

STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION
TRENTON, NEW JERSEY

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IN THE MATTER OF THE TENURE CHARGES)

--against-)

JEROME C. HIGGINS)

SCHOOL DISTRICT OF THE TOWNSHIP OF EDISON,)
MIDDLESEX COUNTY)

Docket No. 121-5/14)

Before: Robert T. Simmelkjaer, Esq.
ARBITRATOR)

OPINION
AND
AWARD

APPEARANCES

FOR THE BOARD

Nicholas Celso, III, Esq., Schwartz Simon Edelstein & Celso, LLC
Ari D. Schneider, Esq., Schwartz Simon Edelstein & Celso, LLP

FOR THE RESPONDENT

Robert M. Schwartz, Esq.

BACKGROUND

In accordance with N.J.S.A. 18A:6-11 as amended, by letter dated April 24, 2014, the Edison Township Board of Education ("Board") filed Sworn Tenure Charges against the respondent, Mr. Jerome C. Higgins. After consideration of the Sworn Tenure Charges and Statement of Evidence against Mr. Jerome C. Higgins, together with the response thereto filed by or on behalf of Mr. Higgins, the Board Resolution approving the Tenure Charges and suspension of Mr. Higgins without pay, and a Certificate of Determination, dated May 14, 2014, were filed pursuant to N.J.S.A. 18A:6-11 and N.J.A.C. 6A:3-5.1

The respondent was charged with "neglect, misbehavior and/or other offenses, including but not limited to insubordination, intentional violation of the law and school policies; intentional and knowing and/or reckless or grossly negligent disregard for the safety, health and well-being of employees, students, the community and school property, resulting in, among other things, the total destruction of the James Monroe Elementary School, warranting dismissal pursuant to N.J.S.A. 18A:17-2 and 18A:6-10.1 *et seq.*"

On June 13, 2104, the tenure charges were referred to the undersigned pursuant to N.J.S.A 18A:6-16 as amended by P.L. 2012, c.26. A hearing was scheduled for July 15, 16 and 21, 2014. Prior to the commencement of the hearing, the respondent, by letter dated July 10, 2010 submitted a unilateral, voluntary and "irrevocable resignation from all employment with the Edison Township Board of Education due to my decision to submit my retirement effective at the close of business on June 30, 2014..."

Mr. Robert M. Schwartz, Esq., the respondent's attorney of record, represented and confirmed via e mail dated July 11, 2014 that the letter of resignation and executed release were signed in his presence and notarized by him

Given the respondent's unilateral and irrevocable resignation, in the Arbitrator's opinion, the approval of the Commissioner of Education would not be necessary pursuant to N.J.A.C. 6A:3-5.6, namely, a "Withdrawal, settlement or mooting of tenure charges." The case of State-Operated School District of the City of Jersey City, Hudson County v. Deborah Robinson, Dkt. No. 403-11/03 (2004) would seem applicable to the instant case. In Robinson, the respondent submitted a letter of resignation, indicating that she was "retiring on an ordinary disability pension." ALJ Sandra Ann Robinson of the Office of Administrative Law ("OAL") held: "An issue is 'moot' when a determination is sought on a matter, which, when rendered, cannot have any practical effect on the existing controversy since there remains no conflict between the parties."

Similarly, In The Matter of the Tenure Hearing of Bernard Saez, State Operated School District of the City of Newark, Essex County, OAL DKT. NO. EDU 11306-05 (2006), ALJ Robert J. Giordano held:

"Against this backdrop, the disposition of the case is made. I CONCLUDE that given his unilateral resignation as a tenured teacher renders the tenure charges against the respondent are rendered moot. He is no longer employed by the school district. He has no claim for back pay which could be resolved by the disposition of the charges here. The petitioner has no other legitimate interest arising out of the instant matter. I thus CONCLUDE the tenure charges certified by petitioner State Operated School District of the City of Newark against respondent Bernard Saez should be dismissed."

AWARD

Based on the foregoing case law and N.J.A.C. 6A:3-5.6, I hereby accept the "Letter of Resignation" submitted by the respondent, Jerome C. Higgins, and entered into by the parties, effective July 10, 2014, and Order that the tenure charges against Jerome C. Higgins, be dismissed as moot. (See attached).

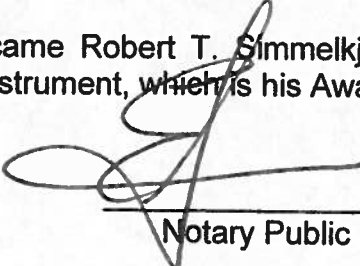
July 17, 2014


Robert T. Simmelkjaer
Arbitrator

STATE OF NEW JERSEY}
COUNTY OF BERGEN}

On the 17th day of July 2104 before me came Robert T. Simmelkjaer to me known as the person who executed the foregoing instrument, which is his Award.

