

EDWARD HENDRICKSON, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE : DECISION

CITY OF RAHWAY, UNION COUNTY :

AND RAY LOPEZ, BOARD MEMBER, :

RESPONDENTS. :

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SYNOPSIS

On September 27, 2017, petitioner appealed the respondent Board’s decision not to renew his annual contract as Buildings and Grounds Manager at the end of the 2016-2017 school year. Petitioner was notified by letter dated June 9, 2017 that his employment would be discussed and acted on at one of two June Board meetings. Subsequently, on June 28, 2017, petitioner was notified that the Board had voted not to renew his contract for the upcoming school year, and he was relieved of his duties that day. Petitioner’s appeal asserted, *inter alia*, that the June 27, 2018 Board vote on his employment renewal was improper; he requested that the Board reconvene to vote on a motion to extend his employment contract and to pay his salary pending a vote on the motion. The Board filed a motion for summary decision, contending that petitioner’s appeal was filed out of time, and that the petition failed to state a valid claim for relief.

The ALJ found, *inter alia*, that: there are no material facts at issue herein, and the matter is ripe for summary decision; petitioner had notice of the Board’s decision to non-renew his contract no later than June 28, 2017; pursuant to *N.J.A.C. 6A:3-1.3(i)*, petitioner was required to file his appeal within ninety days of final notice of the Board’s action, or no later than September 26, 2017; in this case, the petitioner filed his appeal on September 27, 2017, thereby failing to comply with the ninety-day rule; and petitioner has failed to establish exceptional circumstances or a compelling reason to relax the statutory deadline for filing. Accordingly, the ALJ granted the Board’s motion for summary decision 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. 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 14934-17  
AGENCY DKT. NO. 229-9/17

EDWARD HENDRICKSON, :  
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 PETITIONER, :  
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 V. : COMMISSIONER OF EDUCATION  
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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 review, the Commissioner concurs with the ALJ's determination – for the reasons stated in the Initial Decision – that the petition of appeal was time barred under *N.J.A.C. 6A:3-1.3(i)*. The Commissioner, likewise, concurs that petitioner has failed to set forth any compelling reason to relax the timely filing requirement. Accordingly, the Initial Decision is adopted as the final decision in this matter and the petition of appeal is dismissed.

IT IS SO ORDERED.<sup>1</sup>

ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 13, 2018  
Date of Mailing: April 13, 2018

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<sup>1</sup> This decision may be appealed to the Appellate Division of the Superior Court 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 14934-17

AGENCY DKT. NO. 229-9/17/1

**EDWARD HENDRICKSON,**

Petitioner,

v.

**BOARD OF EDUCATION OF THE  
CITY OF RAHWAY, UNION COUNTY  
AND RAY LOPEZ, BOARD MEMBER,**

Respondents.

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**David Rostan**, Esq., for petitioner (Law Office of David Rostan, attorneys)

**Fred Shahrooz-Scampato**, Esq., for petitioner (Law Offices of Fred Shahrooz-Scampato, attorneys)

**Margaret A. Miller**, Esq., for respondents (Weiner Law Group, attorneys)

Record Closed: February 15, 2018

Decided: March 5, 2018

BEFORE **SUSANA E. GUERRERO**, ALJ:

Respondents, the Board of Education of the City of Rahway (“Board”) and Board Member Ray Lopez (collectively “respondents”) filed a motion seeking summary decision on the basis that Edward Hendrickson’s (“petitioner” or “Hendrickson”) petition

was untimely filed; and that the Board's vote that resulted in not renewing Hendrickson's employment was proper and fully in accordance with applicable law. Petitioner opposes the motion.

