

JOSEPH ANNECCHINO, :  
 :  
 PETITIONER, : COMMISSIONER OF EDUCATION  
 :  
 V. : DECISION  
 :  
 BOARD OF EDUCATION OF THE :  
 TOWNSHIP OF IRVINGTON, :  
 ESSEX COUNTY, :  
 :  
 RESPONDENT. :

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### SYNOPSIS

The petitioner in this case was employed under tenure as Supervisor of Visual and Performing Arts by the respondent Board when his position was eliminated in a reduction in force (RIF) in 2012. Petitioner – who had been employed by the District since 1984 – was reassigned to a teaching position for the 2012-2013 school year, at a reduced salary. Petitioner contended that subsequent to the elimination of his position, non-tenured employees were permitted to remain in supervisory positions in the district, while he was demoted to a teaching position in violation of his tenure rights; he sought payment of \$23,628 from the school district, representing the difference between his former supervisory salary and the amount he was paid as a teacher following his demotion. The respondent Board argued that its reason for retaining the non-tenured employees was that it had determined to keep as supervisors those people who possessed knowledge and experience in the subjects they were supervising; petitioner was not offered a supervisory position in another department because he did not have “content” expertise in anything besides visual and performing arts.

The ALJ found, *inter alia*, that: petitioner’s position was eliminated as part of a valid RIF pursuant to N.J.S.A. 18A:28-9; the respondent Board merged petitioner’s former position with that of the Director of Staff Development for the 2012-2013 school year; petitioner was certified as a teacher of visual arts and had supervisor endorsements; based on petitioner’s tenure status, he should have been preferred for a supervisor position over a non-tenured school employee; irrespective of content expertise, a certified supervisor with tenure should be preferred over one who is non-tenured; and, although there is no statutory right to the salary held prior to a RIF, awards of differences in salary are appropriate remedies when a petitioner’s tenure rights are violated as a result of a RIF. The ALJ concluded that petitioner is entitled to the salary difference of \$23, 628 for the 2012-2013 school year, and ordered that he be awarded this amount by the school district.

The Commissioner concurred with the ALJ’s conclusion that the criteria which the Board used to reorganize after the RIF was not harmonious with the rules concerning tenure; specifically, the respondent applied the regulations and precedent concerning seniority – instead of tenure – to the aftermath of the RIF. This would have been appropriate in a situation where all supervisory positions at the time of the RIF were held by tenured employees, but this was not the case here, and thus petitioner had a greater right to a supervisory position than any of the non-tenured supervisors. The Commissioner concluded that the petitioner should have been placed in one of the supervisory positions and paid a supervisor’s salary following the RIF, instead of being reassigned as a teacher at a lower salary; accordingly, the petition was granted and respondent was ordered to pay the petitioner \$23,628.

<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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June 24, 2014

JOSEPH ANNECCHINO, :  
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The petitioner in this matter asks the Commissioner to order that he be compensated for the loss of salary which he suffered when his supervisory position was abolished and he was transferred to a teaching position during the 2012-2013 school year. Upon review of the record and Initial Decision of the Office of Administrative Law (OAL),<sup>1</sup> the Commissioner concurs with the Administrative Law Judge (ALJ) that petitioner is entitled to the compensation which he requests.

It is undisputed that at the time his position of Supervisor of Visual and Performing Arts was eliminated, petitioner had earned tenure as a supervisor in respondent's district. It is also undisputed that subsequent to the abolishment of petitioner's position, which occurred by virtue of a legitimate, economically driven reduction in force (RIF), non-tenured employees were permitted to remain in supervisory positions in the district, while petitioner was demoted to a teaching position. Respondent's stated reason for this result was that it determined to keep as supervisors the employees who possessed knowledge and experience in the subjects they were supervising. It is also clear, however, that the Board of Education did not approve the need for dual certification.

The ALJ correctly concluded that the criteria which respondent used to reorganize after the RIF was not harmonious with the rules concerning tenure. More specifically, respondent appears to

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<sup>1</sup> Neither party filed exceptions to the Initial Decision.

have applied the regulations and precedent concerning seniority – instead of tenure – to the aftermath of the RIF. If it had been the case that all respondent’s supervisory positions were held by tenured supervisors at the time of the RIF, determinations concerning the various supervisors’ experiences in each category of supervisory position would have been relevant.

However, the field of candidates included non-tenured employees. As a tenured supervisor, petitioner had a greater right to a supervisory position than any of those non-tenured supervisors. *See, e.g., Nicholas Duva v. State-operated School District of the City of Jersey City, Hudson County*, State Board Decision No. 56-99, March 6, 2002:

Given that . . . “supervisor” [is not] among those positions enumerated in *N.J.S.A. 18A:28-5*, the scope of petitioner’s tenure protection under his Administrative Certificate extended to all assignments for which he was qualified by virtue of possessing a supervisor’s endorsement. Hence, upon abolishment of his director’s assignment, the petitioner was entitled to be employed in assignments requiring a supervisor endorsement in preference to any non-tenured individuals.

*Duva, supra* at 17-18.

Thus, instead of being reassigned as a teacher, petitioner should have been placed in one of the supervisory positions in respondent’s district and paid a supervisor’s salary.

Accordingly, the petition is granted and respondent shall pay petitioner \$23,628, the amount found by the ALJ to be due and owing.

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

ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 24, 2014  
Date of Mailing: June 24, 2014

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<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*).