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Nonrenewal of Employment Contract is Equivalent to Termination, “Over-Seventy” Exception Does Not Apply

By Anthony P. Sciarrillo

On June 1, 2010, the New Jersey Supreme Court decided *Nini v. Mercer County Community College*, holding that a refusal to renew the contract of an employee over seventy years old on the basis of age is a violation of the New Jersey Law Against Discrimination (“LAD”). In reaching this decision, the Court determined that the over-age-seventy exception contained in *N.J.S.A. 10:5-12(a)* does not apply to the nonrenewal of an existing employee’s contract.

Rose Nini had been an employee of Mercer County Community College (“College”) from 1979 until June of 2005. She was employed by the College in various capacities ranging from executive assistant to Dean of Corporate and Community Programs. Her employment was always arranged through a series of contracts governed by agreement between the Trustees of the College and the College Professional Staff Federation. The terms of appointment under these contracts corresponded with the number of years the employee had worked for the College. In Nini’s case, she was entitled to a three-year contract requiring at least one year’s notice of non-reappointment. Nini received such notice on June 23, 2004, informing her that her contract would not be renewed and was set to expire June 30, 2005.

Following the notice of non-reappointment, Nini sent a series of unanswered letters to the College requesting review of the nonrenewal decision. Nini claimed that the president of the College, Dr. Robert Rose, made it very clear that Nini “should not have been working at her age.” She also noted that various department heads would make jokes about getting rid of the oldest employees. In response, the College denied that its decision had anything to do with Nini’s age, citing a number of legitimate reasons for its decision not to renew Nini’s contract.

Nini filed a complaint alleging age discrimination and retaliation by the College. The College countered with a motion for summary judgment, relying on *N.J.S.A. 10:5-12(a)*, which permits an employer to “decline to hire or promote any person over 70 years of age.” Agreeing with the College’s position, the judge granted (cont’d ➔)

summary judgment on the grounds that Nini had “no claim under New Jersey’s LAD.” The Appellate Division reversed, holding that “the over-seventy exception does not apply when an employer decides not to renew an employee contract.” In analyzing *N.J.S.A. 10:5-12(a)*, the Appellate Division declared that “a contract nonrenewal should be considered a termination and, therefore, outside the protection of the over-seventy exception.”

The New Jersey Supreme Court granted the College’s certification, ultimately affirming the judgment of the Appellate Division despite the fact that the matter had been settled. In reaching its decision, the Court relied upon principles of statutory interpretation to determine whether the over-seventy exception of *N.J.S.A. 10:5-12(a)* applied to a contract nonrenewal. While the exception explicitly covers new hires and promotions, the Court found that *N.J.S.A. 10:5-12(a)* “is silent on the issue of contract renewals.” Looking to the Legislature’s intent behind the LAD, the decision notes a “broad prohibition” against employers basing their employment decisions on discriminatory reasons. The Court also reasoned that “where a general provision in a statute has certain limited exceptions, all doubts should be resolved in favor of the general provision rather than the exceptions.” Finally, the Court referred to the 1985 amendments that created the over-

seventy exception, noting those same amendments were “solely focused on the prohibition on mandatory retirement.”

Applying these principals to the case at hand, the Court held that failure to renew a contract based on age was akin to termination and does not fit into the over-seventy exception. The decision sought to avoid a paradoxical “two-tiered system” in which fixed-term contract employees would be entitled to fewer rights than those serving at-will. Additionally, the Court noted that it was upholding the overarching purpose of the LAD by protecting contract employees who have “served faithfully” for a number of years. While the Court specifically addresses the over-seventy exception, the decision suggests that in future LAD disputes, contract nonrenewal will be the functional equivalent of termination.

At the time of the Court’s decision Nini had already settled her case with the College. The Court nevertheless handed down its opinion on the grounds that the issue in appeal was “an important matter of public interest.”

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Seton Hall law student Kevin T. Murphy assisted in writing this Alert. The information provided here is necessarily general and is not intended as legal advice or a substitute for legal advice. If you have any questions regarding this Alert, please contact Anthony P. Sciarrillo of the EdLaw Group at edlawgroup@lindabury.com.



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