

THOMAS LYGATE,	:	
	:	
PETITIONER,	:	COMMISSIONER OF EDUCATION
	:	
V.	:	DECISION
	:	
BOARD OF EDUCATION OF	:	
THE BOROUGH OF CARTERET,	:	
MIDDLESEX COUNTY,	:	
	:	
RESPONDENT.	:	

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SYNOPSIS

Petitioner – a former assistant to the school business administrator/accountant who had settled a federal lawsuit against the respondent Board of Education through a written agreement providing payment for lost wages and benefits together with employment effective October 1, 2005 in a twelve-month, non-tenured position pursuant to a one-year contract – contended that he had acquired tenure by virtue of the settlement together with his employment during the 2000-01 and 2001-02 school years, and that the Board’s nonrenewal of his employment for the 2006-07 school year violated his tenure rights. Among other defenses, the Board contended that the appeal was untimely filed pursuant to the 90-day rule at *N.J.A.C. 6A:3-1.3(i)*.

The ALJ concluded that the appeal was not untimely filed, since – notwithstanding that the petitioner had received prior notice of nonrenewal from the district superintendent – he had no actionable claim until November 21, 2006, when the Board acted to eliminate his position, and the appeal was filed within 90 days of that date. However, the ALJ dismissed the petition on substantive grounds, concluding that payment of lost wages pursuant to a settlement agreement does not constitute employment for tenure acquisition purposes, so that petitioner lacked the requisite years of service to obtain tenure.

The Commissioner concurred that the petition should be dismissed, but modified the basis for so doing. Expressing no opinion on the merits of the appeal, the Commissioner found that the petition was untimely filed and that relaxation of *N.J.A.C. 6A:3-1.3(i)* was not warranted under the circumstances. The Commissioner noted that, pursuant to well-established case law, a petitioner whose cause of action arises out of nonrenewal of employment must – unless facts necessary to make a claim are unknown at the time – file a petition within 90 days of the notice of nonrenewal. The Commissioner found that the superintendent’s letter advising the petitioner of his nonrenewal provided all the notice necessary for him to claim a violation of tenure rights, and that there was no need for his position to be abolished by the Board in order to make such claim.

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 2660-07  
AGENCY DKT. NO. 51-2/07

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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 the petitioner’s exceptions and the Board of Education’s (Board) reply, both timely filed in accordance with *N.J.A.C. 1:1-18.4* and *1:1-18.8*.

In his exceptions, the petitioner urges rejection of the Initial Decision, renewing at length the arguments previously raised at the OAL in support of his position. (Petitioner’s Exceptions at 1-18) In reply, the Board – although objecting to the petitioner’s “wholesale attempt to reargue the Petition” – addresses the petitioner’s major points by reiterating its own prior counter-arguments and endorsing the conclusions of the Administrative Law Judge (ALJ). (Board Reply at 1-5, quotation at 2)<sup>1</sup>

Upon review, for the reasons that follow, the Commissioner concurs with the ALJ that summary decision in this matter is appropriately granted to the Board.

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<sup>1</sup> The parties’ exceptions are not further elaborated herein, since – notwithstanding the Commissioner’s careful consideration of them – the arguments they raise are sufficiently summarized in the Initial Decision.

She does so, however, without reaching the merits of the dispute, finding instead that the petition of appeal – contrary to the conclusion of the ALJ – was untimely filed.

Initially, for the reasons expressed in the Initial Decision, the Commissioner concurs with the ALJ that the petitioner's cause of action in this matter arose upon notice that his employment would not be continued beyond the expiration of his contract on September 30, 2006 – not upon ratification in October 2005 of the settlement agreement providing him with a one-year nontenured employment contract. (Initial Decision at 13-14)

The Commissioner cannot concur, however, with reckoning the point of such notice as the Board's November 21, 2006 action eliminating the petitioner's position. (Initial Decision at 14-15) It is by now well established that a petitioner whose cause of action arises out of the nonrenewal of his or her employment must – unless facts necessary to make a claim are unknown at the time – file a petition within 90 days of the *notice of nonrenewal*, and that the running of the regulatory limitations period is not tolled by the possibility that the petitioner might ultimately persuade the board to offer reemployment through statutory and regulatory mechanisms provided for this purpose. *N.J.S.A.* 18A:27-4.1 (a nontenured employee who is not recommended for renewal by the chief school administrator shall be deemed nonrenewed, but shall be permitted to appear before the board of education to convince it to offer reemployment); *N.J.A.C.* 6A:32-4.6 (procedures for informal appearance before the board); *Cordell Wise v. Board of Education of the City of Trenton, Mercer County*, Commissioner's Decision No. 301-00, decided September 11, 2000, affirmed by the State Board of Education January 3, 2001 (State Board Decision No. 58-00); *Victor Eisenberg v. Board of Education of the*

*Borough of Fort Lee, Bergen County*, State Board of Education Decision No. 43-02, decided November 5, 2003 (reversing Commissioner's Decision No. 356-02L, decided October 3, 2002); *Tatiana Charapova v. Board of Education of the Township of Edison, Middlesex County*, State Board of Education Decision No. 30-06 decided August 1, 2007 (reversing Commissioner's Decision No. 224-06, decided June 20, 2006); *Drew Bradford v. Board of Education of the Township of Union, Union County*, Commissioner's Decision No. 61-07, decided February 14, 2007, affirmed by the State Board of Education June 6, 2007 (State Board Decision No. 5-07).

Here, the petitioner was clearly notified by letter dated August 28, 2006 that the chief school administrator was not recommending him for reemployment. Receipt of this letter – which occurred on or before September 4, 2006, as evidenced by the superintendent's September 13, 2006 follow-up communication<sup>2</sup> – provided all the notice needed for the petitioner to claim that his employment was being discontinued in violation of his tenure rights; there was no need for the position he held to be abolished by the Board in order for him to make such claim. Consequently, the February 21, 2007 petition of appeal in this matter – even granting every inference to the petitioner with respect to the aforementioned notices – was filed well beyond its latest possible due date in mid-December 2006. Moreover, the Commissioner finds nothing in the record or circumstances of this matter to warrant relaxation of the established limitations period pursuant to *N.J.A.C. 6A:3-1.16*; rather, the greater interest lies in its enforcement. *Kaprow v. Board of Educ. of Berkeley Tp.*, 131 N.J. 572 (1993)

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<sup>2</sup> This letter was written in response to a September 4, 2006 communication from the petitioner (not in the record) and states that the nonrenewal was due to budgetary constraints.

Accordingly, the Commissioner adopts the recommendation of the OAL granting summary decision to the Board and dismissing the petition of appeal as her final decision in this matter, but modifies the basis for such holding as set forth above.<sup>3</sup>

IT IS SO ORDERED.<sup>4</sup>

COMMISSIONER OF EDUCATION

Date of Decision: March 17, 2008

Date of Mailing: March 18, 2008

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<sup>3</sup> Having found it unnecessary to reach the ALJ's substantive findings and conclusions because the petitioner's claim is barred on procedural grounds, the Commissioner notes that no opinion on the merits of the appeal is herein expressed or should be inferred.

<sup>4</sup> 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.*