### **FACTUAL BACKGROUND**

Petitioner was employed by the Board as a Building and Grounds Manager for the Rahway Public Schools ("District") beginning in February 2011. His contract of employment extended for the remainder of the 2011/2012 school year. In May 2011, he was reappointed for the 2012/2013 school year, and was subsequently reappointed for employment by the Board in May of every year through the 2016/2017 school year. Petitioner's contract of employment for the 2016/2017 school year was due to expire on June 30, 2017. By letter dated June 9, 2017, Rahway's Superintendent of Schools advised petitioner that his employment would be discussed at the June 13, 2017 Board meeting and that action would be taken at that meeting or at the June 27, 2017 meeting.

On June 27, 2017, the Board considered Hendrickson's employment and the Superintendent's recommendation that petitioner be reappointed for a six-month period (July 1, 2017 through December 31, 2017) rather than a one-year term. The Board consisted of nine members, and the motion to reappoint petitioner for six months resulted in a vote of three ayes, three nays; with the additional three Board Members absent. Board member Ray Lopez was one of the three members who voted not to renew petitioner's employment contract.

On June 28, 2017, the day following the Board's vote, the Board's Secretary/Business Administrator informed Hendrickson of the Board's vote. Petitioner was relieved of his duties at that time, and turned in his keys to the District buildings and vehicle. He did not return to work for the District after June 28, 2017 and his contract of employment expired on June 30, 2017.

On September 27, 2017, petitioner filed his Petition of Appeal with the Commissioner of Education, and served it on the Board. The Petition asserts: that the June 27, 2017 vote did not constitute a recorded roll call of the majority vote of the full

membership of the Board pursuant to N.J.S.A. 18A:27-4.1; that another vote should have taken place to break the deadlock; that respondent Ray Lopez should have recused himself from the June 27 vote; and that the Board's decision not to renew the petitioner's contract was arbitrary and capricious. The petitioner requests that the Board reconvene to vote on the motion to extend petitioner's contract of employment and to pay his salary pending a vote on the motion.

### **Respondents' Motion for Summary Decision**

Respondents filed a motion for summary decision on December 13, 2017. The basis for the motion is two-fold. First, respondents assert that summary decision is appropriate here because petitioner failed to file the petition within ninety days of the Board's decision, as required by N.J.A.C. 6A:3-1.3. Petitioner was advised by letter dated June 9, 2017, that the Board would be discussing his employment status at the Board's regularly scheduled June 13, 2017 meeting, and that action would be taken at that meeting or at the following meeting on June 27, 2017. The Board voted on the motion to reappoint petitioner on June 27, 2017, and while petitioner may not have been aware of the result of this vote on that day, he was informed of the outcome of the vote the following day, June 28, 2017, by the Board's Secretary/Business Administrator. Respondents maintain that petitioner knew or should have reasonably known of any claims that he may have had against the Board regarding its failure to appoint him on June 27, when the Board's final "action" occurred. Respondents assert that petitioner was, therefore, required to file his Petition of Appeal with the Commissioner of Education by September 25, 2017, or by September 26, 2017 at the latest if Hendrickson could not be deemed to have known or reasonably known of the Board's action until he spoke with the Board Secretary/Business Administrator on June 28, 2017.

Second, respondents maintain that summary decision is also appropriate because there is no legal basis for awarding petitioner's requested relief—i.e., that the Board reconvene and conduct a new vote on the motion to reappoint petitioner. The Board's June 27 vote on the motion to reappoint Hendrickson was a proper roll call vote of the Board, in complete accord with N.J.S.A. 18A:27-4.1, and it resulted in

Hendrickson not receiving the necessary five affirmative votes for reappointment. Despite petitioner's contention, the Board had no legal obligation to take a second vote on the motion in order to "break the tie."

N.J.S.A. 18A:27-4.1, which addresses a Board of Education's procedures for taking certain personnel actions, states in part:

Notwithstanding the provisions of any law, rule or regulations to the contrary,

a. A board of education shall appoint, transfer or remove a certificated or non-certificated officer or employee only upon the recommendation of the chief school administrator and by a recorded roll call majority vote of the full membership of the board. The board shall not withhold its approval for arbitrary and capricious reasons.

