

EDU #8276-95  
C # 133-96M  
SB # 30-96

ANGELO VELASQUEZ, :  
 :  
 PETITIONER-APPELLANT, :  
 :  
 V. : STATE BOARD OF EDUCATION  
 :  
 BOARD OF EDUCATION OF THE : DECISION  
 BOROUGH OF BRIELLE, MONMOUTH :  
 COUNTY, :  
 :  
 RESPONDENT-RESPONDENT. :

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Decided by the Commissioner of Education, April 4, 1996

For the Petitioner-Appellant, Chamlin, Rosen, Cavanagh & Uliano  
(Thomas W. Cavanagh, Jr., Esq., of Counsel)

For the Respondent-Respondent, Wayne J. Oppito, Esq.

As stipulated by the parties, Angelo Velasquez (hereinafter "petitioner") commenced his employment as a teaching staff member for the Board of Education of the Borough of Brielle (hereinafter "Board" or "Brielle Board") in September 1992. On May 3, 1995, the Superintendent of Schools recommended to the Board that petitioner not be offered an employment contract for the 1995-96 school year. As a result of the Superintendent's recommendation, petitioner's name was excluded from the list of staff members the Board voted to reappoint for 1995-96. In a letter dated May 12, 1995, the Superintendent notified petitioner that the Board had determined not to offer him a contract for 1995-96. At petitioner's request, the Superintendent informed petitioner of the reasons for his nonrenewal by letter dated June 14, 1995. On July 5, 1995,

petitioner was provided with an informal appearance before the Board. In a letter dated July 7, 1995, petitioner was notified by the Superintendent that the Board had determined not to reverse its earlier decision not to renew his contract for the 1995-96 school year. At no time did the Superintendent recommend to the Board that petitioner be offered a contract for 1995-96. Nor did the Board at any time take formal action on petitioner's renewal by a recorded roll call vote.

On July 31, 1995, petitioner filed a petition with the Commissioner of Education, challenging the Board's action under N.J.S.A. 18A:27-10 and N.J.S.A. 18A:27-4.1.<sup>1</sup> The parties subsequently filed cross-motions for partial summary decision with regard

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<sup>1</sup> N.J.S.A. 18A:27-10, as amended, provides that:

On or before May 15 in each year, each nontenured teaching staff member continuously employed by a board of education since the preceding September 30 shall receive either

- a. A written offer of a contract for employment from the board of education for the next succeeding year providing for at least the same terms and conditions of employment but with such increases in salary as may be required by law or policies of the board of education, or
- b. A written notice from the chief school administrator that such employment will not be offered.

N.J.S.A. 18A:27-4.1, which became effective on June 19, 1995, provides, in pertinent part:

1. Notwithstanding the provisions of any law, rule or regulation 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.

b. A board of education shall renew the employment contract of 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. A nontenured officer or employee who is not recommended for renewal by the chief school administrator shall be deemed nonrenewed. Prior to notifying the officer or employee of the nonrenewal, the chief school administrator shall notify the board of the recommendation not to renew the officer's or employee's contract and the reasons for the recommendation. An officer or employee whose employment contract is not renewed shall have the right to a written statement of reasons for nonrenewal...and to an informal appearance before the board. The

to Count One of the petition, in which petitioner had requested that this matter be remanded to the Brielle Board for a vote on his request for reemployment.

On March 7, 1997, an Administrative Law Judge (“ALJ”) recommended dismissing the petition. The ALJ noted that N.J.S.A. 18A:27-4.1 was enacted by the Legislature in response to the Appellate Division decision in Rotondo v. Carlstadt-East Rutherford Reg’l High School Dist., 276 N.J. Super. 36 (App. Div. 1994), in which the Court held that regulations barring a local board from appointing a teaching staff member without the affirmative recommendation of the chief school administrator were invalid because they contravened N.J.S.A. 18A:27-1. The ALJ indicated that if the amendments to N.J.S.A. 18A:27-10 were intended to remove district board consideration of reemployment of an employee not recommended by the superintendent, the intent had not been realized since all the nonrenewed employee had to do was request an appearance before the district board. The ALJ found this inconsistent with the earlier statement in the statute that a nontenured employee who was not recommended for renewal by the chief school administrator was deemed to be nonrenewed.

The ALJ concluded that “the least absurd interpretation” of the statute was that a nontenured officer or employee who was not recommended for renewal by the chief school administrator was to be deemed nonrenewed unless the employee exercised his or her right to an informal appearance before the board. If the board then disagreed with the superintendent’s recommendation, an employment contract would issue notwithstanding the superintendent’s recommendation. The ALJ concluded that “[n]o

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purpose of the appearance shall be to permit the staff member to

matter how the present language is viewed, there is no way to harmonize the language and the apparent intent without torturing the plain meaning of the words used.” Initial Decision, slip op. at 19.

Applying his interpretation of the statute to the instant case, the ALJ found that petitioner had received all the consideration he was entitled to receive. The ALJ observed that petitioner had had the opportunity to try to convince the Board to offer him reemployment, but that such attempt had been unsuccessful. Consequently, the ALJ recommended dismissing the petition.

