

#362-12 (OAL Decision: Not yet available online)

KATHLEEN BIGGIANI, :

PETITIONER, : COMMISSIONER OF EDUCATION

V. : DECISION

BOARD OF EDUCATION OF THE :
BOROUGH OF RIDGEFIELD, :
BERGEN COUNTY, :

RESPONDENT. :

SYNOPSIS

Petitioner, a tenured secretarial employee whose position was abolished in a reduction in force (RIF) in June 2010, alleged that the respondent Board violated her tenure and seniority rights when it failed to rehire her for a secretarial position which was posted in August 2011, and instead selected a non-tenured employee to fill the vacancy. After transmittal of the case to the Office of Administrative Law (OAL), the Board filed a motion for summary disposition, contending that petitioner had no legal entitlement to a position created after her employment was terminated in a RIF. In its motion to dismiss, the Board referenced the well-settled principle that secretaries are not protected by the seniority system that applies to teaching staff members. The ALJ assigned to the case denied the motion to dismiss, after which the Board sought an interlocutory review of the ALJ’s August 7, 2012 order by the Commissioner of Education.

The Commissioner reviewed the ALJ’s order and the parties’ submissions in this matter, and determined that reversal of the ALJ’s August 7, 2012 order is appropriate; consequently, an evidentiary hearing is not necessary for the disposition of this case. Citing prior case law, the Commissioner found, *inter alia*, that – while tenured secretaries may “bump” into the secretarial positions of untenured employees at the time of a RIF – in the absence of contractual seniority for secretaries, a board of education is not obliged to maintain a seniority list and call a secretary back when a secretarial job opens up subsequent to the elimination of his or her prior position. In light of this finding, the Commissioner determined that petitioner did not have a legal right to the secretarial position that opened up in respondent’s district over a year after her prior employment was terminated. Accordingly, the Commissioner granted summary disposition in favor of respondent and issued a final decision dismissing the petition.

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.

August 31, 2012

KATHLEEN BIGGIANI, :
PETITIONER, : COMMISSIONER OF EDUCATION
V. : DECISION
BOARD OF EDUCATION OF THE :
BOROUGH OF RIDGEFIELD, :
BERGEN COUNTY, :
RESPONDENT. :

Respondent Board of Education of the Borough of Ridgefield has sought interlocutory review of an August 7, 2012 order by an Administrative Law Judge (ALJ) in the Office of Administrative Law (OAL) which denied respondent's application for summary decision dismissing the petition. Having reviewed both the ALJ's order and the parties' submissions, and having decided to undertake such interlocutory review, the Commissioner has determined that reversal of the August 7, 2012 order is appropriate.

As discussed in the Interlocutory Order, petitioner was a tenured secretary in respondent's district whose position was eliminated on June 30, 2010 as the result of an economically induced reduction in force (RIF). Petitioner does not allege that the RIF itself was improper, nor does she contend that at the time of the RIF there were vacant secretarial positions or secretarial positions held by non-tenured employees to which she might have been entitled. Rather, petitioner contends that in August 2011 – over a year after the RIF – when a new secretarial position opened in the district, respondent was obliged to offer it to her in preference to any non-tenured candidate, so long as she was qualified for the job.

Respondent moved for summary disposition, arguing that as a matter of law petitioner had no legal entitlement to a position created after her employment was terminated via a reduction in force. In so arguing, respondent made reference to the settled principle that secretaries are not protected by the seniority system enjoyed by teaching staff members. *See, e.g., Ferronto v. Bd. of Educ. of the Township of Weymouth, et al.*, State Board of Education Decision #36-05, decided February 1, 2006; *Sheridan v. Board of Education of the Township of Ridgefield Park, Bergen County*, 1976 S.L.D. 995, 997.

Consequently, while tenured secretaries may “bump” into the secretarial positions of untenured employees at the time of a RIF, *Lisa Salimbene v. Board of Education of the Township of Dennis, Cape May County*, Commissioner Decision No. 511-11, decided November 10, 2011, at 2, in the absence of contractual seniority for secretaries a board of education is not obliged to maintain a seniority list and call a secretary back when a secretarial job opens up subsequent to the elimination of his or her prior position. *Gloria Dezuzio v. Board of Education of the Borough of Bound Brook, Somerset County*, Commissioner Decision No. 387-08, decided September 18, 2008, at 2.

Significantly, such decisions as *Dezuzio, supra*, and *Judith A. DiNapoli v. Board of Education of the Township of Verona, Essex County*, Commissioner Decision No. 281-12M, decided July 16, 2012 (Slip Op.), at 2, hold that school secretaries enjoy neither seniority privileges nor recall rights. Thus, a tenured secretary can exercise his or her right to “bump” a non-tenured secretary solely at the time of the RIF. Indeed, in the absence of a system of seniority, there is no fair and practical way of determining who, among multiple “RIF’d” tenured secretaries, might properly be “recalled” or offered a position that is created or vacated

subsequent to a RIF. And the longer the interval of time between the RIF and the opening of a secretarial position, the more compounded the issue can become.

In light of the foregoing, petitioner did not have a legal right to the secretarial position which opened up in respondent's district over a year after her prior employment was terminated. Consequently, an evidentiary hearing regarding her qualifications for the position is not necessary for the disposition of this case.

Accordingly, summary disposition is granted in favor of respondent, and a final decision dismissing the petition is hereby issued.

IT IS SO ORDERED.¹

COMMISSIONER OF EDUCATION

Date of Decision: August 31, 2012

Date of Mailing: August 31, 2012

¹ 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*).