

KEVIN GOETZ, :

PETITIONER, : COMMISSIONER OF EDUCATION

V. : DECISION

BOARD OF EDUCATION OF THE :
TOWNSHIP OF FREEHOLD, :
MONMOUTH COUNTY :

RESPONDENT. :

SYNOPSIS

Petitioner – who was hired by the respondent Board in March 2005 as a Technology Education teacher – alleged that his termination as the result of a reduction in force (RIF) was a violation of his tenure and seniority rights pursuant to *N.J.A.C. 6A:32-5.1*. The respondent Board contended that the petitioner resigned prior to the RIF and therefore relinquished his tenure and seniority rights in the school district. The Board filed a motion for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue, and the matter is ripe for summary decision; petitioner was notified on December 15, 2013 that his position would be abolished for the 2014-2015 school year; petitioner was encouraged by the Board to seek employment elsewhere; petitioner secured employment in another school district that was to begin immediately, which resulted in his submission of a letter of resignation on March 19, 2014; this letter was accepted by the Board on March 25, 2014; after the petitioner’s resignation – on April 8, 2014 – the Board passed a resolution to conduct a RIF; ultimately, petitioner was unable to take the position he had secured because of a change in his circumstances; petitioner contended that he attempted to rescind his resignation, and was told to submit an email requesting that his resignation to be extended until June 30, 2014; the Board approved this extension; and it is undisputed that petitioner never made a formal request to the Board to rescind his resignation. The ALJ concluded that the law is clear that an employee’s resignation extinguishes any tenure rights that employee may have had. Accordingly, the ALJ granted summary decision in favor of the Board, and dismissed the petition.

Upon review, the Commissioner concurred with the ALJ’s findings and conclusions, and adopted the Initial Decision of the OAL as the final decision in this matter, with prejudice. The petition was 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 7546-16
AGENCY DKT. NO. 120-4/16

KEVIN GOETZ, :
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 PETITIONER, : COMMISSIONER OF EDUCATION
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 V. : DECISION
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The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. The parties did not file exceptions to the Initial Decision.

Upon such review, the Commissioner adopts the Administrative Law Judge's recommended decision for the reasons expressed therein. Accordingly, the petition is dismissed with prejudice.

IT IS SO ORDERED.*

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 2, 2017

Date of Mailing: March 2, 2017

*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).



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDU 7546-16

AGENCY DKT. NO. 120-4/16

KEVIN GOETZ,

Petitioner,

v.

**TOWNSHIP OF FREEHOLD BOARD OF
EDUCATION, MONMOUTH COUNTY,**

Respondent.

James J. Uliano, Esq., for petitioner (Chamlin, Rosen, Uliano and Witherington,
attorneys)

Daniel R. Roberts, Esq., for respondent (Kenney, Gross, Kovats and Parton,
attorneys)

Record Closed: December 5, 2016

Decided: January 17, 2017

BEFORE **LISA JAMES-BEAVERS**, ALJ:

STATEMENT OF THE CASE

Petitioner Kevin Goetz (petitioner) alleges his termination by respondent Freehold Township Board of Education (Board) as a result of a reduction in force (RIF)

was in violation of his tenure and seniority rights pursuant to N.J.A.C. 6A:32-5.1. The Board counters that petitioner resigned prior to the RIF and therefore relinquished his tenure and seniority rights.

PROCEDURAL HISTORY

On April 29, 2016, petitioner filed a petition of appeal against the Board with the New Jersey Department of Education Office of Controversies and Disputes. On May 18, 2016, the Board filed an answer. The Office of Controversies and Disputes transmitted the petition and answer to the Office of Administrative Law where they were filed on May 20, 2016, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to -13, for determination as a contested case.

I issued a prehearing order on August 26, 2016, setting a hearing date of December 20, 2016, and setting a motion schedule requiring that dispositive motions be filed by November 4, 2016. On November 4, 2016, the Board filed a motion for summary decision arguing there were no material facts in dispute and the Board was entitled to judgment as a matter of law. On November 22, 2016, petitioner filed opposition to the motion. On December 5, 2016, the Board filed a reply to the opposition and the record closed. The hearing date was adjourned in light of the motions. I now grant the Board's motion for summary decision.

FACTUAL DISCUSSION

Petitioner Kevin Goetz was hired by the Board on or about March 14, 2005, as a Technology Education teacher. Petitioner's Statement of Material Facts, ¶2. At all applicable times, petitioner held a teaching certificate with a Teacher of Industrial Arts endorsement. Id. at ¶3. Petitioner served as a Technology Education teacher from the time he was hired until June 30, 2014. Id. at ¶4.

