

LISA SALIMBENE, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE : DECISION
 TOWNSHIP OF DENNIS, :
 CAPE MAY COUNTY, :
 :
 RESPONDENT. :

SYNOPSIS

Petitioner, a tenured secretary in the district, was notified in April 2010 that her position would be reduced from a twelve month to a ten month position. In July 2010, she filed the instant petition asserting tenure rights to a position held by the non-tenured secretary to the superintendent, who remained employed on a twelve month schedule. The respondent Board filed a motion for summary disposition.

The ALJ found, *inter alia*, that: the petitioner is tenured and the Administrative Assistant is not; the job qualifications for petitioner's position as secretary to the elementary school principal and those of the administrative assistant to the superintendent are substantially similar; analysis of the specific *duties* of each of the two positions suggests patent and obvious differences in responsibilities; however, the published *qualifications* for the two positions are not so different that petitioner's tenure rights can simply be ignored; there are no material facts at issue in this matter, and the matter is ripe for summary decision. The ALJ then concluded that since both positions are secretarial and the qualifications for both jobs are nearly identical, a "skilled" or "qualified" tenured secretary must prevail over a non-tenured secretary in terms of tenure rights to comparable job titles. Accordingly, the ALJ denied the Board's motion for summary decision and – although petitioner did not file a cross-motion for summary decision – concluded the case in favor of the petitioner.

The Commissioner concurred with the ALJ's determination to deny the Board's motion for summary decision, but concluded that the Initial Decision in favor of petitioner was premature. The Commissioner found that: the job qualifications for the two positions in question are very similar, but the written job descriptions for the two positions are vastly different; and a tenured school employee asserting priority over a non-tenured employee must be fully qualified for the position sought. Accordingly, the matter was remanded to the OAL for the purpose of determining whether petitioner's skills are sufficient to satisfactorily execute what appears to be a more complex and varied set of responsibilities than those called for in the secretarial position which petitioner has held. If the evidence indicates that petitioner possesses the requisite skills, she is entitled to the administrative assistant position.

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.
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Petitioner, a tenured secretary whose employment was changed from a twelve-month position to a ten-month position in the course of a reduction in force (RIF), brought the instant action to assert a claim upon a twelve-month position held by a non-tenured secretary. Upon review of the record, Initial Decision of the Office of Administrative Law (OAL) and respondent's exceptions, the Commissioner remands the case for the reason discussed *infra*.

The matter came to the Commissioner as a decision on a summary disposition motion filed by respondent. The Commissioner concurs with the Administrative Law Judge's (ALJ) determination to deny the motion. The Commissioner concludes, however, that the ALJ's decision on the ultimate issue in the case was premature.

At the outset, the Commissioner notes that certain facts material to the instant controversy are undisputed. Petitioner is a tenured secretary in respondent's district, and the holder of the position petitioner seeks is non-tenured. The written job descriptions for both the

position petitioner has held and the one that she seeks are vastly different. *See*, Exhibits N and P to the September 2, 2011 Certification of Cynthia A Satter, Esq.

While secretaries do not have statutory seniority rights in the wake of a RIF, *see*, e.g., *Sheridan v. Board of Educ. of the Township of Ridgefield Park, Bergen County*, 1976 S.L.D. 995, 997 (no statute or rule of the State Board of Education has ever been promulgated which provides tenured educational secretaries with a set of clearly delineated seniority rights or procedures governing dismissal when a reduction in force is effected by employing boards), a tenured secretary may “bump” into another secretarial position held by a non-tenured employee. *See*, e.g. *Lavine v. Board of Education of the City of Trenton, Mercer County*, Commissioner’s Decision No. 232-84, decided July 23, 1984, *aff’d* State Board of Education, December 5, 1984, *aff’d* Superior Court, Appellate Division, November 18, 1985. A prerequisite to asserting such “bumping” rights, however, is that the tenured school employee asserting priority over a non-tenured employee must be fully qualified for the position(s) being sought. *See Kearny Bd. of Educ. v. Horan*, 11 N.J. Misc. 751 (Sup. Ct. 1933).

