
Adell v. Bd. of Ed. of Borough of Fair Lawn, Bergen County
Cite as 2 *N.J.A.R.* 327

RICHARD ADELL,
Petitioner,
v.
**BOARD OF EDUCATION
OF THE BOROUGH OF FAIR LAWN,
BERGEN COUNTY,**
Respondent.

Decided January 23, 1980

Initial Decision

SYNOPSIS

Petitioner, a tenured teaching staff member on extended sick leave, alleged that the Board of Education acted arbitrarily when it terminated his extended sick leave and employment at midyear after he informed the Board of his intention to resign at the end of the school year.

The administrative law judge found that a local board may, in its discretion, grant extended sick leave benefits beyond the allowed annual and accumulated sick leave; however, no vested rights result from such discretionary action. Since the Board has the discretionary authority to rescind any action taken at an earlier meeting where no vested rights accrue, rescinding such benefits was not arbitrary.

Theodore Simon, Esq., for the Petitioner

Reginald F. Hopkinson, Esq., for the Respondent

GLICKMAN, ALJ:

This matter comes before the court by way of petition filed pursuant to *N.J.S.A.* 18A:6-9 vesting the Commissioner of Education with jurisdiction to hear or determine all controversies and disputes arising under the school laws. This matter was then transmitted to the Office of Administrative Law for determination as a contested case pursuant to *N.J.S.A.* 52:14F-1 *et seq.*

Subsequent to the filing of the petition and answer, and subsequent to a prehearing conference, the parties submitted cross motions for summary decision or summary judgment pursuant to *N.J.A.C.* 6:24-1.16, and Uniform Administrative Procedures Rules of Practice 1:1-13.1 *et seq.* and the guidelines embodied in New Jersey Court Rules 4:46-1 *et seq.* Counsel for petitioner submitted to this tribunal a brief in support of his motion for summary decision as well as four exhibits attached to the brief. Counsel for

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respondent submitted a brief in support of its motion for summary decision as well as four exhibits attached to its brief. This tribunal has carefully reviewed and studied the pleadings, the prehearing order, and the briefs and exhibits attached thereto and feels that this matter is ripe for summary decision.

According to the prehearing order which was drafted as a result of a prehearing conference on October 4, 1979, at the Office of Administrative Law the issues identified at that time were:

1. Was respondent's action in terminating petitioner's extended sick leave with pay, less substitute salary before June 18, 1979, arbitrary, capricious and or unreasonable?

2. And if so, what relief is available to petitioner?

The uncontroverted facts which have been gleaned from the pleadings, prehearing order, and briefs and exhibits attached thereto, are as follows:

1. Petitioner, Richard Adell, was an employee of respondent, Board of Education of the Borough of Fair Lawn, from September 1954 until February 28, 1979.

2. On February 28, 1979, pursuant to Board resolution of March 15, 1979, the following official action was taken by respondent: "*Termination of Employment* that the employment of Richard Adell, psychologist be terminated at the end of the day on February 28, 1979, since he moved out of the area to California."

3. On December 17, 1976, petitioner, Richard Adell, sent a letter to Mr. Thomas J. Cannito, Superintendent of Schools, indicating that he would begin sick leave sometime in the beginning of March 1977.

4. *N.J.S.A.* 18A:30-2 states:

All persons holding any office, position, or employment in all local school districts, regional school districts, or county vocational schools of the State who are steadily employed by the Board of Education or who are protected by tenure in their office, position, or employment under the provisions of this or any other law, ...shall be allowed sick leave with full pay for a minimum of ten school days in any school year.

5. *N.J.S.A.* 18A:30-3 states:

If any such persons requires in any school year less than the specified number of days of sick leave with pay allowed, all days of such minimum sick leave not utilized that year shall be accumulative to be used for additional sick leave as needed in subsequent years.

6. *N.J.S.A.* 18A:30-6 states:

When absence, under the circumstances described in section 18A:30-1 of this article, exceeds the annual sick leave and the accumulated sick leave, the Board of Education *may* pay any such person each day's

salary less the pay of a substitute, if a substitute is employed or the estimated cost of the employment of a substitute if none is employed, for such length of time as *may* be determined by the Board of Education in each individual case. A day's salary is defined as 1/200 of the annual salary. (emphasis added)

7. *N.J.S.A.* 18A:30-7 states:

Nothing in this chapter shall affect the right of the Board of Education to fix either by rule or by individual consideration, the payment of salary in cases of absence not constituting sick leave, or to grant sick leave over and above the minimum leave as defined in this chapter or allowing days to accumulate over and above those provided for in section 18A:30-2, except that no person shall be allowed to increase his total accumulation by more than 15 days in any one year.

8. On or about February 27, 1978, petitioner, Richard Adell's formal sick leave, which was accumulated pursuant to *N.J.S.A.* 18A:30-3 expired.