On or about December 15, 2013, petitioner met with Dianne Brethauer, Principal of the Dwight D. Eisenhower Middle School, located in the Board's district. Board's

Counterstatement of Material Facts, ¶1. At that meeting, Principal Brethauer informed petitioner that his position would be abolished for the 2014-2015 school year and encouraged petitioner to seek employment elsewhere. Ibid. Petitioner indicated that he was interested in replacing the retiring digital arts teacher. Id. at ¶3. In January 2014, petitioner met with Assistant Superintendent Neil Dickstein, who informed petitioner that he was ineligible to teach the digital arts class because he did not hold an art degree. Id. at ¶4. The Assistant Superintendent further advised petitioner that there were no available jobs for him in the district. Ibid.

As the result of this news, petitioner secured employment in North Plainfield, New Jersey. Id. at ¶6. The position was to begin immediately. Ibid. On or about March 19, 2014, petitioner submitted an e-mail to Superintendent Ross Kasun, with a carbon copy to Principal Brethauer and Human Resources Department Manager Ann Lenahan, stating: "Please be advised that I am resigning my teaching position as of today March 19, 2014. I anticipate my last day to be May 16, 2014." Exhibit A. On March 25, 2014, at its regular meeting, the Board accepted petitioner's letter of resignation. Exhibit B, p. 3, 5. On or about April 8, 2014, the Board formally approved a reduction in force (RIF), citing declining enrollment and budgetary constraints. Exhibit D, pp. 6-7.

During the period of time between March 19, 2014 and May 16, 2014, petitioner's circumstances changed and he was unable to take the position that he had secured in North Plainfield. Board's Counterstatement of Material Facts, ¶7. Petitioner contends that he approached the administration to rescind his resignation and was told to submit an e-mail asking for his resignation to be extended until June 30, 2014. Id. at ¶8. On or about May 13, 2014, petitioner sent an e-mail to HR Manager Lenahan, with a carbon copy to Assistant Superintendent Dickstein, writing: "I would like to request that my resignation slated for May 16 be extended to June 30. Thank you for all your help in this matter." Exhibit E. At its regular meeting on May 14, 2014, the Board approved petitioner's request to extend his resignation date. Exhibit E, p. 10. Although petitioner alleges that he advised school administration of his desire to rescind his resignation, it is undisputed that petitioner never made a request to the Board to rescind his resignation.

Petitioner's Statement of Material Facts, ¶11; Board's Response to Material Statement of Facts, ¶11. Petitioner worked through June 30, 2014, and subsequently accepted a position with the Lacey Township Board of Education. Petitioner's Counterstatement of Material Facts, ¶9.

LEGAL DISCUSSION

In a contested case, a motion for summary decision may be granted “if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law.” N.J.A.C. 1:1-12.5(b). Under this regulation, which is akin to the judiciary’s motion for summary judgment, see R. 4:46-1, “the determination [of] whether there exists a genuine issue with respect to a material fact challenged requires . . . a consideration of whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party in consideration of the applicable evidentiary standard, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party.” Brill v. Guardian Life Ins. Co., 142 N.J. 520, 523 (1995). In making this determination, the analysis is “whether the evidence presents a sufficient disagreement to require submission to a [fact finder] or whether it is so one-sided that one party must prevail as a matter of law.” Id. at 533-34. Summary decision is also proper when the opposing party “points only to disputed issues of fact that are ‘of an insubstantial nature.’” Id. at 529.

Previous administrative decisions have made clear that an employee’s tenure rights are extinguished upon his resignation. Janik v. Camden Bd. of Educ., OAL Dkt. No. EDU 6608-97, initial decision (July 22, 1998), adopted, Comm’r (September 4, 1998) <<https://njlaw.rutgers.edu/collections/oal/html/initial/edu6608-97.html>>. Further, “[w]hen a teacher submits a voluntary and unconditional letter of resignation, which is accepted by the Board, the individual has no automatic right to rescind the resignation.” Murray v. N. Highlands Reg’l Bd. of Educ., 92 N.J.A.R.2d (EDU) 335, aff’d, State Board, 96 N.J.A.R.2d (EDU) 351, at 15. “A teaching staff member may withdraw her

resignation before it is accepted by the school board . . . However, a school board's acceptance of a teaching staff member's offer of resignation terminates the teaching staff member's employment, and a subsequent withdrawal is ineffectual after its acceptance.” Eberwein-O'Donnell v. Winslow Twp. Bd. of Educ., OAL Dkt. No. EDU 9323-10 (May 1, 2012), adopted, Comm'r, (July 16, 2012) <https://njlaw.rutgers.edu/collections/oal/final/edu9323-10_1.pdf> (internal citations omitted).

In Janik, supra, the petitioner, a tenured Director of Vocational Education, was informed on May 7, 1997 that his position would be eliminated effective June 30, 1997. The petitioner claimed that he was entitled to tenure as a principal, and the board denied the claim on June 16, 1997. On June 18, 1997, the petitioner sent a letter to the board advising that he would be retiring on July 1, 1997, and the board accepted the letter on June 30. On July 18, 1997, the petitioner filed a petition of appeal, arguing that he was entitled to a principal position following the RIF.

