

#176-12 (OAL Decision: Not yet available online)

SHANNON HARRIS,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF	:	DECISION
THE CITY OF BRIDGETON,	:	
CUMBERLAND COUNTY,	:	
	:	
RESPONDENT.	:	
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SYNOPSIS

Petitioner claimed that she had attained tenure on the basis of five months of substitute service as a maternity leave replacement teacher, and that respondent Board violated her tenure rights. Petitioner had been employed by the Board for the school years beginning September 1, 2007 through June 30, 2008, September 1, 2008 through June 30, 2009, and September 1, 2009 through June 30, 2010 when her employment was terminated. She was subsequently called back on an interim basis as a kindergarten teacher, to provide coverage for a short term maternity leave from January 3 through May 20, 2011. Petitioner claimed to have acquired tenure on her first day of substitute service, January 3, 2011. The Board asserted that petitioner had not acquired tenure in her employment with the school district. The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: there were no material facts in dispute, and the matter was ripe for summary decision; the question in this matter is whether petitioner attained tenure as a result of her interim employment between January and May 2011; petitioner’s employment during this period was temporary, as replacement for a teacher who was absent on maternity leave but scheduled to return to her position; the provisions of *N.J.S.A. 18A:16-1.1* and New Jersey case law support the conclusion that a person does not accrue tenure when she substitutes for a tenured teacher who is on a maternity leave; and without the period of interim employment in 2011, petitioner fails to satisfy the requirements for the acquisition of tenure set forth at *N.J.S.A. 18A:28-5*. Accordingly, the ALJ granted respondent’s motion for summary decision and dismissed the petition.

Upon a thorough and independent review of the record, the Commissioner concurred that summary decision is appropriately granted to the Board. Accordingly, the Initial Decision of the OAL was adopted as the final decision and 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.

May 3, 2012

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties did not file exceptions to the Initial Decision.¹

Upon full review and consideration, the Commissioner concurs with the Administrative Law Judge (ALJ) that summary decision is appropriately granted to the Board. Petitioner in this matter was employed as an elementary school teacher by the Board for the school years beginning September 1, 2007 through June 30, 2008, September 1, 2008 through June 30, 2009, and September 1, 2009 through June 30, 2010. Her employment was terminated by the Board at the end of the 2009-10 school year. Petitioner was subsequently called back on an interim basis for the period January 3, 2011 through May 20, 2011, as a kindergarten teacher substituting for a tenured teacher on a short-term maternity leave, who – at the end of this period – returned to her position. Petitioner claims to have acquired tenure on the first day of her five

¹ Board counsel, A. Paul Kienzle, Jr., did, however, write to advise that the Initial Decision erroneously identified him as counsel for petitioner. Mr. Kienzle clarified that Ned P. Rogovoy, Esq. is petitioner’s attorney.

month substitute service, *i.e.*, January 3, 2011. For the reasons cogently presented by the ALJ on pages 3-10 of his decision, the Commissioner is in full accord with the ALJ's determination that substitute service for a fixed term, filling in for a position that is not vacant, cannot be counted toward tenure. (See *N.J.S.A.* 18A:16-1.1 and *Sayreville Education Association v. Sayreville Board of Education*, 193 *N.J. Super.* 427, Appellate Division 1984) Therefore, petitioner failed to meet the statutory condition for the acquisition of tenure.

Accordingly, the recommended decision of the OAL is adopted as the final decision in this matter. Summary decision is granted to the Board and the instant Petition of Appeal is hereby dismissed.

IT IS SO ORDERED.²

ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 3, 2012

Date of Mailing: May 4, 2012

² 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).