9. On January 27, 1978, petitioner, Richard Adell, wrote to Mr. Tom Cannito, Superintendent of Schools, requesting the Board of Education to grant him extended sick leave, that is 120 days of additional sick leave over the accumulated sick leave that he already received, based on five additional days of sick leave for each of the 24 years that he worked in the district.

10. On February 20, 1978, the respondent, Board of Education, passed a motion that "extended sick leave be granted to petitioner, Richard Adell, psychologist, Thomas Jefferson Junior High School and Memorial Junior High School in accordance with and within the limits of Board policy."

11. Pursuant to the Board resolution of February 20, 1978, petitioner Richard Adell, continued to receive extended sick leave benefits until December 5, 1978.

12. On December 6, 1978, petitioner, Richard Adell, who was now living in California, wrote to the Fair Lawn Board of Education, requesting:

I would like to apply, again, for extended sick leave, or rather, continued sick leave. I am most appreciative that the Board has approved my previous request. I believe that I will use up all potential sick leave by June, so this should be my last request.

13. On February 22, 1979, petitioner, Richard Adell, wrote to the Fair Lawn Board of Education indicating:

I truly regret that I must submit my notice of retirement at the conclusion of the school year. The indication is strong that I will not be able to return to work in the foreseeable future and since this June marks the completion of 25 years of service to Fair Lawn, the time has come to leave. I thank quite deeply the members of this and previous school boards for permitting to work so long with the youth of Fair Lawn, as well as supporting me in my present illness.

14. Pursuant to a Board resolution of March 15, 1979, the following action was taken: that the employment of Richard Adell, psychologist, be terminated at the end of the day on February 28, 1979, since he moved out of the area to California.

15. On March 15, 1979, the respondent, Board of Education, mailed a letter to petitioner, Richard Adell, indicating that his resignation would be deemed to be effective as of February 28, 1979, and that the remuneration and extended leave will be terminated effective February 28, 1979.

Petitioner argues that the respondent-Board's action on February 20, 1978, vested petitioner with a right to extended sick leave until June 18, 1979 which could not be taken away by the Board on March 15, 1979. Respondent argues that any extended sick leave granted over and above the accumulated sick leave which petitioner was entitled to pursuant to *N.J.S.A.* 18A:30-3 was granted pursuant to the Board's discretion and vested no rights to petitioner. Therefore, it follows that the Board could rescind its resolution of February 20, 1978 by the one of March 15, 1979, terminating petitioner's extended sick leave benefits, and such action would not be arbitrary, capricious and or unreasonable.

With regard to sick leave, the law is abundantly clear that a teacher has an entitlement or right to at least ten days of sick leave per year. (See, *N.J.S.A.* 18A:30-2). If a teacher requires less than the ten days of sick leave in any particular year, such days not utilized shall be accumulative to be used for additional sick leave as needed in subsequent years. (See, *N.J.S.A.* 18A:30-3). Thus, in the instant case, the sick leave which petitioner had an entitlement or right to pursuant to the aforementioned statutes, expired on February 27, 1978.

It is also clear that a local Board of Education may, in its discretion grant extended sick leave benefits, beyond the allowed annual and accumulated sick leave periods, on a case-by-case basis. See, *Hutchenson v. Board of Education of Totowa*, 1971 *S.L.D.* 512, *Marriott v. Board of Education of Hamilton Township*, 1949-50 *S.L.D.* 57 and the State Board of Education decision in *Ramsey Teachers Association, a New Jersey Teachers Corporation and Cecella O'Tolle v. Board of Education of the Borough of Ramsey, Bergen County*, 1978 *S.L.D.* 120. Again, in the instant case, and in compliance with the applicable law, the respondent on February 20, 1978, granted petitioner, Richard Adell, an extended sick leave beyond his allowed annual and accumulated sick leave which was expected to expire on February 27, 1978. Although the stipulations indicate that petitioner continued to receive extended sick leave benefits until December 5, 1978 for the purpose of this decision, it is clear that petitioner's extended sick leave benefits terminated officially on February 28, 1979 as a result of the

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Board of Education resolution passed on March 15, 1979. Thus, petitioner received over one year's payment of extended sick leave benefits from respondent.

Although petitioner argues that the Board resolution of February 20, 1978 vests petitioner with a right or entitlement to extended sick leave benefits which could not unilaterally be rescinded or taken away, this tribunal cannot agree with such a position. As was alluded to in *Piscataway Board of Education v. Piscataway Maintenance and Custodial Association*, 152 N.J. Super. 235 (App. Div. 1977), extended sick leave benefits set forth in a contract to any qualifying employee as a matter of *right* was illegal. As stated in *Piscataway*, at 246-7:

Our concern is over the payment of salary in whole or in part, for prolonged absence beyond the allowable annual and accumulated sick leave. As to such payment, the controlling statute, N.J.S.A. 18A:30-6, plainly leaves the matter to the discretion of the local Board of Education which may pay any such person each day's salary less the pay or estimated cost of a substitute, for such length of time as may be determined by the Board of Education in each individual case.

