

THOMAS MANNA, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE : DECISION
 SOMERSET COUNTY VOCATIONAL :
 TECHNICAL SCHOOL DISTRICT, :
 SOMERSET COUNTY, :
 :
 RESPONDENT. :
 _____ :

SYNOPSIS

Petitioner – a tenured teacher of Diesel Technology in respondent’s district, alleged that his tenure rights were violated when he was terminated from full-time employment as the result of a reduction in force and reinstated to a part-time position, which resulted in the loss of his health insurance benefits. Respondent contends that petitioner, as a part-time employee, is not eligible for health insurance benefits.

The ALJ identified two issues in this matter: whether petitioner’s tenure rights were violated when he was reduced in force and then offered only a part-time teaching position, which he accepted; and whether petitioner lost compensation to which he is otherwise entitled as a tenured teacher when his health insurance benefits ended because he was no longer working full-time. The ALJ found that: petitioner was reinstated into his position and compensated by receiving a percentage of his salary step in proportion to his new part-time teaching schedule, and therefore his appeal as to the first issue is without merit; and eligibility for health insurance in the district is a contractual matter limited to full-time employees. Accordingly, the ALJ concluded that petitioner’s appeal as to loss of tenure rights must be dismissed and the respondent’s determination as to petitioner’s ineligibility for health insurance benefits must be affirmed.

Upon a thorough and independent review of the record, the Commissioner adopted the Initial Decision as the final decision, with the following modification: any increase in petitioner’s teaching hours in the second semester of the 2009-2010 school year would necessitate a recalculation of the proportionate salary he was entitled to receive during this period; if the parties are unable to agree on the number of increased hours involved or the appropriate pro-rata salary calculation, the petitioner is encouraged to file a new petition of appeal on that issue.

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.

June 14, 2010

OAL DKT. NO. EDU 6384-09
AGENCY DKT. NO. 167-7/09

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner’s exceptions and the Board’s reply thereto – filed in accordance with *N.J.A.C.* 1:1-18.4 – were fully considered by the Commissioner in reaching his determination herein.

Petitioner excepts to the Administrative Law Judge’s (ALJ) conclusion that although the court’s decision in *Bassett v. Board of Education of the Borough of Oakland*, 223 *N.J. Super.* 136 (App. Div. 1988) stands for the proposition that a reduction in force, through the diminishment of a particular program, still entitles the teaching staff member’s continuation in the reduced program at a pro-rata reduction in compensation, because this court was silent on the issue as to whether such “compensation” includes benefits – such as the health insurance coverage petitioner is seeking here, comparatively reduced – the parties’ collective bargaining agreement (CBA) must control the outcome of that issue. Petitioner argues that the statutory

protection referred to by the *Bassett* court “is *N.J.S.A.* 18A:25-5 which prohibits a ‘reduction in compensation’ except for statutory cause”, and the interpretation given by the court is that a “reduction” in the instance of a diminished position necessitates a pro-rata reduction no matter what a CBA might direct. Petitioner further argues that “compensation” as utilized in *N.J.S.A.* 18A:28-5 has to mean more than salary. An argument that an individual is protected pursuant to *N.J.S.A.* 18A:28-5 merely by maintaining a pro-rata level of salary with a total loss of insurance benefits, he contends, is unfathomable, especially in current times when an individual’s cost for health care is nearly equal to his pro-rata share of salary. Petitioner, therefore, maintains that “[a] pro-rata reduction in compensation should include *all* compensation meaning salary, benefits and other quantifiable emolument[s] of employment.” (Petitioner’s Exceptions at 2) (emphasis added)

Petitioner next charges that there is a second issue in this matter which was left fully unaddressed by the ALJ in her decision. He points out that although the ALJ’s factual findings, paragraph 5, recognized:

[f]or the first semester of school year 2009-2010, petitioner taught three courses per week, which totaled fifteen teaching hours plus administrative and prep time (approximately five to six hours per week, pro-rated). For the second semester, he taught three courses and had one additional course assigned to him (to permit a student to compete the program), which totaled twenty teaching hours plus administrative and prep time (approximately six to eight hours per week, pro-rated). [Initial Decision at 3]

she failed to consider his argument that – as the determination of the pro-rata share of salary paid him by the Board was made by hours worked vis-à-vis his salary on the salary guide were he still in a full time position – his “pro-rata salary should increase by virtue of the increase in his

assignment from one semester to the next – an increase of approximately 25% in teaching time.”
(Petitioner’s Exceptions at 2-3)