July 17, 2014


Notary Public

Edward L. Craviolo
Notary Public, State of New Jersey
No. 2387644
Qualified in Bergen County
Commission expires 7/24 20 14



July 10, 2014

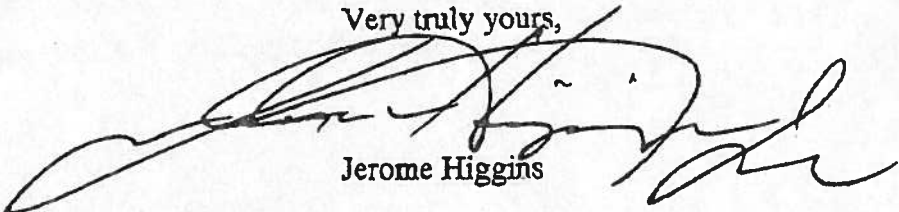
Edison Township Board of Education
c/o Richard O'Malley, Ed.D.
Superintendent of Schools
Edison Township Board of Education
312 Pierson Avenue
Edison, New Jersey 08837

Re: Irrevocable Letter of Resignation

Dear Board Members and Dr. O'Malley:

Please accept this letter as my irrevocable resignation from all employment with the Edison Township Board of Education due to my decision to submit my retirement effective at the close of business on June 30, 2014, subject to my receipt of payment for the approximately twenty-five (25) vacation days to which I am entitled by law.

Very truly yours,


Jerome Higgins

cc: Robert M. Schwartz, Esq.
Jonathan M. Busch, Esq.

General Release

I, **Jerome C. Higgins**, the "Releasor", hereby grant this Release

to

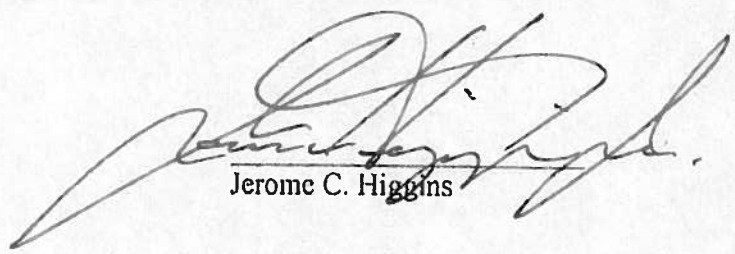
the **Edison Township Board of Education, New Jersey**, the "Releasee"
(or the "Board").

I grant this Release in return for the Board's acceptance of my resignation from employment with the Board effective at the close of business on June 30, 2014, and for compensation of my unused, accrued vacation days through June 30, 2014. I acknowledge the legal sufficiency of this consideration and promise not to challenge it.

In exchange for the above consideration, Mr. Higgins, his heirs and assigns and successors in interest mutually irrevocably and unconditionally waive, release and forever discharge any and all claims or rights, whether known or unknown, which they have or may have had individually and collectively, against past and present Board members, all officers and administrators, their agents and employees, personally and officially, as well as their successors, and assigns, including, but not limited to any and all claims for attorneys fees, back pay or front pay, any claims for emotional distress or pain and suffering, any and all claims involving tax liability stemming from this settlement, and any and all claims arising under any federal, state or local ordinance, regulation or law including, but not limited to, the New Jersey and Federal Constitutions, Title VII of the Civil Rights Acts of 1871 and 1991, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Employee Retirement Income Security Act, the Federal Family and Medical Leave Act, the Fair Labor Standards Act, the Equal Pay Act, the Workers' Adjustment and Retaining Notification Act, the New Jersey Law Against Discrimination, the New Jersey Family Leave Act, the New Jersey Conscientious Employee Protection Act, the New Jersey Workers' Compensation Law, the New Jersey Wage and Hour Law, the Employer-Employee Relations Act, any collective negotiations agreement, any common law claim and any and all other claims for harassment, discrimination or retaliation of any kind, breach of promise, misrepresentation, negligence, fraud, estoppel, defamation, violation of public policy, wrongful or constructive discharge, or any other tort, contractual or quasi-contractual claim. Mr. Higgins also hereby represents and acknowledges that he does not have any worker's compensation claims and that he was not injured in any manner while at work, in the course of employment, by the Board.

Specifically exempted from this Release are any claims for health insurance continuation coverage under and pursuant to the Consolidated Omnibus Budget Reconciliation Act ("COBRA"), and any rights associated with any pension earned in the Public Employment Retirement System (PERS).

I further acknowledge that I have had the advice of independent legal counsel prior to executing this Release and that I do so without duress and with a full understanding of my rights. I acknowledge further that I am satisfied with the advice I have received from my attorney.



Jerome C. Higgins

Date: 7/10/14

Signed and Subscribed to
Before me on this 10
Day of July, 2014

Notary Seal

Robert A. Schmitt
Att. at Law
Admitted to Practice
State of N.J.
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