The ALJ granted summary decision to the board, holding that the petitioner's resignation terminated his tenure rights. The ALJ noted that when the petitioner filed his petition of appeal, he

had no employment relationship or tenure rights with respondent to preserve. His employment with respondent and all rights concomitant thereto, were severed on June 30, 1997, when he completed his employment and retired. The fact that petitioner expressed his disagreement with respondent's legal conclusions concerning his tenure entitlements prior to conclusion of his employment, is irrelevant; when petitioner filed the petition of appeal he had no standing to make any of the claims set forth therein because he no longer had any employment relationship with respondent.

[Id. at 7.]

For these reasons, the ALJ concluded that the petitioner lacked standing to raise the tenure claims set forth in the petition of appeal and granted summary decision in the school board's favor.

In the present matter, there is no dispute as to any of the material facts; accordingly, the matter is ripe for summary decision. The following facts are undisputed: Petitioner submitted a letter of resignation on March 19, 2014, and the Board accepted his resignation on March 25, 2014. Petitioner subsequently requested that his resignation be extended to June 30, 2014, and the Board approved this extension. Petitioner never made any request to the Board to rescind his resignation. Based on these facts, petitioner's employment relationship was severed upon the Board's acceptance of his resignation, and he has no tenure rights to preserve. Thus, summary decision in the Board's favor is appropriate.

Petitioner argues that there are disputes as to "the circumstances surrounding the RIF and both parties' actions from the period of time from December 2013 through June 2014." Petitioner's Opposition Brief, p. 1. According to petitioner, he was notified on December 15, 2013 that his position would be eliminated for the following school year, and the principal of the school encouraged petitioner to seek employment elsewhere. Petitioner had indicated that he wanted to replace the retiring digital arts teacher, but the Assistant Superintendent informed petitioner that he was ineligible to teach the class because he did not hold an art degree. The Assistant Superintendent further indicated that there were no available jobs for petitioner in the district. After receiving this information, petitioner secured employment with another district, and thus tendered his resignation with the Board. Petitioner was ultimately unable to take the new position. Petitioner states that he approached the administration to rescind his resignation and was told to submit an e-mail asking for the resignation to be extended until June 30, 2014. It is undisputed, however, that petitioner never made a request to the Board to rescind his resignation.

Even if the facts as presented by petitioner are true, they do not alter the effect of petitioner's resignation under the law. Like in Janik, supra, it is irrelevant that petitioner expressed interest in another teaching position prior to the conclusion of his employment. When petitioner filed his Petition of Appeal, he had already ended his employment relationship with the Board and had no standing to make tenure claims.

Petitioner denies ¶7 of the Board's Statement of Material Facts, which reads, "On or about April 8, 2014, the Board determined to conduct a reduction in force. The RIF eliminated one teacher of Health and Physical Education, and one teacher of Industrial Arts/Technology Education. The RIF was effective June 30, 2014. Dickstein Cert., ¶8." The minutes from the Board's April 8, 2014 regular meeting reflect the Board's approval of a reduction in force, eliminating one teaching position in Health and Physical Education and one position in Industrial Arts/Technology Education. Exhibit D, p. 6. There is one discrepancy -- while the minutes indicate that the RIF would become effective on July 1, 2014, the Board's Statement of Material Facts indicates that it would become effective on June 30, 2014. Id. at 7. Nevertheless, the undisputed facts show that petitioner's resignation was accepted by the Board, thus cutting off any tenure rights that petitioner may have had.

Petitioner also denies ¶9 of the Board's Statement of Material Facts, which reads, "Petitioner was not provided with any notice of the RIF, as he had already resigned his position. Dickstein Cert., ¶8." The record makes clear that petitioner resigned his teaching position as of March 19, 2014. The Board approved his resignation on March 25, 2014. Thus, by the time the Board passed the resolution to conduct a RIF on April 8, 2014, petitioner had already resigned. Petitioner argues that he was told orally that there would be a RIF prior to his resignation. Petitioner's Opposition Brief, p. 2. However, regardless of when petitioner first learned that there would be a RIF, petitioner's resignation severed his employment relationship with the Board. Petitioner cannot invoke tenure rights that no longer exist.

CONCLUSION

I **CONCLUDE** that the facts, as presented by petitioner, do not demonstrate a material factual dispute. It is undisputed that petitioner submitted a letter of resignation, and the Board accepted his resignation. The law makes clear that an employee's resignation extinguishes any tenure rights he may have had. For these reasons, summary decision is appropriately granted in the Board's favor.

ORDER

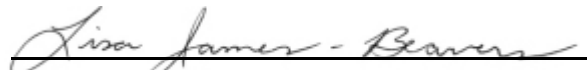
Based on the foregoing, I **ORDER** that the Board's motion for summary decision is hereby **GRANTED** and petitioner's appeal **DISMISSED**.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

January 17, 2017
DATE


LISA JAMES-BEAVERS, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

cmo