

44-01

MABEL MOUNT,	:	
	:	
PETITIONER,	:	
	:	
V.	:	
	:	
BOARD OF EDUCATION OF THE	:	COMMISSIONER OF EDUCATION
BOROUGH OF TINTON FALLS,	:	
MONMOUTH COUNTY,	:	
	:	DECISION
RESPONDENT,	:	
	:	
AND	:	
	:	
DEBORAH DE GRASSI, MICHELE	:	
TRIO, NILSA MONTANER AND	:	
DEBORAH MRUZ,	:	
	:	
INTERVENORS.	:	

SYNOPSIS

Petitioner, a tenured secretary, challenged her layoff after her position was abolished, arguing that she is entitled to a position held by a nontenured secretary, specifically identifying four positions held by nontenured secretaries to which she claimed an entitlement. The respondent Board denied that petitioner possessed the requisite skills for any of the identified positions and argued that its determination to lay off petitioner, and refusal to offer her any of the four identified positions, should be affirmed.

The ALJ determined that petitioner should have been offered a secretarial position within the District that was held by a nontenured secretary when her position was abolished. The ALJ further concluded that the duties performed by petitioner and the intervenors were very similar, and that, absent a showing by respondent that the duties of the nontenured secretaries were so specialized or unique that petitioner could not perform the duties, which respondent failed to do, petitioner was entitled to one of the positions.

The Commissioner affirmed the determination of the ALJ with modification. While agreeing that petitioner is entitled to one of the secretarial positions held by three of the intervenors, the Commissioner determined that she is not entitled to the position of the fourth intervenor, because the position of Clerical Assistant for District Services/Special Programs and Projects is not secretarial. Finally, the Commissioner held that the Board may exercise its discretion in selecting the secretarial position to be offered petitioner.

FEBRUARY 7, 2001

OAL DKT. NO. EDU 120-00
AGENCY DKT. NO. 381-12/99

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The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. The Board's exceptions were submitted in accordance with *N.J.A.C.* 1:1-18.4.

In its exceptions, the Board reiterates its contention that petitioner is not able to perform either the functions of the Clerical Assistant for District Services/Special Programs and Projects position, or those of the secretarial positions in its Special Services Office. Underscoring that tenured secretaries do not have seniority rights, the Board reasons that it may select any tenured secretary to be eliminated when a reduction in force occurs. (Board's Exceptions at 1) The Board continues,

Of course, we recognize that the rights of a tenured secretary are greater than those of a non-tenured secretary **IF, AND ONLY IF**, the tenured secretary can perform in the new position. The rights

of a tenured secretary over non-tenured personnel are not absolute. The Board of Education may still retain a non-tenured secretary over a tenured secretary, if the latter does not have the qualifications or ability to perform the open position. If a Board of Education eliminates a tenured position (e.g. Transportation/Attendance Coordinator) and that person asserts tenure rights to a secretarial position for which he or she does not have the requisite skills, the Board need not retain that person. See *Hansen v. Bd. of Ed. of Maywood*, S.B. #51-89 (March 7, 1990). (emphasis in text) (Board's Exceptions at 2)

The Board next reviews the functions inherent in the positions, as noted *supra*, arguing that each job requires a knowledge base and set of skills which petitioner does not possess, and asserting that "it would be a disaster to put her in any of these positions." (*Ibid.*) Thus, it concludes that *Hansen, supra*, applies herein and the Initial Decision must be reversed.

Upon careful and independent review of the record in this matter, the Commissioner determines to affirm the Initial Decision of the ALJ, with modification. At the outset, the Commissioner notes that the Board does not dispute that petitioner acquired tenure in the position of secretary. (Initial Decision at 2) Further, mindful that "a secretary in a school system does not acquire tenure to a specific office position in a particular school but rather gains tenure as a secretary in that entire school system" (*Mackey, supra*, at 1983 *S.L.D.* 105), the Commissioner finds that the record herein is sufficient to conclude that the duties assigned to the nontenured secretaries were not "so specialized or unique that [petitioner] would be incapable of satisfactorily performing them." *Hibo and Arillo v. Board of Education of the West Essex Regional School District, Essex County*, slip opinion at 12, decided by the Commissioner December 29, 1997, *aff'd* State Board June 3, 1998. Thus, the Commissioner concludes that petitioner has demonstrated an entitlement to one of the secretarial positions currently held by Intervenors Montaner, Mruz and Trio, since each was serving as a nontenured secretary in the

District at the time petitioner was subjected to the reduction in force.¹ However, the Commissioner cannot agree with the ALJ's conclusion that petitioner's tenure in the position of Secretary entitles her to hold the position of Clerical Assistant for District Services/Special Programs and Projects currently held by Ms. DeGrassi, since the record before him supports the conclusion that this position is not, by either title or function, a secretarial one. *See, Given v. Bd. of Ed. of East Windsor Regional School District*, 1978 S.L.D. 43, *aff'd* State Board of Education 46, *aff'd* Appellate Division 1979 S.L.D. 832.

Accordingly, the Initial Decision of the ALJ is modified as set forth herein. The Board may exercise discretion in selecting which of the secretarial positions, as identified above, shall be offered to petitioner.²

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: FEBRUARY 7, 2001

Date of Mailing: FEBRUARY 7, 2001

¹ The ALJ concluded that the duties of Interveners De Grassi, Mruz and Trio were secretarial in nature. (Initial Decision at 8) Although the Initial Decision is silent as to the ALJ's conclusions about the duties of Montaner, it is clear from reviewing the record and the Initial Decision that the duties of Montaner were secretarial in nature.

² In accordance with *N.J.A.C.* 1:1-14.10(j), the Commissioner affirms the ALJ's Interlocutory Order of October 5, 2000 granting a motion to intervene on behalf of Deborah DeGrassi, Michele Trio, Nilsa Montaner and Deborah Mruz.

³ 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.* 6A:4-1.1 *et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.