

SHARON WHALEY, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE TOWNSHIP : DECISION
 OF IRVINGTON, ESSEX COUNTY, :
 :
 RESPONDENT. :
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SYNOPSIS

Petitioner – a tenured secretary in respondent’s district – challenged the respondent board’s refusal to accept her offer of resignation at a time when tenure charges of unbecoming conduct were pending against her. The charges involved petitioner’s theft of money orders submitted by applicants for substitute teaching certificates, and were held in abeyance at petitioner’s request during a criminal investigation by the Essex County Prosecutor’s Office. Petitioner pled guilty to the criminal charges, and entered a pretrial intervention program which was conditioned upon petitioner’s immediate and irrevocable forfeiture of her employment with the Board.

The ALJ found, *inter alia*, that: petitioner does not deny the substance of the conduct which resulted in her indictment on criminal charges; petitioner submitted a letter of resignation to the Board on the same day that she entered her guilty plea on the criminal charges; and the judicial forfeiture order is binding on the petitioner. The ALJ concluded that petitioner forfeited her position as a result of her acceptance into a pretrial intervention program; that the Board is under no obligation to accept her resignation in good standing; and ordered summary decision in favor of respondent.

Upon a thorough and independent review of the record, the Commissioner concurred with the ALJ that respondent Board has no obligation whatsoever to take any action with respect to petitioner’s resignation, stressing that as a consequence of the imposed conditions of her pre-trial intervention program, petitioner does not now – nor will she ever in the future – have an employment relationship with the Board. The Commissioner dismissed the petition.

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.

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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, submitted in accordance with the provisions of *N.J.A.C.* 1:1-18.4, were fully considered by the Commissioner in making her determination herein.^{1 2}

Petitioner’s exceptions support the Administrative Law Judge’s (ALJ) finding that petitioner forfeited her position with the District as of June 6, 2005, and thus – as of that date – the parties’ employment relationship was severed. She does, however, charge that the Initial Decision fails to reconcile this finding with the fact that, subsequent to this time, respondent has continued to treat petitioner’s employment status with the District “as an indefinite suspension without pay pending resolution of the criminal matter.” (Petitioner’s Exceptions at pages 5-6,

¹ Although petitioner’s submission was erroneously captioned “Brief in Support of Petitioner’s Request for Clarification of the Initial Decision of the Administrative Law Judge,” it is obvious that this filing was intended as Exceptions to the Initial Decision and it was, therefore, accepted as such. Petitioner is cautioned to in the future take care with the titling of materials, as there is no authorization for the acceptance by the Agency of any document other than “Exceptions” in connection with an Administrative Law Judge’s Initial Decision.

² It is noted that petitioner’s *faxed* submission – some 60 pages in length – included a copy of the Petition of Appeal, the Initial Decision, and a number of additional documents which were part of her filings below. As these are materials which are always included in the record before the Commissioner, it is unnecessary for parties to provide additional copies with their exceptions, particularly when transmitting by facsimile.

quote at page 6) Petitioner claims that the District's continued reporting of this status to potential employers has "unjustly interfered with [her] prospective economic advantage" by preventing her from securing gainful employment in her field. (*Id.* at page 8)

Also left unresolved in the ALJ's decision, petitioner maintains, is the status of the District's tenure charges against her. She advances that, consistent with the ALJ's finding that she forfeited her position on June 6, 2005, the District lacks authority to pursue these charges, as the maximum penalty which could be imposed as a consequence of her being found guilty of the charges is dismissal from her employment – an event which has already transpired. (*Id.* at page 6)

Upon her full and independent review of the record, the Commissioner concurs with the Administrative Law Judge (ALJ) that the Board has no obligation to take any action whatsoever with respect to petitioner's resignation because, as of June 6, 2005, – as a result of the Order of the Superior Court Judge entered on that date with regard to the conditions of her entry into the Pre-Trial Intervention Program (PTI)³ – petitioner forfeited her position with the Irvington Board of Education and was forever prohibited from seeking or accepting employment with any governmental entity in the State of New Jersey. Therefore, her employment relationship with the Board was *immediately* terminated as of that date. The Commissioner observes that the record indicates apparent confusion on the part of the parties as to the interplay of petitioner's forfeiture and the legal consequences of whether she does or does not successfully complete the PTI Program. The Commissioner stresses that petitioner's forfeiture of her position

³ PTI is a probationary type of program that enables an individual who meets certain requirements (*N.J.S.A. 2C:43-12(e)*) to avoid the prospect of a conviction if he or she successfully completes the program. When an individual is accepted into this program, he or she receives a stay of prosecution. In most cases, individuals complete the program and, subsequently, receive the benefit of dismissal of all charges. If, however, an individual does not successfully complete the program, the indictment is returned to the court trial calendar for a full disposition. (See *N.J.S.A. 2C:43-12 & 13, R. 3:28*)

and prohibitions of employment with any governmental entity in the State were conditions of her entry into PTI, not her *successful completion* of PTI. Consequently, these imposed conditions are irrevocable and will in no way be altered by the eventual outcome of her participation in this program. Inasmuch as petitioner does not now, nor will she ever in the future, have an employment relationship with the Board of Education of the Township of Irvington, the District's tenure charges against her, which were placed in abeyance in January 2005 pursuant to *Ott v. Board of Education of the Township of Hamilton*, 160 N.J. Super. 333 (App. Div. 1978), have been rendered moot.⁴

Accordingly, the Initial Decision of the OAL – as expounded upon herein – is adopted as the final decision in this matter, and the instant Petition of Appeal is hereby dismissed.

IT IS SO ORDERED.⁵

COMMISSIONER OF EDUCATION

Date of Decision: November 28, 2006

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⁴ These charges were not certified to the Commissioner but were proceeding at the preliminary District level at the time of placement in abeyance.

⁵ 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.*