

#444-12 (OAL Decision: Not yet available online)

BRIDGEWATER-RARITAN EDUCATION :
ASSOCIATION, ON BEHALF OF :
TAMARA MANZUR, CAROL O'NEIL AND :
MAGGIE CASSIDY, :
 : COMMISSIONER OF EDUCATION
PETITIONER, :
 : DECISION
V. :
 :
BOARD OF EDUCATION OF THE :
BRIDGEWATER-RARITAN SCHOOL :
DISTRICT, SOMERSET COUNTY, :
 :
RESPONDENT. :
_____ :

SYNOPSIS

Petitioning teachers, through the Bridgewater-Raritan Education Association, asserted that the Board's failure to renew their employment was a violation of their tenure and seniority rights. The three petitioning teachers each worked as replacement teachers during some portion of their service in the school district, and contended that a District policy required that time served as a replacement teacher be counted towards the acquisition of tenure. The respondent Board maintained that no such policy was ever formally adopted by the District; accordingly – under applicable New Jersey statutes – the teachers did not attain tenure because time served as a replacement teacher cannot legally be counted towards tenure accrual. The Board filed a motion for summary decision.

The ALJ found, *inter alia*, that: there are no issues of material fact in this case, and the matter is ripe for summary decision; the Commissioner of Education has previously held that, absent the formal adoption of a policy, a school board cannot be bound by oral promises; the issue of whether there was an implied contract is therefore irrelevant; all three petitioning teachers served as replacements for specific teachers who were on maternity leave, and ultimately returned to work; they therefore did not fill vacant positions; under *N.J.S.A. 18A:28-5*, the time the three teachers spent as substitutes for non-vacant positions cannot count towards acquiring tenure; accordingly, none of petitioners served as regular employees for a sufficient period of time to accrue tenure in the District; and the petitioners' argument for equitable estoppel fails because there is no evidence that the Board ever made a material representation to the teachers that their replacement time would count towards the attainment of tenure. Accordingly, the ALJ granted the Board's motion to dismiss the petition.

Upon full consideration, the Commissioner concurred with the ALJ for the reasons comprehensively presented in his recommended decision, and adopted the Initial Decision of the OAL as the final decision in this matter.

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.

November 21, 2012

OAL DKT. NO. EDU 6095-11
AGENCY DKT. NO. 125-5/11

BRIDGEWATER-RARITAN EDUCATION	:	
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The Commissioner has reviewed the record of this tenure dispute, the Initial Decision of the Office of Administrative Law, the petitioner's exceptions on behalf of its members, and the respondent's reply to those exceptions. Upon consideration of the foregoing, the Commissioner completely concurs with the Administrative Law Judge's determination that petitioner's members did not earn tenure in respondent's district.

Accordingly, respondent's motion for summary disposition is granted – for the reasons set forth in the Initial Decision – and the petition is dismissed.

IT IS SO ORDERED. ¹

COMMISSIONER OF EDUCATION

Date of Decision: November 21, 2012
Date of Mailing: November 21, 2012

¹ This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 3* (*N.J.S.A. 18A:6-9.1*).