On March 25, 1996, the Commissioner granted petitioner’s request for interlocutory review of the ALJ’s determination. Thereafter, in a decision dated April 4, 1996, the Commissioner agreed with the ALJ that petitioner had received all that he was entitled to receive from the Brielle Board and that there was no relief that could be granted to him with respect to Count One of the petition. However, the Commissioner disagreed with the ALJ’s underlying interpretation of N.J.S.A. 18A:27-4.1, finding that the plain language of the statute did not force a result that was at odds with the overall legislative intent. The Commissioner reasoned:

In the case of contract renewal for nontenured staff, the law specifically provides that contracts shall be renewed only upon the superintendent’s recommendation and a majority vote of the full board. That the Legislature chose to amend the original bill to retain the employee’s existing right to a statement of reasons and appearance before the board in the event of a nonrenewal was not intended to, and does not, alter this result. [Footnote omitted.] Rather, it simply provides a mechanism by which a staff member whose renewal has not been recommended by the superintendent can appeal to the board, on which the superintendent

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convince the members of the board to offer reemployment....

specifically sits as a nonvoting member pursuant to N.J.S.A. 18A:17-20, in the hope of persuading district decision makers to take favorable action on his or her renewal. In the case of the superintendent, that action would be a recommendation for reemployment, and in the case of the voting members of the board, an offer of reemployment based upon the superintendent's recommendation. To conclude from the statute's ultimate inclusion of this long-standing due process mechanism...that the Legislature intended, or that the statute permits, boards to offer reemployment to a staff member not recommended by the superintendent, ignores both the context of the specific language being relied upon and the overall scheme of the legislative enactment.

Commissioner's Decision, slip op. at 25-26 (emphasis in original).

The Commissioner therefore dismissed Count One of the petition and directed that the remainder of the petition proceed to disposition in the Office of Administrative Law.<sup>2</sup>

Petitioner has filed a motion with the State Board for leave to appeal from the Commissioner's interlocutory decision. After a review of the papers submitted, we grant petitioner's motion for leave to appeal and, after a careful review of the record, affirm the ultimate determination of the Commissioner to dismiss Count One of the petition. However, we reject the Commissioner's analysis and dismiss Count One for the reasons expressed herein.

Giving the words used in the statute their "ordinary and well-understood meaning," Great Atl. & Pac. Tea Co. v. Borough of Point Pleasant, 137 N.J. 136, 143-44 (1994); Levin v. Township of Parsippany-Troy Hills, 82 N.J. 174, 182 (1980), we agree with the ALJ that "there is no way to harmonize the language and the apparent

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<sup>2</sup> In Count Two of his petition, petitioner claimed that the Board's decision not to renew his contract was arbitrary, capricious and unreasonable.

intent [of N.J.S.A. 18A:27-4.1] without torturing the plain meaning of the words used.” Initial Decision, slip op. at 19. While the statute clearly indicates that a district board can renew an employment contract “only upon the recommendation of the chief school administrator” (emphasis added), it also expressly permits an employee whose employment contract is not renewed to request an informal appearance before the district board for the purpose of “attempting to convince the members of the board to offer reemployment” (emphasis added).<sup>3</sup>

After careful review, we agree with the ALJ that the statute as enacted does not effectuate an intent to remove district board consideration of reemployment of an employee not recommended by the superintendent. As noted by the ALJ, all a nonrenewed employee has to do under the statute is to request an informal appearance before the board in an attempt to convince the members of the board to offer him or her reemployment. In that context, we are unable to accept the Commissioner’s attempt to reconcile the language of N.J.S.A. 18A:27-4.1 as enacted with the apparent legislative intent. We find the Commissioner’s explanation, which is predicated on the fact that the chief school administrator is a nonvoting member of the board, to be a strained interpretation of the plain language of the statute.

Nonetheless, like the Commissioner, we find nothing in the statute that would require a district board to vote on a staff member’s renewal after his or her informal

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<sup>3</sup> We note that the contradictory language in N.J.S.A. 18A:27-4.1 (L.1995, c. 125, § 1, eff. June 19, 1995) appears to have resulted from an amendment made to the bill by the Assembly Education Committee. The sponsor’s intent was simply that an employee who was not recommended for renewal by the chief school administrator would be deemed nonrenewed. The bill required the recommendation of the chief school administrator and a simple majority vote of the board for a contract to be renewed. The provision providing an employee whose employment contract was not renewed with the opportunity to appear before the board to convince it to offer reemployment was added by the Assembly Education Committee

appearance before the board. Consequently, while we disagree with the Commissioner's analysis, we reject petitioner's contention that he was entitled to a vote by the Brielle Board on his renewal.<sup>4</sup>

We therefore affirm the ultimate determination of the Commissioner to dismiss Count One of the petition, but do so for the reasons expressed herein.

Attorney exceptions are noted.

August 6, 1997

Date of mailing \_\_\_\_\_

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during its subsequent review of the bill. See Sponsor's Statement; Statement of Assembly Education Committee, 1994 Assembly No. 2410.

<sup>4</sup> In his exceptions to our Legal Committee's report, petitioner notes that the parties had stipulated that the Brielle Board had not acted by a recorded roll call vote after petitioner's informal appearance before that Board in July 1995 "due to the understanding that the legislation...deemed petitioner nonrenewed unless the Superintendent changed his original recommendation." In view of our determination herein, petitioner requests that the Brielle Board now be provided with the opportunity to consider whether to alter the recommendation of the superintendent and to offer petitioner renewed employment. Under the circumstances, we decline to issue such a directive. It has been more than two years since petitioner's informal appearance before the Brielle Board, and there is nothing in the record that would indicate or suggest that the Board would have renewed petitioner's employment had it voted at that time.