Finally, respondents add that even if respondent Board member Ray Lopez had recused himself from the June 27 vote, as petitioner claims he should have, petitioner would still not have the five affirmative votes required to support his appointment.

#### **Petitioner's Response to the Motion for Summary Decision**

Petitioner opposes respondents' motion for summary decision, asserting that there are genuine issues of fact in dispute. One such genuine issue of fact is when Hendrickson became aware of the Board's final decision not to renew his contract, and when the ninety-day period began to run. Hendrickson asserts that the ninety-day limitations period did not start until the end of August because that is when a final decision regarding his employment status was made or communicated to him and when he stopped receiving payments and medical insurance from the District. According to petitioner's certification, he was told by a Board member on June 27, 2017 that the Board had a tie vote concerning his employment, and that his employment status would be revisited in July because "there was not a majority of the full board voting" to renew

the contract.<sup>2</sup> Hendrickson's certification also states that he was told by the same board member after a July 14, 2017 board meeting (at which time petitioner's employment was not addressed, nor scheduled to be addressed) that the Board was "not sure as to what they were going to do" with him, but that "no final decision was made." No one advised him of his employment status with the District after that conversation. According to petitioner, since he continued to receive payments from the District through the end of August, he was under the impression that he was still employed by them and that a final decision concerning his employment had not been made.<sup>3</sup>

Petitioner asserts in his brief that even if the petition was filed one day late, the deadline should be relaxed given the "multiple misleading actions which respondent undertook toward Mr. Hendrickson." He argues that the Board failed to apprise him of "some facts that he had a right to know . . . that the communicating party had a duty to communicate," and that the respondents failed to communicate a final determination that Hendrickson would no longer be employed as of June 30, 2017. Petitioner maintains respondents should be estopped from asserting that the petition is time-barred because it had an affirmative obligation to communicate to the petitioner that as of June 27, he would have to seek civil redress if he wanted to appeal its decision.

Finally, petitioner argues that the Board acted in bad faith in relying on an unsubstantiated anonymous complaint in deciding not to renew his contract, and that the Board's vote was calendared in a manner to foreclose votes by supportive board members. This, according to petitioner, demonstrates a genuine question of fact as to whether respondents acted for arbitrary and capricious reasons.

### **Respondents' Reply**

Respondents filed a reply to petitioner's opposition, stressing that petitioner failed to present any reliable or competent evidence to substantiate his claim that there is a

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<sup>2</sup> Petitioner declined to identify the Board member who he claims told him this despite respondents' request, and the undersigned's direction to do so by February 12, 2018. Petitioner was advised by the undersigned that his failure to disclose the name of this Board member would result in an adverse inference being drawn against him regarding his assertions concerning the Board member.

<sup>3</sup> Respondents explain that the payments received by Hendrickson after he was released of his duties at the end of June 2017 constituted a payout of his accumulated vacation time.

genuine issue of material fact in dispute here. Petitioner does not dispute that the vote took place on June 27, 2017 and that no Board action took place after this date. Anything that occurred after the vote, according to respondents, is of no consequence since this is the date that triggered the ninety-day period. Since petitioner was an at-will employee appointed for a fixed term contract extending from July 1, 2016 through June 30, 2017, his employment with the District automatically ceased on June 30 regardless of the result of the June 27 vote. Moreover, the District had no obligation to further communicate with petitioner about his employment status as the Board's vote on June 27 constituted the Board's only action taken with respect to petitioner. Petitioner's unsubstantiated claims that he was advised by a Board member that further action would be taken on his employment is insufficient to create a genuine issue of material fact.

Respondents maintain that there is no justification for relaxing the application of the ninety-day rule, and there is no basis for equitable estoppel to bar the Board from asserting the statute of limitations defense. Petitioner does not specify what the Board's alleged "multiple misleading" actions were that warrant relaxation of the ninety-day rule or that support an equitable estoppel argument. Petitioner also does not specify what information the Board failed to disclose or communicate to Hendrickson that was legally required. Respondents cite several cases, including Kaprow v. Berkeley Twp. Bd. of Educ., 131 N.J. 572 (1993), to support their position that the statute of limitations period is strictly applied, and argues that there are no compelling circumstances here that justify relaxation of the rule, even if for just one day.

