

#219-15R (OAL Decision: Not yet available online)

CHRISTOPHER KECHULA,	:	
	:	
PETITIONER	:	
V.	:	
BOARD OF EDUCATION OF THE TOWNSHIP	:	
OF PISCATAWAY, MIDDLESEX COUNTY,	:	
	:	COMMISSIONER OF EDUCATION
RESPONDENT.	:	
	:	DECISION
AND	:	
	:	
ALAN HUDSON,	:	
	:	
PETITIONER,	:	
V.	:	
	:	
BOARD OF EDUCATION OF THE TOWNSHIP	:	
OF PISCATAWAY, MIDDLESEX COUNTY,	:	
	:	
RESPONDENT	:	

SYNOPSIS

In this consolidated case, petitioners – formerly employed as custodians for the respondent Board – alleged that their tenure rights were violated when their employment was terminated. The Board asserted that the petitioners’ appeal rests solely on contractual claims – which do not require an interpretation of school law – and filed a motion to dismiss for failure to state a claim and lack of subject matter jurisdiction. In an Initial Decision dated April 7, 2015, the ALJ granted the Board’s motion to dismiss. However, the Commissioner rejected the decision and remanded the matter to the OAL for fact finding to determine whether the Board appointed the petitioners for a fixed term and thereby excluded them from statutory tenure.

On remand, the ALJ found that a revised certification from the Board’s Director of Human Resources supports the respondent’s contention that the petitioners were in fact appointed for fixed one year terms, and therefore not subject to statutory tenure. Accordingly, the ALJ concluded that the matter must be dismissed for lack of jurisdiction.

Upon review, the Commissioner was able to determine that, because the Board’s certification is now part of the record, the petitioners do lack tenure rights pursuant to *N.J.S.A. 18A:17-3*. Therefore, the Commissioner lacks jurisdiction to hear and decide the within consolidated petitions. Accordingly, the Commissioner granted the respondent’s motion to dismiss.

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.
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June 26, 2015

OAL DKT. NO. EDU 7019-15  
(EDU 2417-14 AND 4461-14 [CONSOLIDATED] ON REMAND)  
AGENCY DKT. NOS. 31-2/14 AND 46-2/14

CHRISTOPHER KECHULA,	:	
	:	
PETITIONER	:	
	:	
V.	:	
	:	
BOARD OF EDUCATION OF	:	
THE TOWNSHIP OF	:	
PISCATAWAY,	:	
MIDDLESEX COUNTY,	:	
	:	COMMISSIONER OF EDUCATION
RESPONDENT.	:	
_____	:	DECISION ON REMAND
	:	
ALAN HUDSON,	:	
	:	
PETITIONER	:	
	:	
V.	:	
	:	
BOARD OF EDUCATION OF	:	
THE TOWNSHIP OF	:	
PISCATAWAY,	:	
MIDDLESEX COUNTY,	:	
	:	
RESPONDENT.	:	
_____	:	

The record in this consolidated matter – along with the Initial Decision of the Office of Administrative Law (OAL), issued April 7, 2015, and the subsequent Initial Decision, issued June 2, 2015 in response to the Commissioner’s remand – have been reviewed. The parties did not file exceptions.

By way of background, this controversy concerns whether petitioners, formerly employed as custodians for the Piscataway Board of Education (Board), possessed tenure rights

pursuant to *N.J.S.A. 18A:17-3*<sup>1</sup> that were violated when the Board terminated their employment. The Board filed motions to dismiss the petitions of appeal for failure to state a claim upon which relief can be granted and lack of subject matter jurisdiction.<sup>2</sup> Ultimately, the Administrative Law Judge (ALJ) granted the Board's motions and dismissed both petitions as reflected in the Initial Decision dated April 7, 2015.

In order to determine whether the Commissioner lacks jurisdiction to hear and decide this matter under *N.J.S.A. 18A:17-3*, it is necessary to establish whether the Board appointed petitioners for a fixed term and thereby excluded them from statutory tenure. As a result, on May 12, 2015, the Commissioner rejected the ALJ's Initial Decision – because neither the Initial Decision nor the record contained the requisite factual finding – and remanded the matter to the OAL for further proceedings.

Thereafter, the Board submitted a certification from its Director of Human Resources (R-1) to the ALJ indicating that for each year of their employment with the district, petitioners were, in fact, appointed by the Board for a fixed one-year term. After considering the certification, the ALJ issued an Initial Decision on June 2, 2015 which “serves as a supplement to and incorporates by reference the Initial Decision issued...April 7, 2015” granting the Board's motion and dismissing the petitions for lack of jurisdiction. Because the Board's certification is part of the record, the Commissioner can now conclude that petitioners lacked tenure rights pursuant to *N.J.S.A. 18A:17-3*. Therefore, the Commissioner lacks jurisdiction to hear and decide the consolidated petitions of appeal.

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<sup>1</sup> *N.J.S.A. 18A:17-3* provides that “Every public school janitor of a school district shall, *unless he is appointed for a fixed term*, hold his office, position or employment under tenure during good behavior and efficiency and shall not be dismissed” except for a reduction in force or “neglect, misbehavior or other offense.” (Emphasis added)

<sup>2</sup> Custodians excluded from statutory tenure by virtue of fixed term appointment may negotiate contractual tenure rights – over which the Commissioner lacks jurisdiction. See *Wright v. Bd. of Educ.*, 99 *N.J.* 112, 116 (1985) (holding contractual provision granting tenure to custodians after three years of employment is not barred by *N.J.S.A. 18A:17-3* and falls within the scope of collective negotiations).

Accordingly, respondent's motion is granted and the consolidated petitions are dismissed for lack of jurisdiction.

IT IS SO ORDERED.<sup>3</sup>

COMMISSIONER OF EDUCATION

Date of Decision: June 26, 2015

Date of Mailing: June 26, 2015

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<sup>3</sup> 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*).