

ENRICA B. GILLIKIN, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
CITY OF GARFIELD, BERGEN COUNTY, :
RESPONDENT. :
_____ :

SYNOPSIS

Petitioner – a tenured teacher holding a standard instructional certificate with endorsements as an Elementary School Teacher and a Teacher of Italian – appealed the determination of the respondent Board to non-renew her contract for the 2010-2011 school year, alleging violation of her tenure and seniority rights. Petitioner was continuously employed by the Board as a Teacher of Italian from September 2002 through June 2010. She contends that her tenure extends to her Elementary School Teacher endorsement, and that she was illegally terminated because no resolution was adopted by the Board to abolish her position or to dismiss her from its employ. The Board argues that petitioner is not entitled to an elementary education position in the school district after the abolishment of the elementary World Language Program.

The ALJ found, *inter alia*, that: there is no genuine issue of material fact challenged in this matter, and the case is ripe for summary decision; *N.J.S.A.* 18A:28-1 to -18 authorizes the tenure of educational personnel; petitioner had attained tenure under both her Elementary School Endorsement and her Teacher of Italian endorsement; petitioner does not dispute that her seniority – pursuant to *N.J.S.A.* 18A:29-9 *et seq.* and *N.J.A.C.* 6A:32-5.1 – is limited to the subject area and grade levels she actually taught, nor does she dispute that she does not have sufficient seniority to claim a position as Teacher of Italian from tenured teachers currently employed as such in the district’s secondary grades; at the same time, the Board does not dispute that it has retained non-tenured elementary school teachers following petitioner’s nonrenewal; *N.J.S.A.* 18A:27-4.1 sets forth the procedure by which a certificated employee may be removed, namely upon the recommendation of the chief school administrator and by a recorded roll-call majority vote of the full membership of the Board, which appears not to have happened in this case; however, even if petitioner’s position was legally terminated pursuant to a reduction in force, petitioner should have been retained as an elementary school teacher based upon the tenure law. Accordingly, the ALJ granted summary decision in favor of petitioner, and ordered that respondent shall reinstate petitioner as a full-time employee; compensate her for monetary damages, including loss of salary and medical, dental and prescription insurance coverage; and restore her seniority rights and pension credit.

Upon comprehensive review, the Commissioner concurred with the ALJ’s conclusion that summary decision is appropriately granted to petitioner, and adopted the Initial Decision as the final decision in this matter. The Commissioner ordered respondent to immediately reinstate petitioner to a full-time teaching position, reimburse her within 60 days for lost salary and payments made for medical, dental, and prescription insurance coverage, provide her with seniority credit, and make the requisite contributions to the pension fund and Social Security for the entire period of petitioner’s illegal termination.

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.

October 17, 2011

OAL DKT. NO. EDU 9242-10
AGENCY DKT. NO. 149-7/10

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties did not file exceptions to the Initial Decision.

Upon his considered review, the Commissioner concurs with the Administrative Law Judge (ALJ) that summary decision is appropriately granted to petitioner. For the reasons cogently presented in the ALJ's decision, it is without question that petitioner's tenure rights – pursuant to *N.J.S.A. 18A:28-5, et seq.* – were violated, as a matter of law, when the Board abolished her teaching position and continued to employ non-tenured individuals as elementary teachers for the 2010-11 school year.

Accordingly, the recommended decision of the OAL is adopted as the final decision in this matter. Respondent is hereby directed to immediately reinstate petitioner to a full-time teaching position within the scope of her endorsements; reimburse her within sixty days of the date of this decision for lost salary and payments she made for medical, dental and prescription insurance coverage; provide her with seniority credit; and make the requisite

contributions to the pension fund and Social Security for the entire period of her illegal termination.

IT IS SO ORDERED.*

ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 17, 2011

Date of Mailing: October 18, 2011

* 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*).