

#267-15 (OAL Decision: Not yet available online)

KEVIN GARIFINE, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE : DECISION

CITY OF LONG BRANCH, :

MONMOUTH COUNTY, :

RESPONDENT. :

SYNOPSIS

Petitioner – who was employed in the respondent Board’s buildings and grounds department from 1999 to 2012 as a plumber – contended that the Board violated his tenure rights under *N.J.S.A. 18A:17-3* when it did not renew his contract for the 2012-2013 school year. Petitioner argued that tenure status was conferred upon him in 2007 when the Board entered into a Collectively Negotiated Agreement (CNA) wherein it was agreed that all maintenance and grounds employees who had completed three consecutive years of employment in the district would be entitled to tenure protections pursuant to *N.J.S.A. 18A:17-3*; accordingly, the Board’s termination of his employment was improper. The Board asserted that petitioner was employed as a plumber and not entitled to the tenure protection conferred by the CNA upon custodial/maintenance and grounds employees.

The ALJ found, *inter alia*, that: the primary issue in this matter is whether petitioner’s position as plumber fell within the category of custodial/maintenance and grounds employees; an examination of the Board’s job descriptions reveals that a “plumber” is a custodial employee who may obtain tenure under *N.J.S.A. 18A:17-3*; once statutory tenure has been achieved, it cannot be waived; the waiver of tenure in the 2010-13 CNA had consequences for those in the bargaining unit who had not yet attained it, but petitioner had achieved tenure and could not be removed unless in a manner sanctioned by the tenure statute. Accordingly, the ALJ granted petitioner’s appeal.

The Commissioner determined that the ALJ appropriately granted the petition, but found, *inter alia*, that: the Initial Decision does not address the consequences of declaring petitioner a tenured employee – such as his entitlement to immediate reinstatement in the district – and outstanding issues concerning back pay and emoluments; and these issues must be determined in order to fully resolve the controversy. Accordingly, the Commissioner remanded the matter to the OAL for further proceedings.

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 12, 2015

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This dispute concerns whether petitioner obtained statutory tenure protection under the terms of a collective negotiation agreement (CNA) during the course of his employment as a plumber in respondent’s district and, if so, whether his tenure rights were violated when the district decided not to renew his employment for the 2012-2013 school year.

The record of this matter,¹ along with the Initial Decision of the Office of Administrative Law (OAL), has been reviewed. Additionally, respondent’s exceptions and petitioner’s reply thereto – submitted in accordance with *N.J.A.C. 1:1-18.4* – were also considered by the Commissioner. While reflecting its obvious disagreement with the findings and conclusions contained within the Initial Decision, respondent’s exceptions are unpersuasive and, essentially, recast and reiterate the arguments made below – which were adequately addressed by the Administrative Law Judge (ALJ).

Upon full and independent review of the record, the Commissioner concurs with the ALJ’s comprehensive findings, legal analysis and well-reasoned conclusion that petitioner – a buildings and grounds department employee – gained statutory tenure protection pursuant to Article X of the 2007-2010 agreement², which provides: “[a]ll custodial/maintenance and grounds employees who have

¹ The record did not contain the hearing transcripts.

² At the time of the agreement, petitioner had been employed at the district for eight consecutive years. (Initial Decision at 6)

completed three consecutive years of employment in the school district shall be entitled to tenure protection offered by *N.J.S.A. 18A:17-3*.” (Initial Decision at 2) Noting that tenure rights cannot be waived once established, the ALJ further concluded that the subsequent 2010-2013 CNA – which sought to remove the tenure protections awarded by Article X – could not strip petitioner of tenure rights he already possessed, although the new agreement would impact those who had not yet attained tenure. (Initial Decision at 10) Due to petitioner’s status as a tenured employee, the district can only lawfully terminate his employment through the means provided by *N.J.S.A. 18A:17-3* – a reduction in force, or the filing of tenure charges against him. Neither scenario has occurred here.

Although the Commissioner finds that the ALJ appropriately granted the petition, the Initial Decision does not address the consequences of declaring petitioner a tenured employee – particularly in light of the district’s *ultra vires* decision not to renew his employment for the 2012-2013 school year – such as his entitlement to immediate reinstatement in the district, and outstanding issues concerning back pay and emoluments.³ These determinations are required in order to fully resolve this controversy.

Accordingly, the matter is remanded to the OAL for further proceedings.

IT IS SO ORDERED.⁴

COMMISSIONER OF EDUCATION

Date of Decision: August 12, 2015

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³ Adding to the complexity of this matter are respondent’s undisputed assertions that petitioner’s salary exceeded CNA guidelines, and that petitioner contributed less than other members of the bargaining unit toward his medical benefits.

⁴ 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*).