In reply, the Board advances that petitioner was subject to a bona fide reduction in force but was later rehired on a part-time basis (58% of his prior full-time teaching hours) to allow the diesel program to continue on a limited basis for one year to accommodate those students who only had one year left to complete the program.¹ Upon his rehire, petitioner’s salary, vacation, sick leave time and pension contributions were pro-rated to reflect his part-time status. However, pursuant to a 1996 Board resolution which set employment of 35 hours a week as the minimum eligibility requirement for health insurance benefits, petitioner’s part-time status rendered him “ineligible” for health insurance benefits provided by the Contract. The Board argues that petitioner’s contention that its refusal to provide him with health care benefits is a reduction in “compensation” within the intentment of *N.J.S.A. 18A:28-5* is belied by prior education law decisions which specifically determined that the protections of this statute apply only to salary and that contractual benefits other than salary are not entitled to protection by the statute. *See Arlene C. Allen, et al v. Board of Education of the Township of Clark, Union County*, Commissioner decision No. 189-04, April 30, 2004, *aff’d* State Board, September 1, 2004, *aff’d* A-754-04T2 (App. Div. 2005); *Also See [Hyman] v. Board of Education of the Township of Teaneck*, decided by State Board March 6, 1985, wherein it was determined “that there is no statutory entitlement to benefits, only a right to that which is granted

¹ The Board additionally emphasizes that “[petitioner’s] employer, Somerset County Vocational Technical Institute, will cease to exist on June 30, 2010 when Raritan Valley Community College assumes responsibility for post secondary adult education in Somerset County. Mr. Manna was not offered a position by Raritan Valley Community College.” (Board’s Reply Exceptions at 1)

by contract”, *aff’d* A-3508-84T7 (App. Div. 1986), *cert. den.* 104 N.J. 469 (1986) (Board’s Reply Exceptions at 2)

As to petitioner’s argument that he was entitled to additional money because he taught an extra class in the second semester of the school year, the Board advances that the ALJ refused to entertain argument on this issue “as that was not the subject of his petition and he never established how many more hours, if any, he taught as a result of an additional class.” (*Ibid.*)

Upon careful review of the record, the Commissioner determines to modify the Initial Decision as set forth below.

It is without question that, pursuant to *N.J.S.A.* 18A:28-5, “teaching staff members” serving in any school district or under any board of education “shall not be dismissed or reduced in compensation” except as specifically prescribed under *N.J.S.A.* 18A:6-10(b). In this matter, petitioner, a full-time tenured teacher whose position was eliminated by reason of a reduction in force, was subsequently offered and accepted reassignment to a part-time position in the same instructional area. As found by the ALJ, upon his reinstatement – in accordance with *N.J.S.A.* 18A:28-5 and the Court’s holding in *Bassett, supra.* – petitioner was compensated by receiving a percentage of his salary in proportion to his new part-time teaching schedule. The crux of petitioner’s contention here is that, on his reinstatement, the Board’s refusal to provide him with health insurance benefits – since he was now working fewer than 35 hours per week – was an impermissible reduction of his “compensation” within the intendment of *N.J.S.A.* 18A:28-5. As recognized by the Board in its Reply Exceptions, the term “compensation” with respect to the tenure right protections provided by education law is by now well-established, having been explicitly defined as encompassing **only salary**. *See Arlene C. Allen, et al, supra;*

Hyman v. Board of Education of the Township of Teaneck; Also See *Mark Kramer v. Board of Education of the City of East Orange, Essex County*, Commissioner's Decision No. 299-04, July 12, 2004. Consequently, as petitioner received compensation proportionate to his full-time position, he was accorded the full extent of his statutory right pursuant to *N.J.S.A. 18A:28-5*. Health insurance benefits are not preserved and protected by this statute but, rather – as recognized by the ALJ – are a contractual benefit subject to collective bargaining negotiations. For the reasons presented by the ALJ on pp. 5-6 of her Initial Decision, because petitioner did not qualify as “eligible” for health insurance benefits pursuant to the Contract, he possesses no entitlement to this benefit.

Finally, the record here indicates that subsequent to the filing of his petition on July 24, 2009, and his reinstatement to his position for the 2009-10 school year on a part-time basis at a pro-rata salary of 58% of his prior full time teaching hours, petitioner contends that – beginning in the second semester of this school year – his course load increased by an additional class. Although the ALJ finds the details with respect to this second semester course load increase an undisputed finding of fact – see Findings of Fact No. 5, Initial Decision at 3 – a finding which might appear arguable in light of the Board's Reply Exception argument, she nonetheless failed to address and resolve the impact of such a finding. The Commissioner concludes that it is without question that to prevent an impermissible “reduction in compensation” – pursuant to *N.J.S.A. 18A:28-5* and *Bassett, supra* – an increase in petitioner's teaching hours in the second semester of the 2009-10 school year would necessitate a recalculation of the proportionate salary he was entitled to receive during this period. If the parties are unable to agree on the number of increased hours involved or the appropriate pro-rata salary calculation, petitioner is encouraged to file a new petition of appeal on this issue.

Accordingly, the recommended decision of the OAL – as modified above – is adopted as the final decision in this matter and the instant petition of appeal is hereby dismissed.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: June 14, 2010

Date of Mailing: June 14, 2010

² This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36* (*N.J.S.A. 18A:6-9.1*).