

209-03

LEEANN WOOD, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE : DECISION

BOROUGH OF PEMBERTON, :

BURLINGTON COUNTY, :

RESPONDENT. :

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SYNOPSIS

Petitioning physical education teacher, whose full-time position was abolished and replaced with a 4/5<sup>th</sup>'s position, claimed tenure and seniority rights to other full-time positions within the scope of her certification.

The ALJ found that petitioner's tenure and seniority claims were cured when the Board offered and petitioner accepted a full-time position without any loss of pay or benefits, notwithstanding issues raised by petitioner regarding her working, without written agreement under the Interlocal Services Act, *N.J.S.A. 40:8A-1 et seq.*, two days a week in respondent's schools and three days a week in the Pemberton Township schools. (In preceding years, her schedule had been three days in respondent's schools and two days in Pemberton Township.) The ALJ ordered the petition dismissed.

The Commissioner adopted the Initial Decision as his own, clarifying that petitioner had not raised claims arising from the shared services arrangement in her pleadings, and that Pemberton Township, an indispensable party to any such claims, was neither named as a respondent nor otherwise involved in 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.

May 1, 2003

OAL DKT. NO. EDU 4388-02  
AGENCY DKT. NO. 177-6/02

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PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
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	:	
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_____	:	

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Timely exceptions were filed by petitioner, as were replies by the Board of Education (Board).

Petitioner's exceptions reiterate the previously raised contention that her tenure and seniority rights were triggered, notwithstanding her subsequent assignment to a full-time position, upon her receipt of *notice* that her employment for the following year would be reduced to a 4/5 position. Thus, she claims, she is now entitled to a determination of her tenure and seniority rights in both the Pemberton Borough (the respondent herein) and the Pemberton Township school districts, as well as to a directive from the Commissioner ordering the two districts to enter into a written agreement regarding these matters pursuant to the Interlocal Services Act (the Act), *N.J.S.A. 40:8A-1 et seq.* In reply, the Board urges adoption of the Initial Decision and maintains its prior stance that it is not required to provide joint services through the Act.

Upon review, the Commissioner determines to adopt the Initial Decision of the OAL. In so doing, however, he notes that this matter was pled strictly as a tenure/seniority entitlement claim against the respondent Board,<sup>1</sup> but that, when events transpired so that petitioner's employment was never actually reduced, petitioner's arguments before the Administrative Law Judge (ALJ) turned to claims based on the shared arrangement with Pemberton Township and the provisions of the Interlocal Services Act, notwithstanding that the Petition of Appeal made no reference whatsoever to such claims, no amended petition was ever filed, and an indispensable party to any determination in these regards, the Pemberton Township Board of Education, was neither named as a respondent nor provided an opportunity to intervene pursuant to *N.J.A.C.* 1:1-16.4. Therefore, like the ALJ, the Commissioner finds petitioner's tenure/seniority claim against the respondent Board to be moot, and on the basis set forth above, rejects petitioner's contention that she is entitled to determination on the further issues raised.

Accordingly, for the reasons expressed in the Initial Decision and herein, the recommendation of the OAL dismissing the Petition of Appeal is adopted as the final decision in this matter.

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

COMMISSIONER OF EDUCATION

Date of Decision: May 1, 2003

Date of Mailing: May 1, 2003

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<sup>1</sup> Petitioner alleged that her employment had been reduced even though the Board was retaining nontenured and/or less senior teachers in positions for which she was qualified.

<sup>2</sup> This decision may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6A:4-1.1 *et seq.*