

#80-12 (OAL Decision: Not yet available online)

DEZORAY MOORE, :
 :
 PETITIONER, :
 : COMMISSIONER OF EDUCATION
 V. :
 :
 : DECISION
 BOARD OF EDUCATION OF THE :
 TOWNSHIP OF WILLINGBORO, :
 BURLINGTON COUNTY, :
 :
 RESPONDENT. :

SYNOPSIS

Petitioner – a tenured assistant principal – contended that her tenure rights were violated when her annual salary was reduced in consequence of the change from a twelve-month to a ten-month position in respondent’s school district following a reduction in force (RIF) which eliminated the twelve-month position of principal at Garfield East Elementary School – a position petitioner had held for eight months. Respondent Board asserted that it had acted pursuant to a RIF and in accordance with the law when it placed petitioner in a ten-month assistant principal position in an elementary setting at her base salary, pro-rated for ten months; and that this assignment had been made only after petitioner expressed dissatisfaction with the Board’s intent to reassign her to a twelve-month assistant principal position at the district high school – a position that would have provided the same twelve-month work schedule and salary that petitioner had received prior to the RIF. Petitioner contends that she was reassigned from her principal position to the high school position as a result of the RIF, and that the Board then transferred her of its own volition to the elementary position, thereby illegally reducing her salary.

The ALJ found, *inter alia*, that: it is undisputed that respondent instituted a RIF in the spring of 2010 which eliminated petitioner’s twelve-month principal position; the evidence as presented was clear that petitioner had initially been advised by her superintendant that she would be recommended for an assistant principal position at Memorial Upper Elementary school; the Board, however, did not act on that recommendation but instead assigned petitioner to a new position at the high school that preserved her twelve-month work schedule and salary; petitioner appeared to be disgruntled with the assignment; the Board determined from petitioner’s actions that she was seeking assignment to Memorial Upper Elementary as assistant principal and therefore changed the assignment; this assignment, which petitioner seems to have wanted, resulted in a reduction in her salary due to the ten-month nature of the position; and the reduction is not a violation of her tenure rights. Accordingly, the ALJ dismissed the petition.

Upon comprehensive review of the record, the Commissioner adopted the Initial Decision of the OAL as the final decision in this matter. The petition was dismissed.

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.

March 5, 2012

OAL DKT. NO. EDU 12286-10
AGENCY DKT. NO. 604-10/10

DEZORAY MOORE, :
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In this controversy petitioner contends that her tenure rights were violated when her annual salary was reduced in consequence of the change from a twelve-month to a ten-month position in respondent's school district. Upon review of the record,¹ Initial Decision of the Office of Administrative Law (OAL), petitioner's exceptions and respondent's replies thereto, the Commissioner adopts the Initial Decision for the reasons expressed therein.

The event that precipitated the controversy was a reduction in force (RIF) which eliminated the position of principal of respondent's Garfield East Elementary School. Petitioner had held that twelve-month position for approximately eight months when notice of the reduction in force was issued in April 2010. (Respondent's Exhibit R-1) She was advised that her tenure in the position of Assistant Principal – which tenure had previously been earned in consequence of six years of service in the ten-month position of Assistant Principal of Levitt Middle School – would give her “position rights” over non-tenured assistant principals within the district or allow her to be placed in a vacant assistant principal position. (*Ibid.*)

It is undisputed that, initially, respondent voted (on June 30, 2010) to assign petitioner to respondent's high school – in the newly created twelve-month position of Assistant Principal/Dean

¹ The record does not include a transcript of the hearing, which was held in the Office of Administrative Law on November 29, 2011.

of Students, which position was to have the same annual remuneration as did petitioner's position as principal of Garfield East Elementary School.² (Respondent's Exhibits R-2 and R-3) It is also undisputed that respondent voted on July 26, 2010 to assign petitioner to Memorial Upper Elementary School (Memorial) in the ten-month position of Assistant Principal. (Respondent's Exhibits R-9 and R-10)

Respondent contends that the latter placement of petitioner into the ten-month assistant principal position at Memorial,³ and the attendant reduction in salary, was the result of petitioner's expression of dissatisfaction with the high school assignment. It was, thus, a reassignment in consequence of the RIF. Relying on such cases as *DiMaggio v. Board of Education of the City of Trenton, Mercer County*, Commissioner Decision No. 219-99 (July 8, 1999), respondent reasons that the decrease in petitioner's annual salary caused by the change from the twelve-month position that she rejected to a ten-month position (at the same rate of pay) given to her in consequence of the RIF was not a violation of her tenure rights. *DiMaggio, supra*, at 20.

