

LINDA WHITE, :
 :
 PETITIONER, :
 : COMMISSIONER OF EDUCATION
 V. :
 :
 : DECISION
 BOARD OF EDUCATION OF THE :
 BOROUGH OF GLASSBORO, :
 GLOUCESTER COUNTY, :
 :
 RESPONDENT. :

SYNOPSIS

Petitioner contended that she had earned tenure as a secretary and was entitled to claim the position of any non-tenured secretary in the district when her position was eliminated in a reduction in force (RIF) in June 2010. The respondent Board asserted that petitioner never had tenure as a secretary as she had only worked in that title during the 2004-2005 school year.

The ALJ found, *inter alia*, that: petitioner, who was employed for over eleven years in respondent's district, was originally hired in 1999 as a data processing technician; petitioner held various titles, including data processing technician or operator, aide, secretary, and data processor; petitioner served as a secretary for only one year, the 2004-2005 school year; petitioner was aware that a labor union existed for secretaries, but never sought to join; petitioner signed each of her respective annual contracts, which – except for the 2004-2005 contract – identify her duties as those of a clerical aide or a data processor; the fact that petitioner performed some of the duties of a secretary who had retired did not change her job title; and petitioner considered herself an hourly employee and left the building when other aides left on early dismissal days, rather than remaining at work with the secretaries until the principal authorized their departure. The ALJ concluded that petitioner did not have tenure as a secretary and therefore no rights to a secretarial position, and her termination pursuant to a RIF was not arbitrary, capricious or unreasonable.

Upon careful and independent review, the Commissioner concurred with the ALJ's findings and conclusions and, accordingly, adopted the Initial Decision of the OAL as the final decision in this matter.

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, whose position was eliminated in consequence of a reduction in force (RIF), initiated this controversy when she was terminated. She alleges that she was entitled to be reassigned to a secretarial position within respondent's district. Upon review of the record, Initial Decision, petitioner's exceptions and respondent's replies thereto, the Commissioner adopts the Initial Decision as the final decision in this case.

It is undisputed that during the eleven and one half years of petitioner's employment in respondent's district, she worked under contracts that identified her (in chronological order) as a data processing technician or operator for six years, a secretary for one year, an aide for three years, and a data processor for the last two years. At no time did she join the secretaries' union. Nonetheless, petitioner contends that she earned tenure as a secretary, and reasons that when her position in the high school guidance department was eliminated she was entitled to claim the position of any non-tenured secretary in the district. Because petitioner claims specific tenure rights that are not evident in her contracts or other indicia of employment,

she bears the burden of proving that respondent's termination of her employment was arbitrary, capricious or unreasonable.¹

Tenure in the position of secretary is not generally interchangeable with tenure in other clerical positions. *Diane Giardina v. Board of Education of the Township of Pequannock, Morris County*, Commissioner's Decision No. 124-05, decided April 1, 2005, *aff'd*. State Board of Education Decision No. 23-05, September 7, 2005. However, petitioner maintains in her exceptions, as she did in the Office of Administrative Law, that in the five years subsequent to her employment as a secretary in respondent's district, she continued to perform secretarial duties, notwithstanding that her contracts identified her as an aide and a data processor and her wages were not commensurate with those paid to secretaries with similar terms of service in the district. Relying on such cases as *Roach v. Board of Education of the South Orange-Maplewood School District*, 96 N.J.A.R. 2nd (EDU) 375, petitioner urges the Commissioner to disregard her job titles and, rather, determine whether she earned tenure as a secretary by measuring the actual tasks she performed against the standards for secretarial positions.

Thus, it is not a dispute about the applicable law that is at issue in this controversy. *Roach, supra*, and like cases have established that under certain circumstances it is appropriate to identify an employee's position by analyzing his or her primary duties. Rather, the resolution of this matter requires the Commissioner to analyze the competent evidence concerning petitioner's employment and make a factual finding as to whether, contrary to her contracts and the intentions of her employer, petitioner was a secretary for the three years needed to earn tenure under N.J.S.A. 18A:17-2(a) or (b). In so doing, the Commissioner must defer to the factual and credibility findings of the Administrative Law Judge (ALJ), unless they prove

¹ Petitioner's alternate claim that the elimination of her position was made in bad faith, which claim is apparently based upon speculation about when the decision to eliminate her position was made by respondent's board, is without competent evidentiary support and is consequently rejected.

themselves to be arbitrary, capricious or unreasonable. *See, e.g. N.J.S.A. 52:14B-10(c); D.L. and Z.Y. on behalf of minor children T.L. and K.L. v. Board of Education of the Princeton Regional School District*, 366 N.J. Super. 269, 273 (App. Div. 2004). In the present case, both the ALJ's credibility findings and her findings of fact are harmonious with the record provided to the Commissioner.

