

#218-16 (OAL Decision: Not yet available online)

LOURDES VIDAL-TURNER AND :
C. DEBRA WILLIAMS, :
: PETITIONERS, :
: : COMMISSIONER OF EDUCATION
V. :
: DECISION
BOARD OF EDUCATION OF THE :
CITY OF ATLANTIC CITY, :
ATLANTIC COUNTY, :
: RESPONDENT.
_____ :

SYNOPSIS

The petitioners in this case had been employed under tenure as supervisors by the respondent Board when their positions were eliminated in a reduction in force (RIF), effective July 1, 2015. Petitioners were ultimately reassigned as teaching staff members based on their tenure and seniority, but were moved from twelve-month supervisor positions to ten-month staff positions and their salaries were reduced from \$149,000 to approximately \$110,000. Petitioners challenged the salary determination for their new titles, contending that they were transferred from twelve-month positions to ten-month positions, and consequently their new salary should be based on a prorating of their former twelve-month salary over ten months, which would result in an annual salary of \$124,167. The Board asserted that the RIF was implemented for the purpose of saving money during an economic crisis, and that petitioners’ salaries were appropriate to their new titles of guidance counselor and English teacher, respectively. The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts in dispute, and the matter is ripe for summary decision; pursuant to *N.J.S.A.* 18A:28-9, a local board of education has the authority to reduce its teaching force for reasons of economy; the goal of a RIF is to reduce the budget by reducing staffing costs; tenured staff are not protected in a RIF, but such employees are placed on a rehire list; in the instant matter, the State-Appointed Fiscal Monitor for the Atlantic City School District – acting on behalf of the respondent Board – implemented a RIF in response to a budgetary crisis; the petitioners herein were effectively fired from their eliminated supervisor positions and rehired as teaching staff members in new titles, rather than reassigned or transferred; consequently, there is no basis to use petitioners’ former supervisor salaries in determining their current salaries, as their prior positions were eliminated and they were subsequently rehired as staff members; to do otherwise would undermine the RIF statute and its overriding goal of providing school districts with the authority to control their budgets in times of fiscal crisis. The ALJ concluded that: the petitioners’ supervisor positions were eliminated in a legitimate RIF; petitioners were rehired as teaching staff members; and their current salaries are appropriate to the titles under which they are now employed. Accordingly, the ALJ granted summary decision in favor of the Board and denied petitioners’ motion for summary decision.

The Commissioner concurred with the ALJ’s conclusion that the Board acted within its authority when it RIF’d petitioners for financial reasons in accordance with *N.J.S.A.* 18A:28-9, and that their current salaries are appropriate to the teaching staff positions which the petitioners now hold. However, the Commissioner disagreed with the ALJ’s finding that the petitioners were fired and rehired; rather, petitioners were RIF’d and reassigned to new positions based on seniority, in accordance with *N.J.S.A.* 18A:28-11. Accordingly, the Initial Decision of the OAL was adopted as the final decision, as modified above, 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.

June 16, 2016

OAL DKT. NO. EDU 16976-15
AGENCY DKT. NO. 284-9/15

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

In their exceptions, petitioners argue that the ALJ failed to consider the legal authority they cited in support of their argument that although the Board was permitted to reduce their gross yearly compensation, it should have been prorated on a 10/12th basis to conform their 12-month salary to a 10-month position. Specifically, petitioners argue that this matter is similar to *Rocco DiMaggio v. Board of Education of the City of Trenton, Mercer County*, Commissioner Decision No. 219-99, decided July 8, 1999 and *William Buckley v. Board of Education of the City of Trenton, Mercer County*, Commissioner Amended Decision No. 247+-99, decided September 16, 1999, in which DiMaggio and Buckley were reassigned from 12-month positions to 10-month positions as a result of a reduction in force (RIF), and the school board was permitted to reduce their annual salaries to a prorated amount. Petitioners also cite *Frank D’Alonzo v. Board of Education of the Township of West Orange, Essex County*,

Commissioner Decision No. 162-85, decided May 13, 1985, *aff'd* State Board September 4, 1985, and *Richard Stolte v. Board of Education of the Township of Willingboro, Burlington County*, 1981 S.L.D. 770, for the proposition that petitioners' salaries should have remained the same following their reassignment.

Petitioners also contend that the ALJ erred in finding that petitioners were effectively fired and rehired in new titles. Instead, petitioners argue that they were subjected to a RIF, and as such, their tenure and seniority rights apply in this matter. Petitioners point out that they could not possibly have been "fired and rehired" because the Board would have had to file tenure charges against them prior to firing them, pursuant to the TEACHNJ Act, N.J.S.A. 18A:6-117 *et seq.* As such, petitioners argue that the ALJ erred in finding that there was no basis to apply the petitioner's prior salaries to their new positions.