Petitioner does not deny that respondent's June 30, 2010 action assigning her to the high school was in consequence of a RIF. Rather, she maintains 1) that she never objected to that assignment, 2) that respondent's July 26, 2010 placement of her into the position at Memorial was at its own initiative and should be deemed independent of the RIF, and 3) that the reduction in salary caused by her 'transfer' from the high school position to the assistant principal position at Memorial must be regarded as a violation of her tenure rights.

The resolution of this controversy boils down to an evaluation of the facts and the credibility of the respective parties and/or their representatives regarding their communications in June and July of 2010. Those communications included, *inter alia*, a July 1, 2010 letter from petitioner questioning her appointment to the high school position, a July 15, 2010 meeting – precipitated by

² The record suggests that all other assistant principal positions in respondent's district were ten-month positions.

³ Petitioner ultimately served in that position for the 2010-11 school year.

petitioner's letter – attended by petitioner, respondent's Interim Superintendent David Hesse, respondent's Human Resources Director Terrell Everett and others, and correspondence subsequently sent to petitioner referencing the July 15 meeting. *See, e.g.*, Respondent's Exhibits R-4, R-6, R-7, and R-8.

It is important to recognize at the outset that the Commissioner must accept the Administrative Law Judge's (ALJ) credibility determinations unless the record blatantly contradicts same, *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). Here, the ALJ found respondent's witnesses to be credible as regards respondent's reason for changing petitioner's placement from the high school to Memorial. The ALJ accepted Hesse's testimony that 1) once the RIF was instituted it was Hesse's and petitioner's original expectation – before the first of respondent's board meetings – that petitioner would be given the assistant principal position at Memorial, 2) he interpreted petitioner's July 1, 2010 letter to be a complaint about the assignment in the high school and scheduled the July 15, 2010 meeting to address petitioner's concerns, 3) as a result of communications during the July 15 meeting, he understood petitioner to want the assistant principal position at Memorial, and 4) in the hope of appeasing a displeased employee, he proposed to the respondent board that it give petitioner the assistant principal position at Memorial – which it did.

On the other hand, the ALJ was not persuaded by petitioner's testimony. He found:

that Ms. Moore, despite her more recent attempt to make it appear as if she accepted the High School position and only wanted a better understanding of it, actually was very unhappy with the assignment and actively sought to both express her disagreement with her having been assigned to a job she had not sought (or even been aware of) and also directly sought to have that assignment changed to the one she had expected following her pre-June 29 meeting with Hesse, one that she had not made any protestation of public or private disagreement with prior to the Board's June 29 meeting. (Initial Decision at 8)

In addition to assessing petitioner's testimony, the ALJ noted that there was no indication in the record that petitioner – prior to respondent's July 26, 2010 board action – ever communicated to Hesper or the respondent Board any objections about the reassignment to Memorial – a change about which she had been alerted by Everett's letters of July 15 and July 22 and the Rice Notice of dated July 22, 2010. The ALJ concluded from this that during that time period petitioner was satisfied with the change to a ten-month position, notwithstanding that she would earn less over a calendar year in her more desired position at Memorial.⁴ (Initial Decision at 9)

The Commissioner has discerned nothing in the record that would lead him to believe that the ALJ's factual findings and credibility determinations are baseless or contraindicated. To the contrary, the Commissioner finds that the record supports only one non-speculative explanation for the reassignment of petitioner, and that is respondent's belief that the reassignment was what petitioner wanted.

Petitioner's suggestion, in her exceptions, that her placement in the Memorial assistant principal position should be seen as an action that was independent of the RIF is therefore rejected. The Commissioner concludes that petitioner's reassignment from a twelve-month to a ten-month position was in consequence of the RIF that was announced by respondent in April of 2010. Under those circumstances, the prorating of her salary did not violate petitioner's tenure rights. The petition is accordingly dismissed.

IT IS SO ORDERED.⁵

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 5, 2012

Date of Mailing: March 6, 2012

⁴ The ALJ's account of petitioner's testimony also included the statement that any concerns petitioner may have had about being the only RIF'd administrator to be subject to a salary reduction were not communicated to Hesper or Everett or brought before the respondent Board. Rather, they were "later expressed to Mr. Nash [petitioner's counsel]." Initial Decision at 6.

⁵ 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)*