

JOHN W. RUBY, II, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE : DECISION
 TOWNSHIP OF PISCATAWAY, :
 MIDDLESEX COUNTY; :
 ROBERT COPLAND, INDIVIDUALLY; AND :
 LAWRENCE LOCASTRO, INDIVIDUALLY, :
 :
 RESPONDENTS. :

SYNOPSIS

Petitioner – a former facilities manager in respondent’s district – alleged that the Board terminated him in violation of his tenure rights and other provisions of school law, as well as the “whistleblower” law and law against discrimination. Petitioner asserted that he was entitled to tenure rights as a business manager, and stated that he had also filed a Notice of Tort Claim in Superior Court. Respondent filed motion for summary judgement, asserting, *inter alia*, that: petitioner was not employed as a business manager; many of petitioner’s claims are not under the jurisdiction of the Commissioner; and the petition should be dismissed because it failed to state a claim upon which relief may be granted.

The ALJ found, *inter alia*, that: the Commissioner has complete jurisdiction over the issue of whether petitioner had tenured status with respondent Board, and whether the manner in which he was terminated violated procedural rights; Type II school districts have no authority to appoint a business manager; petitioner cannot be found to be employed in a position which the district is not legally authorized to have, and therefore he could not legally obtain tenure in such position; and the Veterans’ statute did not confer tenure upon petitioner as he was an employee hired for a “fixed” or “stated” period of time. The ALJ concluded that petitioner seeks relief to which he is not entitled as a matter of law, and granted respondent’s motion to dismiss the petition.

Upon a full and independent review, the Commissioner concurs with the Administrative Law Judge – for the reasons clearly presented in his decision – that the Board’s motion to dismiss for failure to state a claim upon which relief may be granted is appropriately awarded; the Initial Decision of the OAL is adopted as the final decision in this matter.

<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>

OAL DKT. NO. EDU 6661-06
AGENCY DKT. NO. 297-9/06

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties filed no exceptions to the Initial Decision.

Upon a full and independent review, the Commissioner concurs with the Administrative Law Judge – for the reasons clearly presented in his decision – that the Board’s motion to dismiss for failure to state a claim upon which relief may be granted is appropriately awarded.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter, and the instant Petition of Appeal is hereby dismissed.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: January 22, 2007

Date of Mailing: January 22, 2007

* This decision may be appealed to the State Board of Education pursuant to *N.J.S.A. 18A:6-27 et seq.* and *N.J.A.C. 6A:4-1.1 et seq.*