

#142-11 (OAL Decision: Not available online)

CHARLOTTE ROBINSON, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
CITY OF TRENTON, MERCER :
COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner – a tenured secretary – contended that the Board terminated her employment without affording her due process in violation of her tenure rights, and sought back pay and emoluments. After the filing of the petition in September 2009, the Board filed a motion for summary decision seeking to enforce a settlement agreement that was entered into by the parties in 2008, arguing that it lawfully terminated petitioner’s employment because she had violated the terms of the settlement agreement. In November 2010, the Board also filed formal tenure charges against the petitioner in a separate action, and sought to consolidate this matter with the tenure charges.

The ALJ recited background history of this controversy, *ie:* in March 2008, the parties settled tenure charges against petitioner which alleged excessive absenteeism relating to petitioner’s alleged substance abuse; and the terms of the settlement included acknowledgment by petitioner that she would be subject to termination of her employment and tenure if she violated the agreement. The ALJ found that: the Board is seeking to enforce the terms of the 2008 settlement agreement, which was adopted as a final decision by the Commissioner of Education and as such is governed by the New Jersey Rules of Court 4:67-6(a); therefore, the Office of Administrative Law (OAL) does not have jurisdiction to enforce the settlement agreement, which action should have been brought in the trial division of the Superior Court. Accordingly, the ALJ concluded that this controversy was brought in the wrong forum and must be dismissed, and denied the request to consolidate the instant case with formal tenure charges which were filed by the Board against the petitioner.

The Commissioner found that: the ALJ wrongfully dismissed this matter, as the Commissioner does have jurisdiction to decide whether the termination of petitioner’s employment was a violation of her tenure and due process rights under *N.J.S.A. 18A:6-1 et seq.*; the Commissioner has jurisdiction over all controversies arising under the school laws pursuant to *N.J.S.A. 18A:6-9*; petitioner is not seeking to enforce the 2008 settlement agreement but rather is seeking an order finding that the Board violated her tenure and due process rights, which is well within the Commissioner’s jurisdiction; the Board’s use of the settlement agreement as a defense to the claims made by petitioner does not automatically convert petitioner’s case into an attempt to enforce a settlement agreement. The Commissioner determined that the proper course of action is to consolidate this matter with the tenure charges currently pending at the OAL, and accordingly remanded the case for further proceedings consistent with the concerns set forth herein.

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.

April 4, 2011

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed.¹ Upon such review, the Commissioner finds that the Administrative Law Judge (ALJ) erroneously determined that the Commissioner does not have jurisdiction to hear this matter.

A brief discussion of the background is required in order to understand the dynamics of this case and to assess whether jurisdiction appropriately lies with the Commissioner. The petitioner filed a Petition of Appeal in this case in September 2009, claiming that the Board's termination of her employment was a violation of her tenure and due process rights under *N.J.S.A.* 18A:6-1 et seq. After the matter was transmitted to the OAL, the Board filed a motion for summary decision seeking to enforce a settlement agreement that was entered into by the parties in 2008. The Board argued that it was entitled to summary decision as it lawfully terminated petitioner's employment because she had violated the terms of the 2008 settlement agreement. In January 2011, the ALJ denied the Board's motion for summary

¹ The parties did not file exceptions to the Initial Decision.

decision finding that the OAL does not have jurisdiction to enforce settlement agreements, and that there were material facts in dispute with respect to whether the provisions in the settlement agreement had been violated by the petitioner.

In November 2010, the Board filed formal tenure charges against the petitioner in a separate action, and in January 2011 the Board filed a motion to consolidate this matter with the tenure charges. Petitioner did not object to such consolidation. Without any further proceedings, the ALJ issued the Initial Decision dismissing the petition in this case finding that the OAL does not have jurisdiction to hear this matter because the Board is seeking to enforce the prior settlement agreement, and that the entire controversy was brought in the wrong forum. The ALJ further held that since the petition is dismissed, the motion for consolidation is rendered moot.

The Commissioner finds that the ALJ wrongfully dismissed this matter because the Commissioner does have jurisdiction to decide whether the termination of petitioner's employment was a violation of her tenure and due process rights under *N.J.S.A. 18A:6-1 et seq.* It is well settled that the jurisdiction "to hear and determine ... all controversies and disputes arising under school law" rests with the Commissioner. *See N.J.S.A. 18A:6-9.* Petitioner, who instituted this action, is not seeking to enforce the 2008 settlement agreement but rather is seeking an order finding that the Board violated her tenure and due process rights when it terminated her employment, a controversy which falls squarely under the jurisdiction of the Commissioner pursuant to *N.J.S.A. 18A:6-9.*

In the Initial Decision, the ALJ relied on New Jersey Court Rules, *R. 4:67-6* – which requires parties who are seeking enforcement of judgments to bring an action in New Jersey Superior Court – to find that the Commissioner does not have jurisdiction in this

case. In so finding, however, the ALJ disregarded the claims advanced by the petitioner and simply dismissed petitioner's case based on a defense asserted by the Board. In order to evaluate the threshold question of subject matter jurisdiction it is necessary to look at the claims made in the petition, not the defenses raised by a respondent. Certainly, the Board's use of the 2008 settlement agreement as a defense to the claims made by the petitioner does not automatically convert petitioner's case into an attempt to enforce a settlement agreement, potentially precluding the Commissioner's jurisdiction. (*But see N.J.A.C. 6A:3-3.1(b)*). In this case a statutory entitlement under the tenure laws is implicated, and as such, it is properly before the Commissioner of Education.

Instead of issuing an Initial Decision dismissing petitioner's case for lack of jurisdiction, the proper course of action would have been to consolidate this matter with the tenure charges that are currently pending before the OAL. Accordingly, the Commissioner hereby remands this matter to the OAL for further proceedings consistent with the concerns set forth above.

IT IS SO ORDERED.²

ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 4, 2011
Date of Mailing: April 4, 2011

² 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*).