

#132-15 (OAL Decision: Not yet available online)

CLAUDIA CAVANAGH, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
BOROUGH OF SADDLE RIVER :
BERGEN COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner – a tenured pre-kindergarten (pre-K) teacher – alleged that the respondent Board violated her tenure and seniority rights when it did not assign her to a full-time position held by non-tenured and/or less senior teaching staff members following a reduction in force (RIF) for the 2013-2014 school year. Petitioner had been teaching in a .8 full-time equivalent (FTE) position during the 2012-2013 school year. The Board implemented budgetary cutbacks during 2012-2013, and in April 2013 petitioner was notified that her pre-K position would be reduced from .8 FTE to .6 FTE for the 2013-2014 school year. Subsequently, after petitioner notified the Board on October 17, 2013 that she intended to assert her right to a full-time tenured position, the Board restored petitioner’s position to .8 FTE and retroactively paid her the difference in salary from September 1, 2013 through October 31, 2013. Petitioner filed her appeal in November 2013. The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: there were no issues of material fact in this case, and the matter was ripe for summary decision; the issues to be determined were whether petitioner was adversely affected by a RIF and if so, whether she was entitled to one of the full-time positions held by non-tenured and/or less senior staff following the RIF; because petitioner was restored to her position in October 2013 and retroactively paid for the difference in salary from September 1 until October 31, 2013, she did not experience a loss of salary or employment benefits and was therefore not the subject of a RIF; further, petitioner was offered a full-time permanent kindergarten teacher position, with an increase in salary, but rejected that offer. The ALJ concluded that petitioner was not the subject of a RIF, and therefore could not assert rights to the positions in question, and accordingly granted the respondent Board’s motion for summary decision and denied petitioner’s cross motion.

Upon comprehensive review, the Commissioner rejected the Initial Decision of the OAL, finding, *inter alia*, that tenure and seniority rights are fixed as of the date of a RIF decision; accordingly, petitioner’s tenure rights were triggered at the time of her RIF in April 2013; moreover, there appears to be a factual issue in dispute in this case. Accordingly, the Commissioner remanded this matter to the OAL for complete development of the record and a determination of petitioner’s tenure and seniority rights as a result of the RIF in April 2013.

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.

April 10, 2015

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The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed, as have the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by the petitioner, Claudia Cavanagh, and the Board of Education’s reply thereto.

This matter involves a claim by the petitioner – a tenured teaching staff member – that she was entitled to a full-time teaching position held by non-tenured and/or less senior teaching staff members following a reduction in force (RIF) for the 2013-2014 school year. In April 2013, the Board notified the petitioner that her tenured pre-kindergarten (pre-K) position would be reduced from .8 full-time equivalent (FTE) to .6 FTE for the 2013-2014 school year.¹ The Administrative Law Judge (ALJ) determined that the petitioner was not the subject of a RIF in April 2013 because in October 2013 the Board restored the petitioner’s position and retroactively paid her the difference in salary from September 1, 2013 until October 31, 2013. As a result, the ALJ determined that the petitioner did not experience a loss of salary or employment benefits, and granted summary decision in favor of the Board.

¹ On April 4, 2013, the Board reduced the petitioner’s pre-K position from .8 FTE to .5 FTE for the 2013-2014 school year, but on April 29, 2013, the Board notified the petitioner that her pre-K position would be reduced from .8 FTE to .6 FTE.

Upon review, the Commissioner finds that the ALJ erroneously determined that the petitioner was not the subject of a RIF in April 2013 simply because the Board attempted to make the petitioner whole in October 2013 when it restored the petitioner to her pre-RIF status, and paid the difference in her salary retroactive to September 1, 2013. The Commissioner also finds that, based on the current record, there appear to be material facts in dispute that may preclude the disposition of this matter by summary decision.

It is well established that tenure and seniority rights are fixed as of the date of the RIF decision. See, *Francey v. Board of Educ. of the City of Salem*, 286 N.J. Super. 354, 358-361 (App. Div.1996) (Tenure rights are fixed as of the date of the RIF decision; therefore, any subsequent endorsements obtained by a teacher are not afforded any tenure protections) Boards of education have historically argued that the date of the employee's RIF is the only reasonable date upon which the employee's rights are established, otherwise it would be impossible for the Board to properly maintain order and efficiency for reemployment purposes. Likewise, boards of education must also adhere to that fixed date. Here, it is undisputed that the petitioner has obtained tenure in the district and that in April 2013 she was notified that her pre-K position would be reduced from .8 FTE to .6 FTE. As a result, her tenure and seniority rights were triggered at the time of the RIF in April 2013. The fact that the Board subsequently attempted to make petitioner whole by retroactively restoring her to her pre-RIF status in October 2013 does not negate the fact that the petitioner was in fact RIF'd in April 2013.

Additionally, the petitioner's rights were not limited to her .8 FTE pre-K position, but rather all other positions held by non-tenured or less senior teaching staff members within the scope of the petitioner's teaching certificate, and endorsements thereto, at the time of the RIF. Although the ALJ stated that the petitioner would not be entitled to the fifth grade position even if she was RIF'd based upon the fact that the fifth grade position was a temporary leave replacement position, the ALJ made no mention of the petitioner's right to the second grade position. It should be noted

that it is irrelevant for tenure and seniority purposes whether the non-tenured teacher who was assigned the second grade position was familiar with the students. Furthermore, the Board's alleged offer in October 2013 to transfer the petitioner to a full-time kindergarten teacher position when the current teacher began maternity leave in February 2014 similarly did not negate petitioner's bumping rights.

Moreover, there also appears to be a factual issue in dispute as to what position the Board designated as a leave replacement position, either the second grade position or the fifth grade position. It appears that the Board originally designated the second grade position as a leave replacement position, then removed that designation and in turn made the fifth grade position a leave replacement position. Certainly it is essential to make factual findings with respect to the nature of the positions in question in order to properly evaluate the petitioner's potential right to these positions.²

Accordingly, the Initial Decision is rejected; this matter is remanded to the OAL for complete development of the record, and a determination of the petitioner's tenure and seniority rights as a result of the RIF in April 2013.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: April 10, 2015

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² Petitioner has alleged that the Board may have changed the designations in order to defeat her seniority rights. It therefore may be necessary for the ALJ to make credibility determinations in order to reach the necessary factual findings.

³ Pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*, Commissioner decisions are appealable to the Superior Court, Appellate Division.