

BERYL ZIMMERMAN, :
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 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 SUSSEX COUNTY EDUCATIONAL SERVICES : DECISION
 COMMISSION, SUSSEX COUNTY, :
 :
 RESPONDENT. :
 :
 AND :
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 JUDY COMMENT, :
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 PETITIONER, :
 :
 V. :
 :
 SUSSEX COUNTY EDUCATIONAL SERVICES :
 COMMISSION, SUSSEX COUNTY, :
 :
 RESPONDENT. :

SYNOPSIS

The petitioners in this consolidated case – tenured teachers employed by respondent on an hourly basis to provide services to students in non-public schools – alleged that their tenure rights as part-time teachers were violated when the Commission reduced their assigned work hours for the 2014-2015 school year from their 2013-2014 school year levels, while non-tenured and/or less senior part-time teachers were employed in positions within the scope of their certifications and endorsements. The Commission contends that the terms of the petitioners’ employment agreements expressly contemplate flexibility regarding the precise number of hours to be assigned and do not vest them with the entitlement of a minimum number of weekly work hours. The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: there are no genuine issues of material fact, and the matter is ripe for summary decision; in order for a reduction of a part-time employee’s hours to trigger tenure/seniority rights, there must be a guarantee – through contract or otherwise – to a minimum number of hours of employment; no such guarantee exists in the within matter; therefore, no violation of the petitioners’ tenure or seniority rights occurred; and the two cases that are dispositive of this issue are *Theresa Alfieri and Therese Mezak v. Board of Educ. of the Township of Saddle Brook*, Commissioner Decision No. 320-01 (September 17, 2001), and *Lucy Kourtesis, et al. v. Board of Educ. of the Bergen County Special Services School District, Bergen County*, Commissioner Decision No. 535-11 (December 5, 2011). Accordingly, the ALJ granted respondent’s motion for summary decision; and denied petitioners’ appeal.

Upon a comprehensive review of the record, the Commissioner concurred with the findings and conclusions of the ALJ, and adopted the Initial Decision as the final decision in this matter. Accordingly, 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.
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OAL DKT. NO. EDU 430-15, EDU 431-15 (CONSOLIDATED)
AGENCY DKT. NO. 327-11/14, 336-11/14

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The record of this consolidated 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, Beryl Zimmerman and Judy Comment, and the Sussex County Educational Services Commission's (Commission) reply thereto. In this case, the petitioners, two part-time tenured teachers, allege that the Commission violated their tenure rights when it reduced their 2014-2015 weekly hours of work from their 2013-2014 school year schedule, while non-tenured part-time staff members were employed in positions within the scope of their certificates and endorsements. The Administrative Law Judge (ALJ) found that the

Commission did not violate the petitioners' tenure and seniority rights because the petitioners were not guaranteed a minimum number of hours through their employment contract or otherwise. Therefore, the ALJ granted summary decision in favor of the Commission and dismissed the petitions of appeal.

The petitioners' exceptions largely reiterate the substance of their submissions at the OAL, repeating the arguments therein to support the contention that the ALJ erroneously found that the Board did not violate the petitioners' tenure rights. The petitioners are claiming rights based on tenure over three non-tenured part-time employees who received work hours from the Commission which the petitioners assert they were entitled to receive during the 2014-2015 school year. The petitioners' maintain that *N.J.S.A. 18A:28-5* protects them, as tenured teachers, from a reduction in compensation, i.e. reduced hours. There is no aspect of the tenure law that creates an exception as to the preservation of compensation by excluding part-time tenured employees. The petitioners further argue that allowing the employment contract and the lack of designated minimum hours to control the scope of the statutory protections of tenure is contrary to the law. Therefore, the theory denying the petitioners' claims that was espoused in the Initial Decision is contrary to the law and should be rejected. (Petitioners' Exceptions at 7-8)

In reply, the Commission also restated the positions advanced in its submissions at the OAL, arguing that the ALJ properly determined that the Commission was entitled to summary decision. The Commission stresses that – under the relevant case law – in order for a reduction of a part-time employee's hours to trigger tenure/seniority rights, there must be a guarantee of a minimum number of hours of employment. See, *Theresa Alfieri and Therese Mezak v. Board of Educ. of the Township of Saddle Brook, Bergen County*, Commissioner

Decision No. 320-01 (September 17, 2001), *affirmed*, State Board (January 8, 2003), *affirmed*, No. A-3105-02 (App. Div. June 14, 2004, *certif. denied*, 181 N.J. 547 (2004); *Lucy Kourtesis, et al. v. Board of Educ. of the Bergen County Special Services School District, Bergen County*, Commissioner Decision No. 535-11 (December 5, 2011), *affirmed*, No. A-2139-11 (App. Div. November 19, 2012), *certif. denied*, 213 N.J. 535 (2013). Although the petitioners' hours were fewer in the 2014-2015 school year than in the previous year, tenure and seniority protections were not triggered because their employment from its inception was intended to be flexible in terms of the precise number of hours to be worked, and they were not otherwise guaranteed a prescribed set of hours. Since the petitioners did not have a tenure right to the number of hours assigned during the 2014-2015 school year, the Commission did not violate their tenure and seniority rights. (Respondent's Exceptions at 5-6)

Upon a comprehensive review of the record in this matter, the Commissioner concurs with the ALJ – for the reasons thoroughly set forth in the Initial Decision – that the Commission did not violate the petitioners' tenure and seniority rights. It is undisputed that N.J.S.A. 18A:28-5 protects the tenured petitioners from a reduction in compensation. However, it is also well established that, in the absence of a guarantee of a minimum number of hours for part-time teachers, a reduction in hours does not equate to a reduction in compensation under N.J.S.A. 18A:28-5, thereby triggering tenure rights. See, *Alfieri, supra*, State Board Decision No. 40-01 at 6-7; *Kourtesis, supra*, Commissioner Decision No. 535-11 at 7. Here, the petitioners' contracts only guaranteed an hourly compensation rate, which was not reduced by the Commission during the 2014-2015 school year; therefore, in the absence a guarantee for a minimum number of hours, the Commission's decision to reduce the petitioners weekly hours did not violate the petitioners' tenure rights. Finally, the Commissioner is not persuaded that the

exceptions filed by the petitioners dictate a different result, because the objections outlined in the exceptions were previously raised before the ALJ and were clearly taken into account by him in determining that the Commission was entitled to summary decision. Accordingly, the Initial Decision is adopted as the final decision in this matter and the petitions of appeal are hereby dismissed.

IT IS SO ORDERED.*

ACTING COMMISSIONER OF EDUCATION

Date of Decision: October 4, 2016

Date of Mailing: October 4, 2016

* 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.