

#307-12 (OAL Decision: Not yet available online)

DEBORAH BEARG, :  
PETITIONER, : COMMISSIONER OF EDUCATION  
V. : DECISION  
BOARD OF EDUCATION OF THE CITY :  
OF ELIZABETH, UNION COUNTY, :  
RESPONDENT. :  
\_\_\_\_\_:

### SYNOPSIS

Petitioner appealed the decision of the respondent Board to terminate her employment as a teacher through a reduction in force (RIF) at the end of the 2010-2011 school year. Petitioner was continuously employed by the Board from 1997 through June 2011. Petitioner contended that the Board offered teaching contracts to other school employees with less seniority than petitioner, in violation of her tenure and seniority rights. Petitioner filed a motion for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue, and the matter is ripe for summary decision; petitioner was employed under tenure at the time of the RIF and plainly met the requirements of *N.J.S.A. 18A:28-5*; the Board gave no consideration whatsoever to the requirements of *N.J.S.A. 18A:28-5* and *N.J.S.A. 18A:28-10* prior to terminating petitioner's employment; and upon petitioner's termination, the Board retained elementary teachers with no prior experience in the district. The ALJ concluded that petitioner must be immediately reinstated to her position of employment, and must be compensated for all lost salary, benefits and emoluments, less mitigation, retroactive to the date of her termination.

Upon careful and independent review, the Deputy Commissioner – to whom this matter was delegated pursuant to *N.J.S.A. 18A:4-33* – concurred with the ALJ's findings and conclusions and, accordingly, adopted the Initial Decision of the OAL granting summary decision to petitioner. The Commissioner ordered the Board to reinstate petitioner as an elementary school teacher with salary and all benefits retroactive to June 30, 2011, less any mitigation.

<p>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.</p>
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August 3, 2012

OAL DKT. NO. EDU 10851-11  
AGENCY DKT. NO. 240-8/11

DEBORAH BEARG, :  
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 PETITIONER, : COMMISSIONER OF EDUCATION  
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 V. : DECISION  
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 BOARD OF EDUCATION OF THE CITY :  
 OF ELIZABETH, UNION COUNTY, :  
 :  
 RESPONDENT. :  
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The Deputy Commissioner – to whom this matter was delegated pursuant to *N.J.S.A. 18A:4-33* – has reviewed the record of this matter and the Initial Decision of the Office of Administrative Law, wherein the Administrative Law Judge concluded that petitioner’s tenure rights were violated when respondent “RIF’d” her while retaining teachers with less seniority in the position of elementary education teacher.<sup>1</sup> As the record fully supports that conclusion, the Deputy Commissioner adopts the Initial Decision as the final decision in this case.

Accordingly, summary decision is granted in favor of petitioner. Respondent shall reinstate petitioner as an elementary school teacher with salary and all benefits retroactive to June 30, 2011, minus any mitigation.

IT IS SO ORDERED.<sup>2</sup>

DEPUTY COMMISSIONER OF EDUCATION

Date of Decision: August 3, 2012

Date of Mailing: August 6, 2012

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<sup>1</sup> Neither party filed exceptions.

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