### **Oral Argument**

Oral argument on the respondents' motion for summary decision was held on February 15, 2018. Counsel for respondents repeated the arguments raised in the motion for summary decision and reply brief, arguing that summary decision is appropriate here because petitioner's appeal was not filed within ninety days of the June 27, 2017 hearing, the only day the Board took any action concerning Hendrickson's employment for the 2017–2018 school year.



Counsel for respondent, Ms. Miller, also argued that since petitioner refused to disclose the identity of the Board member who allegedly led him to believe that his employment status would be determined sometime after June 27, there is no basis to support petitioner's position that the ninety-day period began at the end of August 2017. Despite petitioner's assertion that it was not until late August 2017 that he became aware that he was no longer employed by the District, his own answers to interrogatories undercut this position because they reveal that petitioner requested a Statement of Reason for the Board's decision sometime before July 1, 2017. The fact that petitioner requested an explanation of the Board's decision at that time confirms that he was aware in late June that the Board's decision concerning his employment was a final one.

Mr. Scampato, counsel for petitioner, argued that the focus here should not be on the date triggering the ninety-day rule, but on equity, justice and petitioner's entitlement to have a hearing. He argued that Hendrickson was not given enough information to lead him to know that his employment was not renewed in June 2017.

### **ANALYSIS**

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). To survive a summary decision, the opposing party must show that "there is a genuine issue which can only be determined in an evidentiary proceeding." Ibid. Failure to do so entitles the moving party to summary judgment/decision. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 529 (1995).

The Commissioner of Education has jurisdiction to hear and determine all controversies arising under the school laws. N.J.S.A. 18A:6-9. N.J.A.C. 6A:3-1.1 to -1.17 sets forth the rules of procedure established by the Department of Education for the filing of petitions with the Commissioner of Education to hear and decide controversies and disputes arising under school laws. N.J.A.C. 6A:3-1.1. To initiate a contested case pursuant to these rules, petitioner must prepare a petition of appeal and

serve such petition upon each respondent. N.J.A.C. 6A:3-1.3(a). The petition must state the allegations and facts giving rise to the appeal, and the specific relief sought. N.J.A.C. 6A:3-1.4(a).

N.J.A.C. 6A:3-1.3(i), known as the ninety-day rule, provides that:

[t]he petitioner shall file a petition no later than the 90th day from the date of receipt of the notice of a final order, ruling or other action by the district board of education, individual party, or agency, which is the subject of the requested contested case hearing.

[N.J.A.C. 6A:3-1.3(i).]

The ninety-day rule has been strictly followed and applied almost without exception. D.Q. o/b/o S.Q. v. Sch. Dist. of Newark, 2009 N.J. AGEN LEXIS 640 (Jan. 21, 2009). In Dreher v. Jersey City Bd. of Educ., a petition filed only two days after the ninety-day period was dismissed as untimely. 1987 S.L.D. 1706, aff'd, 1988 S.L.A. 2439 (State Bd. of Educ. 1988), rev'd on other grounds, A-6120-82 (App. Div. 1989), cert. denied, 117 N.J. 138 (1989).

The Commissioner, however, has discretion to relax these rules pursuant to N.J.A.C. 6A:3-1.16 “under exceptional circumstances or if there is a compelling reason to do so.” Snow v. Bd. of Educ. of the Twp. of Moorestown, 2007 N.J. AGEN LEXIS 312 (April 20, 2007). “Such authority is rarely invoked unless strict adherence to the rule would be inappropriate, unnecessary or where injustice would occur, or where the Commissioner finds the presence of a substantial constitutional issue or other issue of fundamental public interest beyond that of concern only to the parties themselves.” Ibid. In fact, this extraordinary relief has been reserved only for those situations where a substantial constitutional issue is presented or where a matter of significant public interest is involved, beyond that of concern only to the parties. AAA School LLC v. Passaic Cnty. Educ. Servs. Comm’n, Passaic Cnty, 2014 N.J. AGEN LEXIS 397 (June 18, 2014).