In reply, the Board argues that the ALJ appropriately concluded that petitioners were subject to a legitimate RIF and were not entitled to their former supervisor salaries after being bumped into the new titles of guidance counselor and English teacher. The Board asserted that it "has the legal ability to commensurately reduce the employees' salary onto the lower salary guide at a step that corresponds with their seniority rights and level of experience." (Board's Reply at 2) The Board points out that the reduction in salary for economic benefit is the purpose of the RIF, which would not be achieved if the salaries were not reduced. The Board argues that the Appellate Division has found that "seniority is not the same as salary and does not guarantee the tenured employee to maintain the level of salary." (*Ibid.*, citing *Edward Carpenito v. Board of Education of the Borough of Rumson, Monmouth County*, 322 N.J. Super. 522, 531 (App. Div. 1999)).

The Board further contends that the cases relied upon by petitioners – *i.e.*, *Stolte* and *D’Alonzo* – are distinguishable from this matter since those cases involved transfers and the petitioners’ seniority rights were not triggered because they did not suffer a loss of employment benefits. Finally, the Board emphasizes that it acted within its authority and in good faith when it implemented the RIF for economic reasons.

Upon review, the Commissioner concurs with the ALJ that the Board acted within its authority when it RIF’d petitioners for financial reasons, in accordance with *N.J.S.A.* 18A:28-9. However, the Commissioner agrees with petitioners that they were not fired and rehired, but rather RIF’d and reassigned to new positions based on their seniority, in accordance with *N.J.S.A.* 18A:28-11. Nevertheless, the Commissioner agrees with the Board that it had the authority to reduce petitioners’ salaries onto a lower salary guide – at a step that corresponds with their seniority and level of experience – when it reassigned petitioners as part of a RIF from 12-month supervisor positions to 10-month positions as guidance counselor and teacher.

“When a school board deems it necessary to eliminate a position, ‘seniority’ is a right afforded to tenured employees entitling the employee to either continue in an existing job opening based upon their longevity of employment or to be placed upon an eligible list for reemployment when a new position becomes available.” *Carpenito, supra*, 322 *N.J. Super.* at 531. When a Board implements a RIF and reassigns tenured employees to new positions, “a reduction in a tenured staff member’s salary/compensation and benefits is permissible.” *DiMaggio, supra*. As such, “when an employee of a board of education is transferred for proper reason to a position which has a lesser salary expectation, that employee is entitled only to the salary in the new position according to his/her appropriate step on the salary scale.”

Claus Schwarzkopf v. Board of Education of the City of Camden and Charles Smerin, Superintendent of Schools, 1985 S.L.D. 130, 135.

Accordingly, the Board acted within its authority when it reduced the salaries of petitioners as part of a RIF. Petitioners were reassigned from supervisor positions to titles with a lower salary expectation: guidance counselor and teacher. As such, the Board was permitted to reduce their salaries to the appropriate step on the salary scale, in accordance with their experience and seniority. Despite petitioners' contention, the Board was not required to maintain their supervisor salaries – or pay them the same rate on a prorated basis – following the RIF, when they were reassigned to positions on a lower salary scale. Such a requirement would render a RIF ineffective at addressing a school's financial situation.

Petitioners rely upon *DiMaggio* and *Buckley* for the proposition that the Board must maintain petitioners' rates of salary on a 10/12th basis to conform their 12-month positions into 10-month positions. However, these cases may be distinguished from the instant matter, as *Buckley* and *DiMaggio*'s positions were not reduced to positions with a lower salary expectation. *DiMaggio* was reassigned from job placement coordinator to teacher of auto mechanics/small engines, while *Buckley* was reassigned from job developer to teacher of industrial arts. All of the positions involved were on the same salary guide. By contrast, petitioners held the higher title of supervisor and were RIF'd to guidance counselor and teaching positions.

Additionally, the facts of the *D'Alonzo* matter cannot be compared to petitioners' situation. *D'Alonzo* involved a transfer of a high school assistant principal to an assignment as a junior high school assistant principal, without a reduction in salary. Such a transfer to another assignment within the same tenured position title, without a reduction in salary, is a valid transfer – rather than a RIF – and has no bearing on the instant matter. *See Williams v. Board of*

Education of Plainfield, 176 N.J. Super. 154 (App. Div. 1980), *certif. denied*, 87 N.J. 306 (1981).

In the *Stolte* matter, the petitioner was transferred from an assistant principal position to a teaching position while maintaining his administrator salary, frozen at its previous level. Although the Board in *Stolte* kept his salary the same, there is no requirement that all Boards do the same in a RIF. It is clear that reductions in salary or compensation are permitted as part of a legitimate RIF.

Accordingly, the Initial Decision of the OAL – as modified above – is adopted as the final decision in this matter, and the petition is hereby dismissed.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: June 16, 2016

Date of Mailing: June 17, 2016

* 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*).