For example, the record supports the ALJ's acceptance of the testimony of respondent's representatives about the district's cost-cutting measures, including distributions of some of the tasks of retired employees among remaining employees, and the representatives' assertions that those distributions were never intended to cause changes in the job titles of the employees who were assigned the extra tasks. (Initial Decision at 7-8) Respondent's Guidance Department experienced an incident of attrition in 2006, leaving it with only one secretary – Margaret Dougherty. (1T97; 1T102²) Guidance Director LaPalomoto's request for a second secretary was denied, but he was advised that his department would receive help from an aide to the data processing supervisor; that aide was the petitioner. (1T99)

The record also supports the ALJ's determination that, notwithstanding the overlap between several items in the respective job descriptions for Secretary (Joint Exhibit J-18) and Clerical Aide (Joint Exhibit 17) in respondent's district, there were aspects of Dougherty's secretarial position that distinguished it from petitioner's task set. Tantamount among those differences was the fact that Dougherty's job description, and not petitioner's, included responsibility for handling confidential student information. Dougherty also handled all the "important" mail, took shorthand, and independently created such documents as letters of recommendation for students applying to college. (1T102-03; 1T109; 1T115) Petitioner usually did not generate correspondence, and when she did it was boilerplate notices such as those

² 1T represents the transcript of the first hearing day in this case, which took place on February 15, 2011.

periodically sent to maintenance employees in anticipation of SAT testing dates. (1T113) In sum, a review of the record, including petitioner's testimony, indicates that generally, besides conserving the materials in the Career Resource Center, petitioner's primary responsibilities were input and retrieval of computer data, the sorting of mail, the logging of appointments, the occasional typing of a letter or memorandum, filing, and otherwise assisting with information and materials created and/or initiated by other employees.

In light of both the differences in petitioner's and Dougherty's job titles, salary categories and above-referenced levels of responsibility, the ALJ appropriately concluded that petitioner's two-hour morning stretch at Dougherty's desk – before reporting to her position as an aide in the Career Resource Center at 9:30 a.m. – did not render petitioner a secretary. (Initial Decision at 7) Nor was there any evidence in the record that petitioner's work rose above the class of the duties identified in the above-referenced job description for "Clerical Aide." (Joint Exhibit J-17)

Finally, the ALJ noted that the record indicated that during the five years subsequent to petitioner's one-year contract as a secretary, she never challenged respondent's classification of her position as aide or data processor, or complained that her pay was at a lower level than the salary for secretaries with the same length of service. (Initial Decision at 7-8) Nor did petitioner ever join the secretaries' union. (*Ibid.*) Additionally, the ALJ referenced petitioner's testimony that unless she was told otherwise, she would leave with the aides on early dismissal days – in contrast to secretaries, who were required to stay the full day. (*Ibid.*) The ALJ reasonably regarded these facts as indicia that petitioner knew that she was not employed as a secretary.

In summary, the Commissioner concludes both that the ALJ's factual and credibility findings were not arbitrary, capricious and unreasonable, and that the record

supported her determinations that 1) petitioner had not earned tenure as a secretary and 2) respondent's termination of petitioner's employment pursuant to a RIF was not arbitrary, capricious or unreasonable.

Finally, in light of petitioner's admission that she received advance notice of respondent's intention to consider – at an April 28, 2010 public board meeting – a recommendation to eliminate her position, the Commissioner rejects petitioner's allegation that respondent violated the Open Public Meetings Act.

Accordingly, the petition is dismissed.

IT IS SO ORDERED.³

ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 16, 2012

Date of Mailing: April 18, 2012

³ 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*)