By granting its employee extended total disability leave benefits as a matter of right, the Board in this case surrendered its statutory obligation to deal with each case on an individual basis. We are convinced that in adopting the Employer-Employee Relations Act the Legislature did not contemplate that local Boards of Education could or would abdicate their statutorily imposed management responsibilities. Cf. *Dunellen Bd. of Ed. v. Dunellen Ed. Ass'n.*, supra 64 N.J. at 25. As we recently held in *In re Englewood Bd. of Ed.*, 150 N.J. Super. 265 (App. Div. 1977), where the subject matter sought to be negotiated or arbitrated is left to the managerial discretion of the School Board by Legislative mandate, any agreement to the contrary is invalid and unenforceable.

It is readily apparent, therefore, that the Board's granting of extended sick leave benefits to petitioner on February 20, 1978 was discretionary and did not vest petitioner with any rights or entitlement to initial payments or their continuation. See, *Mary Taccone v. Board of Education of the City of Newark, Essex County*, 1976 S.L.D. 1045. It follows, therefore, that the Board has the discretionary authority to rescind any action taken at an earlier meeting where no vested rights accrue. The Commissioner has found the existence of vested rights in contractual relationships. See, *Marion S. Harris v. The Board of Education of Pemberton Township, Burlington County*, 1939-49, S.L.D. 164 (1938); *Samuel Hirsch v. Board of Education of the City of Trenton, Mercer County*, 1961 S.L.D. 189; *Anthony Amorosa v. Board of Education of the City of Jersey City, Hudson County*, 1964

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S.L.D. 105; *Leon Gager v. Board of Education of the Lower Camden County Regional High School District Number 1, Camden County*, 1964 *S.L.D.* 81; *James Docherty v. Board of Education of West Paterson, Passaic County*, 1967 *S.L.D.* 297; *Leonard v. Moore v. Board of Education of the Borough of Roselle, Union County*, 1973 *S.L.D.* 526; and *Ronald Glab v. Board of Education of the Borough of Belmar, Monmouth County*, 1975 *S.L.D.* 243.

It is **CONCLUDED**, therefore, that since there is no genuine issue of material fact, and since the granting of extended sick leave benefits to petitioner on February 20, 1978 was discretionary and since petitioner had no vested right or entitlement to extended sick leave benefits, the rescinding of said sick leave benefits effective February 28, 1979, was proper, and was not arbitrary, capricious and/or unreasonable;

And, therefore, it is further **CONCLUDED** that respondent's motion for summary decision be and is hereby granted and petitioner's motion for summary decision be and is hereby denied.

Accordingly, it is hereby **ORDERED** that petitioner's petition be and is hereby **DISMISSED** with prejudice.

After reviewing this Initial Decision, the Commissioner of
Education on February 28, 1979 issued the following
Final Decision:

The Commissioner has reviewed the entire record of the matter controverted herein including the initial decision rendered by the Office of Administrative Law.

The Commissioner observes that exceptions were filed by the parties, pursuant to the provisions of *N.J.A.C.* 6:24-1.17(b).

Petitioner argues that the Board, once having granted him extended sick leave, cannot legally rescind that grant. Further exception is grounded in the contention that the Board unlawfully terminated petitioner's tenured employment. The Board's exceptions refute petitioner's arguments contending that it made a discretionary judgment to extend petitioner's sick leave but terminated such leave when petitioner revealed that he had moved to California.

The Commissioner observes that petitioner's regular cumulative sick leave was completed on February 28, 1978. On February 20, 1978 the Board took action to extend petitioner's sick leave at full pay through December 5, 1978.

In the meantime, petitioner moved to California.

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The Commissioner has carefully examined the record and finds that the Board, showing commendable compassion for a long-time employee, determined to grant extended sick leave at partial pay from December 6, 1978 until February 28, 1979 under a given set of circumstances but subsequently found that those circumstances had changed. Petitioner wrote from his residence in California and indicated an intention to retire in June 1979.

The Commissioner cannot agree with petitioner's contention that the Board once having exercised its discretion to grant sick leave cannot legally rescind that action. Such action is not graven in stone nor does it rise to the level of a contractual or constitutional deprivation. *Piscataway Board of Education, supra*.

The Commissioner finds that the Board's decision at that time not to extend petitioner's sick leave on a partial pay basis was a proper one and part of its discretionary authority.

The Commissioner does not agree with the action of the Board to summarily dismiss petitioner at that time. Petitioner, a tenured employee of the Board, could not be so terminated and was entitled to proper proceedings. In view of the evidence of petitioner's ill health the Commissioner directs that the Board's actions to terminate petitioner's employment as of February 28, 1979, taken at its meeting of March 15, 1979 be and hereby is declared a nullity. The Board is directed to herewith initiate disability retirement proceedings as of February 28, 1979.

With the aforementioned modification and instruction to the Board, the Commissioner affirms the findings and determination as rendered in the initial decision in this matter and adopts them as his own.

Accordingly, the Petition of Appeal is hereby **DISMISSED**.