

GEORGE GROSS, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE : DECISION
 TOWNSHIP OF MOUNT HOLLY, :
 BURLINGTON COUNTY, :
 :
 :
 RESPONDENT. :
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SYNOPSIS

Petitioner, a former tenured teacher who had been employed by the Board for 37 years, sought an order directing the respondent to approve the rescission of his resignation and restore him to the teaching position he held during the 2003-04 school year. Petitioner contends that he was enticed to retire based on promises made by Board employees regarding the terms and availability of future long term substitute positions, and because these promises were not kept, the Board must allow the rescission of his resignation and return him to his previous employment status. Respondent contends that the central issue in this matter is whether or not petitioner, following his retirement from the district, was promised payment for speculative employment with the Board at the substitute rate of pay or at Step 1 on the teacher salary guide.

The ALJ found, *inter alia*, that: a tendered resignation or retirement is legally binding upon acceptance by a board of education and cannot thereafter be unilaterally rescinded or modified by the staff member; no cause exists in the instant matter to support application of the doctrine of equitable estoppel; and boards of education cannot be bound by the oral representations of business administrators, superintendents, or board attorneys. Accordingly, the ALJ concluded that the Board's refusal to permit rescission of petitioner's resignation was appropriate and well within its discretionary authority, and that the petition should be dismissed.

The Commissioner concurs with the ALJ's conclusions, emphasizing that the petitioner has failed to establish that the Board's refusal to approve his attempted rescission of his retirement was arbitrary, capricious, unreasonable or violative of his tenure rights, and that this matter lacks compelling extraordinary circumstances which could serve to provide equitable justification for the rescission of petitioner's retirement. Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter, and the instant Petition of Appeal is dismissed.

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.

OAL DKT. NO. EDU 8567-04
AGENCY DKT. NO. 305-9/04

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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 and the Board’s reply thereto, filed in accordance with *N.J.A.C.* 1:1-18.4, were fully considered by the Commissioner in reaching her determination herein.

On exception petitioner essentially recasts and reiterates his arguments advanced below with respect to the applicability of the doctrines of estoppel and/or mutual mistake to this case. (Petitioner’s Exceptions, Pages 11-22) He additionally charges that the Administrative Law Judge (ALJ) either failed to resolve or incorrectly resolved numerous factual issues, which petitioner deems critical to this case, with regard to the “promises” made to him at various points in time by Board Secretary/Business Administrator Margiotta and Principal Dileo. In so doing, he maintains, the ALJ ignored the “consistent and clear testimony with vivid recollection as to statements made [by these individuals]” offered by petitioner and his witness, Frederick Gerry and instead credited the unreliable and incredible testimony of Margiotta and Dileo. Petitioner

presents detailed discussion of each of these factual issues and the resolution which, he avers, must be adduced from the true record. (Petitioner's Exceptions at pages 3-11, quote at 4) The exceptions conclude by urging the Commissioner to reject the Initial Decision and to issue an Order:

- (a) finding and declaring that Respondent's refusal to allow Petitioner to rescind his offer to resign and retire is null, void, and of no effect;
- (b) deeming Petitioner's resignation to be rescinded;
- (c) directing Respondent to take all actions necessary and proper to restore Petitioner to the position of employment he held during the 2003-04 school year, together with all benefits, emoluments, and advantages including tenure and seniority, to which he would have been entitled had Respondent allowed him to rescind his resignation and retirement as he had requested; and
- (d) granting Petitioner any and all other relief and remedies which are appropriate and to which he is lawfully entitled.
(Petitioner's Exceptions, Page 23)

The Board's reply exceptions advocate the correctness of the ALJ's decision and urge its adoption by the Commissioner.

Upon a careful and independent review of the record – which included transcripts of one of the two days of hearing¹ – the Commissioner, finding petitioner's exceptions wholly without merit, is in accord with the ALJ's conclusion that petitioner has failed to establish that the Board's refusal to approve his attempted rescission of his retirement was arbitrary, capricious, unreasonable or violative of his tenure rights.²

¹ The Initial Decision recites that hearing in this matter was conducted on November 1 and 2, 2005. Transcripts for only November 1, 2005 were included in the record. However, the record evidences that the November 2, 2005 proceedings may have been conducted, on limited issues, by telephone.