In light of the foregoing, the Commissioner and the OAL have – in cases where secretaries have claimed bumping rights – carefully analyzed and compared the evidence relating to the duties and responsibilities of the eliminated or reduced position and the position sought by the RIF’d employee. *See*, e.g. *Karen Harrington and Eve Hiller v. Board of Education of the Sussex County Vocational School District, Sussex County*, Commissioner Decision No. 250-11 (July 7, 2011); *Joanne Burger v. Board of Education of the Borough of Maywood, Bergen County*, Commissioner Decision No. 191-11 (May 19, 2011); *Mabel Mount v. Board of Education of the Borough of Tinton Falls, Monmouth County and Deborah Degrassi, Michele Trio, Nilsa Montaner and Deborah Mruz*, Commissioner Decision No. 44-01 (February 7, 2001).

Indeed, respondent relied upon such cases in arguing that the differences between the duties of petitioner's former position and the range of responsibilities of the position she seeks are too great to allow petitioner to "bump" into the latter job.

However, as ALJ Miller found in his Initial Decision, there is another factor at play in the present case. For each of the two positions at issue in this controversy, respondent published a list of required qualifications. (Exhibits N and P to the September 2, 2011 Certification of Cynthia A Satter, Esq.) The qualifications for the position of Administrative Assistant to the Superintendent are:

- Previous secretarial experience required – school secretary (administrative level) experience preferred.
- Good organizational skills required.
- Possession of excellent oral and written language skills.
- Computer skills and good typing skills required.
- Excellent telephone manners.
- Knowledge of efficient office practices.
- Professional demeanor and effective people skills.
- Knowledge of use of standard office equipment.
- Minimum high school diploma required.

The qualifications for the secretarial position in which petitioner has been employed for three years are:

- High school or vocational school diploma required.
- School secretary experience preferred.
- Computer skills and typing skills required.
- Possession of good oral and written language skills.
- Good telephone manners.
- Knowledge of efficient office practices.
- Professional demeanor and people skills.
- Knowledge of use of dictaphone.

The qualifications described in the two lists are almost identical, differing only in the requirement that a candidate for the administrative assistant job have good organizational skills.

Noting that petitioner had apparently successfully held the secretarial position for over three years, the ALJ concluded that she had demonstrated the skills, knowledge and experience called for in that position. Since the skills, knowledge and experience required by the secretarial job were, apart from the possession of organizational abilities, identical to the qualities which respondent demanded for the administrative assistant job, the ALJ then reasoned that petitioner was qualified for the latter position. He granted petitioner summary disposition – notwithstanding the fact that she had not moved for same – and ordered that she be given the administrative assistant job.

Respondent’s argument – that the differences in the described duties required by petitioner’s secretarial job versus the administrative assistant position precludes reflexive “bumping” from the former to the latter – has some merit and is in keeping with prior Commissioner decisions. However, in the present case, that argument is undermined by the fact that respondent published almost identical lists of job qualifications for the two positions.

It is for this reason that the Commissioner remands this case to the OAL. The record is devoid of fact-finding on the issue of whether petitioner has mastered the skills required for the position of administrative assistant. The Commissioner is reluctant to adopt the ALJ’s *sua sponte* summary disposition of the matter, which appears to be based solely upon the assumption that petitioner’s tenure in her secretarial position signifies that she possesses those skills.

In summary, this matter is remanded to the OAL for the sole purpose of determining whether petitioner’s skills are sufficient to satisfactorily execute what appears to be a more complex and varied set of responsibilities than those called for in the secretarial position

which she has held in respondent's district. If the evidence indicates that she possesses the requisite skills, she is entitled to the administrative assistant position.

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 10, 2011

Date of Mailing: November 15, 2011