

RICHARD MARKOWSKI,	:	
	:	
PETITIONER,	:	
V.	:	
	:	
BOARD OF EDUCATION OF THE	:	COMMISSIONER OF EDUCATION
CAPE MAY COUNTY SPECIAL	:	
SERVICES SCHOOL DISTRICT,	:	DECISION
CAPE MAY COUNTY,	:	
	:	
RESPONDENT.	:	
	:	

SYNOPSIS

Petitioner, tenured teaching staff member who was rified from his position as social studies teacher on April 28, 1998, alleged that the Board reduced his position from full-time to part-time while essentially retaining the same teaching duties for another individual in violation of petitioner’s tenure and seniority rights. Petitioner had declined the offer of “part-time” employment to accept full-time employment in another public school district. Petitioner contended the Board assigned the less senior replacement teacher to more time than had been assigned to petitioner prior to his RIF.

The ALJ found that the matter was ripe for summary judgment. The ALJ found that subsequent to the Board’s action to abolish the social studies teacher position and create a three-fifths, part-time position in its stead, the replacement teacher taught social studies on a *full-time* basis from September 1998 until about April 1999. Taking into consideration the number of student contact hours involved in the position, the ALJ concluded that the Board failed to reduce the position of social studies teacher from full-time to part-time, as authorized by its action on April 28, 1998. Rather, it retained a full-time social studies position in its schools from September 1998 until about April 1999. The ALJ concluded that petitioner was entitled to that position for that period pursuant to his tenure and seniority status with the Board. The ALJ ordered the Board to provide petitioner with the salary and other emoluments to which he was entitled between September 1998 and April 1, 1999, less mitigation. The ALJ ordered that the Board maintain petitioner on its seniority list for the position of social studies teacher and that he be so advised when and if a position becomes available.

The Commissioner concurred with the ALJ, finding that the matter was ripe for summary judgment and determining that the Board had not, in reality, effectuated a RIF until April 1999. Agreeing that petitioner’s tenure and seniority rights were violated during the period at issue, the Commissioner granted summary judgment to petitioner as recommended by the ALJ.

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The Board's exceptions were untimely filed pursuant to *N.J.A.C.* 1:1-18(a).¹ Accordingly, neither the exceptions nor the reply thereto have been considered in the determination of this matter.

Upon his independent and comprehensive review of the record, the Commissioner agrees with the Administrative Law Judge (ALJ) that this matter is ripe for summary judgment. The Commissioner further agrees that no reduction in force (RIF) was actually effectuated in this matter until about April 1999, when the classroom schedule of the "part-time" staff member who replaced petitioner was changed. Therefore, during the period at issue, petitioner's tenure and seniority rights were, in fact, violated as claimed.

Accordingly, the initial decision of the OAL, granting summary decision to petitioner, is affirmed for the reasons expressed therein.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: March 24, 2000

¹ The Initial Decision was mailed to the parties on February 9, 2000, and the exceptions were filed on February 23, 2000.

² This decision, as the Commissioner's final determination, 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.* 6:2-1.1 *et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.