

#420-12 (OAL Decision: Not available online)

ANABEL GUTIERREZ, :
PETITIONER, : COMMISSIONER OF EDUCATION
V. : DECISION
BOARD OF EDUCATION OF THE :
CITY OF ELIZABETH, UNION :
COUNTY, :
RESPONDENT. :

SYNOPSIS

In August 2010, petitioner – a tenured teacher in respondent’s school district – appealed the decision of the respondent Board to terminate her employment through a reduction in force (RIF) in June 2010. Petitioner asserted that the Board terminated her employment in contravention of her tenure and seniority rights under *N.J.S.A. 18A:28-5 et seq.*, and sought reinstatement and back pay retroactive to the date of her termination.

The ALJ found that: petitioner failed to appear for a hearing in this matter on July 30, 2012, despite having received appropriate notice; attorney for the petitioner appeared at the hearing and confirmed on record her ongoing inability to reach her client, but asked for additional time to contact her client. The ALJ extended the time for petitioner to respond until August 2012, but heard nothing further until a letter from counsel on September 13, 2012 advising that petitioner was still unresponsive to all attempts at communication. Accordingly, the ALJ concluded that petitioner had abandoned this matter and ordered the case returned to the Department for appropriate disposition.

Upon careful and independent review, the Commissioner concurred with the ALJ’s findings and conclusions and, accordingly, adopted the Initial Decision of the OAL as the final decision in this matter. The petition was dismissed.

<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>

October 26, 2012

ANABEL GUTIERREZ, :
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Petitioner was a tenured teacher in respondent’s district and one of hundreds of employees terminated by respondent in June 2010. She was also one of approximately eighty employees who appealed respondent’s action as violative of the tenure laws in place at the time.

As explained in the Initial Decision of the Office of Administrative Law (OAL), due to the commonality of the issues in most of the above-referenced eighty petitions, they were managed together. Ultimately, a hearing was set for July 30, 2012 and each petitioner was so advised by a notice from the OAL – which notice warned that the petitioner’s “APPEARANCE [WAS] MANDATORY. FAILURE TO APPEAR [WOULD] RESULT IN DISMISSAL OF [HER] PETITION.” A copy of the notice sent directly to the instant petitioner is in the file for this case.

Notwithstanding the notice, petitioner did not appear at the July 30 hearing. Her counsel, who did appear, represented that she had attempted to contact petitioner to discuss the need for petitioner’s appearance, but was unable to reach her.

As no explanation for her non-appearance was received from petitioner subsequent to the hearing, the Administrative Law Judge concluded that petitioner had abandoned her appeal and directed that the file be returned to the Department of Education pursuant to *N.J.A.C. 1:1-14.4(a)*. The Commissioner similarly concludes that the appeal has been abandoned, and dismisses the petition for petitioner's failure to prosecute.

IT IS SO ORDERED.¹

COMMISSIONER OF EDUCATION

Date of Decision: October 26, 2012

Date of Mailing: November 1, 2012

¹ This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*.