In this matter, there is no dispute that on June 27, 2017 the Board voted on a motion to reappoint Hendrickson for a six-month term extending from July 1, 2017

through December 31, 2017, as his employment contract with the District was set to expire on June 30, 2017. Of the nine sitting board members, only three of the required five members voted in the affirmative to approve Hendrickson's six-month contract, and the motion to reappoint failed. The Board took no further action on petitioner's employment after the June 27, 2017 vote.

On June 28, 2017, the day following the Board meeting, Hendrickson met with the Business Administrator/Board Secretary who informed him of the result of the Board's vote. Petitioner does not dispute that he had this meeting and that he was informed of the Board's vote. While petitioner maintains that he was under the impression that the "tie vote" did not constitute the District's final action concerning his employment and that they would meet again to vote again on his contract, it is undisputed that Hendrickson was dismissed by the Business Administrator/Board Secretary on that day, he did not return to work for the district any time after June 28, and he was never given any official notice that his employment would be addressed by the Board again at some later date. Moreover, prior to 2017, petitioner had had his previous employment contracts with the District approved at around the same time every year and he was aware that his contract for the 2017–2018 school year had not been renewed when addressed by the Board in June 2017. **I FIND**, therefore, that petitioner received sufficient notice of the Board's final decision not to renew his employment contract on June 28, 2017, when he met with the Business Administrator/Board Secretary. While petitioner maintains that it was not until the end of August 2017 that he realized his employment with the District ended, he knew full well that his most recent employment contract expired on June 30, 2017 and that the Board did not renew his contract on June 27, 2017.

Petitioner did not file his appeal with the Commissioner of Education and the Board until September 27, 2017. Based on the foregoing, **I FIND** that petitioner was required to file the Petition of Appeal by September 26, 2017 to comply with the ninety-day filing requirement; and I further **FIND** that petitioner's petition is time-barred as it was filed past the ninety-day statutory deadline. I also **FIND** that petitioner has not presented any exceptional circumstances or compelling reasons for the Commissioner of Education to relax this deadline.

**CONCLUSION AND ORDER**

As the moving party, respondent Board carries the burden of proof to demonstrate, by a preponderance of the credible evidence, that summary decision should be entered in favor of respondents, and specifically that summary decision is appropriate because petitioner failed to comply with the ninety-day rule. After considering all of the proofs and arguments relative to the motion, I **CONCLUDE** that respondents have met their burden by establishing that petitioner's appeal was filed beyond the ninety-day deadline established by N.J.A.C. 6A:3-1.3(i), and that petitioner has failed to establish exceptional circumstances or a compelling reason to relax this statutory deadline.

Based on the foregoing, I **CONCLUDE** that the respondents' motion for summary decision should be **GRANTED**.

It is, therefore, **ORDERED** that the motion for summary decision filed by the Board of the City of Rahway and Ray Lopez, Board Member, is **GRANTED** for the reasons stated herein.

In light of the above findings of fact and conclusions, it is unnecessary to address respondents' additional arguments in support of the motion to dismiss—specifically that there is no legal basis for the Board to conduct a new vote on the motion to reappoint petitioner.

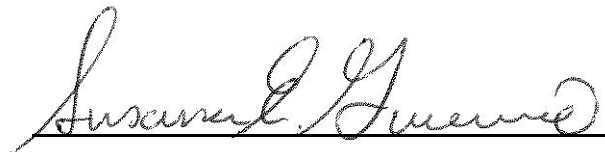
I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

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.

March 5, 2018  
DATE

  
**SUSANA E. GUERERO, ALJ**

Date Received at Agency: \_\_\_\_\_

Date Mailed to Parties: \_\_\_\_\_

jb