

RONALD NELSON, :
 :
 PETITIONER, : COMMISSIONER OF EDUCATION
 :
 V. : DECISION
 :
 BOARD OF EDUCATION OF THE :
 TOWNSHIP OF EAST BRUNSWICK, :
 MIDDLESEX COUNTY, :
 :
 RESPONDENT. :
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 :

SYNOPSIS

Petitioner contends that he acquired tenure rights based on his employment as a janitor in East Brunswick schools between April 2001 and June 2004, and appeals his termination by the Board following the end of the 2003-04 school year, claiming violation of tenure rights. The basis for petitioner’s claim of tenure rights is a 1955 Board resolution granting tenure to custodians after three years of employment.

The ALJ concluded *inter alia* that: the Board’s April 1995 revocation of the 1955 resolution— through approval of a board resolution which specifically revoked “Any Policy, ByLaw, Rule or Regulation for the governance of the Board” not contained in the written policy manual— negated any basis for the petitioner’s claim to tenure rights; there was no implied contract between petitioner and the Board; and the authority of a board to make and rescind tenure related resolutions, and the notice required to do so, are well supported in case law. The ALJ granted the Board’s motion for summary decision, and dismissed the petitioner’s appeal.

The Commissioner concurs with the ALJ that the petitioner was a nontenured employee hired on a contractual basis, and the Board was not required to follow tenure removal procedures in terminating his employment. The Commissioner adopts the Initial Decision as his own for the reasons expressed therein, and dismisses the petition.

<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>

OAL DKT. NO. EDU 8966-04
AGENCY DKT. NO. 356-10/04

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have petitioner's exceptions and the Board of Education's (Board) reply filed pursuant to *N.J.A.C.* 1:1-18.4.

In his exceptions, petitioner renews his contention, as previously argued before the OAL, that the Board's 1955 resolution granting tenure to custodians after three years of employment is still in effect. (Petitioner's Exceptions at 1-3) Petitioner reiterates that the Board's 1995 resolution revoking prior Board policies, on which the Administrative Law Judge (ALJ) relied in concluding that petitioner did not have tenure, did *not* nullify the Board's obligations in this regard because it did not *expressly* repeal the 1955 resolution or state a *specific* intent to discontinue custodial tenure. Citing *Newark Publishers' Association v. Newark Typographical Union*, 22 N.J. 419 (1956) as quoted with emphasis supplied in *Kirschling v. Board of Education of the Township of Pemberton*, 94 *N.J.A.R.2d* (EDU) 12, 20 (1993), petitioner urges that in deciding a

matter such as this, it is “*not the real intent but the intent expressed or apparent in the writing that controls.*” (*Id.* at 4-6)

In reply, the Board counters that, as correctly found by the ALJ, the Board had long since taken all actions necessary to formally rescind its prior regulations and policies with respect to custodial tenure. Reiterating the district’s litigation history and the uncontested intent of the 1995 resolution, and pointing to the language of the resolution itself, the Board urges: “It is beyond the pale to assert***that the words ‘any policy, bylaw, rule or regulation for the governance of the board not contained (in the written policy manual) is specifically revoked’ [do] not reflect the clear intent of the Board of Education to repeal and revoke not only the specific 1955 resolution***, but also any other unwritten rules, regulations or policies, whatever their source, which were not contained in the policy manual specifically being adopted at the 1995 Board reorganization meeting.” (Respondent’s Reply Exceptions at 2-5, quotation at 4)

Upon review, the Commissioner fully concurs with the ALJ that petitioner was a nontenured employee hired on a contractual basis, and the Board was not required to follow tenure removal procedures in terminating his employment because it had acted in 1995, six years prior to petitioner’s hiring, to nullify its 1955 resolution granting tenure to custodians after three years of employment in the district.

Like the ALJ, the Commissioner distinguishes the current matter from the earlier cases cited by petitioner, since—unlike the situation in those cases—the Board here is not relying solely on silence about custodial tenure in policy manuals or a change in practice with respect to issuance of open-ended custodial employment contracts. Instead, the Board’s position is based on an official resolution—duly adopted at a public

meeting, promulgated through distribution of manuals to every school in the district, and clear both on its face and in its genesis as a response to administrative and court rulings on the continuing effect of unrepealed policies—that *specifically* revoked *all* prior policies, regulations, etc., not contained within the Board policy manual adopted via the same resolution. In taking this action, and in repeating it at each reorganization meeting since 1995, the Board has left no doubt about its official abrogation of any past policy not included within the currently sanctioned manual, thus curing the primary defect that prevented it, in the pre-1995 cases cited by petitioner, from successfully claiming that district custodians were nontenured employees.^{1 2}

The Commissioner also rejects petitioner’s contention that the Board could not disavow its obligations to him under the 1955 resolution without express notification to the effect that, as a result of the Board’s 1995 action, custodians could no longer obtain tenure in the district. Petitioner was hired six years after the Board formally rescinded its one-time policy of granting tenure to custodial staff; there is no reference to tenure status for custodians in any Board policy manual in effect at the time of petitioner’s hire or during his employment; petitioner was employed from the outset through a series of fixed-term contracts; and the record contains no indication whatsoever—nor does the Petition of Appeal allege—that petitioner was somehow given the promise or expectation that he would acquire tenure in the district.

¹A board’s general authority to rescind prior policies is beyond question, and indeed, is assumed in the very cases cited by petitioner; the claimants in those cases prevailed only because the Board had not taken the actions necessary for such rescission.

² It is noted that this matter represents the first custodial tenure case decided subsequent to the Board’s adoption of the 1995 resolution.

Accordingly, the Commissioner finds no creditable basis for petitioner's claim, and the Initial Decision of the OAL, granting summary decision to the Board and dismissing the Petition of Appeal, is adopted for the reasons expressed therein.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: July 22, 2005

Date of Mailing: July 22, 2005

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*