school year was not extended past June 24, 2003, and other teachers were not required to work. However, unlike other employees who were paid through June 30, the Board could not have required her to work had the school year been extended because she was on leave.

[Petitioner] argues that the amount paid does not vary and that the only exception is when there is an unauthorized absence. The Board disagrees. Since [petitioner] did not work the full year, her distribution will be different from those employees who worked the full year. [Petitioner] claims to have worked “the entire year...” (*citation omitted*) and in the same breath states that she began her leave on May 22, 2003. May 22, 2003, was not the end of the school year, as such [petitioner] did not work the “entire year” as other employees.

[Petitioner] also argues that although teachers would have been required to work had the school year been extended through June 30, 2003, that such should be discounted because it did not occur. However, it is significant because such an extension is always real in school districts and had it occurred, [petitioner], unlike other teachers, could not have been required to work because she made herself unavailable.*** [Petitioner] requested unpaid leave from May 22, 2003 through the end of her contract year and beyond. The Board agrees with the ALJ that she received exactly what she requested. [Petitioner] is not entitled to pay for a period in which she was unavailable to work and placed on an unpaid leave. (Board’s Reply at 3-5)

Upon careful review and consideration, the Commissioner concurs with the ALJ that petitioner is not entitled to the relief she seeks. However petitioner attempts to characterize her situation, the fact remains that the days for which she asks “not to be docked” occurred at a time during which petitioner was on an *extended, pre-arranged leave of absence*, unpaid as of the date (June 6) on which petitioner exhausted all of her accumulated sick, personal and family days. Once her paid leave was exhausted,

petitioner's status by its very nature precluded any entitlement to or expectation of pay for the duration of the leave; it is of no import whatsoever that events transpired so that active teachers, i.e., those not on leave, were not required to report to work on three days falling within the unpaid leave period. In effect, with respect to the days at issue, petitioner is demanding that the Board treat her as an employee not on leave, a position which is simply not tenable under the factual circumstances of this matter.

Accordingly, for the reasons expressed therein and above, the Initial Decision of the OAL dismissing the Petition of Appeal is adopted as the final decision in this matter.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: November 3, 2004

Date of Mailing: November 3, 2004

³ 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.*