² With respect to petitioner's challenge to the ALJ's credibility determinations in this matter, the Commissioner "may not reject or modify any findings of fact as to issues of credibility of lay witness testimony unless it is first determined from a review of the record that the findings are arbitrary, capricious or unreasonable or are not

It is uncontroverted that, by letter dated February 2, 2004, petitioner notified the Board that he was taking advantage of the Board of Education's Enhanced Sick Leave Sell Back Plan and would be retiring at the end of the 2003-04 school year. The Board adopted a resolution accepting petitioner's retirement notice at a Special Meeting on February 5, 2004. The seminal issue in this matter is whether the school laws provide petitioner with the entitlement to rescind his resignation/retirement under the specific circumstances of this case. Initially, in this regard, it is by now a long-accepted precept in school law that a submitted resignation/retirement is legally binding upon acceptance by a board and cannot subsequently be unilaterally modified or rescinded by either the teaching staff member or the Board. *See F. Rupert Belles v. Wayne Township Board of Education*, 1938 S.L.D. 556; *Kozak v. Waterford Township Board Education*, 1976 S.L.D. 633; *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; *Bloomfield Education Association v. Board of Education of the Township of Bloomfield*, decided by the Commissioner December 29, 2003. Despite this well-recognized maxim, New Jersey courts have felt compelled, on rare occasion in a few unique education law cases, to provide relief to petitioners - in the face of situations involving extraordinary equitable considerations - by relaxing the strict mandate of this rule in order to prevent what they perceived as abject injustice. *See Hall v. Jefferson Board of Education*, 125 N.J. 299 (1991) and *Evaul v. Board of Education of the City of Camden*, 35 N.J. 244 (1961) (details of which are discussed by the ALJ on Page 10 of the Initial Decision). The instant petitioner professes that similarly compelling extraordinary equitable circumstances, entitling him to rescission of his retirement, are present in this matter.

supported by sufficient, competent and credible evidence in the record." N.J.S.A. 52:14B-10(c). The record before the Commissioner provides no cause for modification or rejection in this regard.

Petitioner claims entitlement to rescission on two alternative theories, *i.e.*, 1) equitable estoppel and 2) mutual mistake of the parties. As to estoppel – this theory of recovery requires that an individual prove: 1) that there was a clear and definite promise; 2) that the promise was made with the expectation that the promisee would rely on it; 3) that the petitioner *reasonably* relied on the promise; and 4) that the promise resulted in a detriment in reliance thereon. *Peck v. Imedia, Inc.*, 293 N.J. Super. 151, 165 (App. Div. 1966) (emphasis supplied) Even assuming, *arguendo*, that certain representations or promises may have been made to petitioner by Ms. Margiotta, the Board’s Secretary/Business Administrator and/or Mr. Dileo, Principal of the Holbein School, the Commissioner rejects out-of-hand petitioner’s claim of estoppel as she, initially, finds no merit in his contention that he properly and reasonably relied on these District administrators as having the authority to grant him the deal he sought, thereby rendering the representations and/or promises of these individuals as binding on the Board. It is long-settled in education law that the representations of individual board members or administrators are insufficient to bind a board to a particular course of action. *See e.g.*, *Harold A. Vandebren v. Board of Education of the School District of Wanaque*, 1967 S.L.D. 4, *aff’d* State Board of Education; 1967 S.L.D. 6; *Alice W. Cardman and Millburn Education Association v. Board of Education of the Township of Millburn*, 1977 S.L.D. 746; *Cheryl Dorrington v. North Bergen Board of Education*, 1982 S.L.D. 247; *Kevin Griffin v. Board of Education of the City of Paterson*, 93 N.J.A.R. 2d (EDU) 882. Rather, here, as in *Dorrington*, *supra*:

An examination of the [full] record reveals that the Board committed itself not at all to petitioner, but that petitioner mistakenly relied on the opinions and assurances of [Board administrators] in concluding that a commitment had been made. Such reliance was misplaced, since opinions and assurances cannot stand in the stead of deliberate Board action.

Dorrington at 256, quoting *Anna Brennan v. Board of Education of the City of Pleasantville*, 1977 S.L.D. 1059.

The Commissioner further concludes that it is inconceivable that petitioner, as a professional educator with 37 years experience in the District's employ, would be unaware of this hierarchical nature of public education. Additionally, the Commissioner concurs with the ALJ, for the reasons clearly detailed in the Initial Decision at pages 12-13, that, - particularly in light of the speculative rather than guaranteed nature of any possible future employment opportunities in the District - there is nothing upon which petitioner could have or should have relied to his detriment. It is, therefore, evident that the Board is not estopped from asserting that no agreement existed between it and petitioner which might serve to require it to allow rescission of his proffered retirement.

Similarly rejected is petitioner's argument that rescission of his retirement is justified on the grounds of mutual mistake by the parties. The Commissioner is in full agreement with the ALJ's analysis and conclusion that Teachers Pension Annuity Fund Fact Sheet #28 has no applicability or bearing under the circumstances of this matter and, therefore, "there was no mutual misunderstanding of the 'law' warranting rescission of [petitioner's] retirement." (Initial Decision Pages 15-16, quote at 16)

In light of the above, the Commissioner finds and concludes that this matter lacks the compelling extraordinary circumstances such as those present in *Hall* and *Evaul* which could serve to provide equitable justification for the rescission of petitioner's retirement.

Accordingly, the Initial Decision of the OAL, as explicated above, is adopted as the final decision in this matter and the instant Petition of Appeal is hereby dismissed.

IT IS SO ORDERED.³

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 1, 2006

Date of Mailing: September 1, 2006

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.*