

PATRICIA MILANO, :  
PETITIONER, : COMMISSIONER OF EDUCATION  
V. : DECISION  
BOARD OF EDUCATION OF THE :  
TOWNSHIP OF FRANKLIN, :  
SOMERSET COUNTY, :  
RESPONDENT. :

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#### SYNOPSIS

Petitioner – a certified pre-school teacher employed in respondent’s district – contended that she had acquired tenure for the years she taught under contracts with the Township of Franklin Board of Education. The underlying merits of this matter were decided previously in an Initial Decision issued in June 2008, but the matter was remanded to the OAL by the Commissioner in July 2008 because the ALJ had not resolved the threshold question of whether the petitioner’s cause of action was ripe for adjudication since the petition did not allege suffering of any loss of pay, employment or other specific benefit.

Incorporating his June 2008 Initial Decision – which ordered that the petitioner had acquired tenure on September 2, 2004 – the ALJ found that this matter is ripe for determination because the issue of tenure impacts directly on the health insurance benefits available to the family of the petitioner, as well as the out-of-pocket monthly expense to petitioner of paying for these benefits. Accordingly, the ALJ ordered the matter ripe for adjudication.

The Commissioner considered both the June 2008 Initial Decision and the instant supplementary decision, and agreed with the ALJ that the petition was timely filed and that the petitioner acquired tenure in respondent’s district. The Commissioner found, however, that the record shows that petitioner acquired tenure pursuant to *N.J.S.A. 18A:28-5(c)* on October 3, 2004. Accordingly, the Commissioner adopted the Initial Decision and the supplementary decision with this modification, and directed the Board to compensate the petitioner for the difference in health insurance costs between individual and family coverage for the period she should have been granted tenure status.

<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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March 25, 2009

OAL DKT. NO. EDU 8206-08  
(EDU 6797-06 ON REMAND)  
AGENCY DKT. NO. 286-8/06

PATRICIA MILANO, :  
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 PETITIONER, :  
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 V. : COMMISSIONER OF EDUCATION  
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The record of this matter and the supplementary Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties did not file exceptions to the supplementary decision.

By way of background, the underlying merits of this matter were previously before the Commissioner in July 2008, wherein she reviewed the Administrative Law Judge's (ALJ) June 9, 2008 decision granting petitioner summary decision. Petitioner in this underlying matter had sought a declaration that she had achieved tenure in the district, while the Board interposed a defense of untimeliness of the petition. When this matter was originally transmitted to the OAL, the Agency included a Special Feature request which, in pertinent part stated: "Request threshold consideration of whether petitioner's cause of action is ripe for adjudication, since petition does not allege suffering of any loss of pay, employment or other specific benefit." In his June 2008 decision, the ALJ found that the petition of appeal was timely and that petitioner did acquire tenure in respondent's district in September of 2004; however, his decision

did not address the requested foundational issue. In that the ALJ's June 9, 2008 decision did not resolve the requisite threshold question, the Commissioner – on July 24, 2008, decision #321-08, – found that neither the petition's timeliness nor the merits of the parties' respective positions was appropriately before her at that time and she, therefore, remanded the matter to the OAL again requesting a determination as to whether the petitioner's cause of action was ripe for adjudication. With the receipt of the instant supplementary decision finding that petitioner suffered monetary damages as a consequence of the Board's denial of tenure, the Commissioner can now proceed with her review and determination of the ALJ's June 9, 2008 recommendation on the merits of this matter.<sup>1</sup>

Upon a full review of the record – and finding the Board's exception arguments reiterative of those presented to the ALJ below, which it is determined were satisfactorily addressed and resolved in the Initial Decision – the Commissioner agrees with the ALJ, for the reasons detailed on pp. 4-9 of his decision, that the petition of appeal was timely filed and that petitioner acquired tenure in the Franklin School District. The Commissioner, however, does not agree with the ALJ that petitioner's tenured status was acquired on September 2, 2004. Notwithstanding that the first academic year of the pre-school program in which petitioner was to teach commenced during the 2001-02 academic year, the record reflects that petitioner's offer of employment was made and accepted on September 20, 2001, with an expressed effective date of October 2, 2001 (See Exhibit B). Consequently, the Commissioner finds and concludes that petitioner acquired tenure, pursuant to *N.J.S.A.* 18A:28-5(c), on October 3, 2004.

Accordingly, the Initial Decision of June 9, 2008 – as modified above – and the instant supplementary decision are adopted. The Board is hereby directed to compensate

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<sup>1</sup> A copy of the ALJ's June 9, 2008 initial decision – along with the Commissioner's July 24, 2008 decision wherein the Board's exception and petitioner's reply arguments on exception are summarized – is attached.

petitioner the difference in health insurance costs between individual and family coverage for the period she should have been granted tenure status.

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

COMMISSIONER OF EDUCATION

Date of Decision: March 25, 2009

Date of Mailing: March 25, 2009

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<sup>2</sup> This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36*.