

ALISON HENDERSHOT, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE : DECISION
 TOWNSHIP OF MONTAGUE, :
 SUSSEX COUNTY, :
 :
 RESPONDENT. :

SYNOPSIS

Petitioning tenured teaching staff member alleged that the Board reduced her position and salary while it employed nontenured teachers within her area of certification in violation of her tenure rights.

The ALJ determined that petitioner's assertion that a reduction in force occurred when her salary was reduced is without merit. The ALJ concluded that petitioner's salary for the 1998-99 school year was improperly reduced.

The Commissioner affirmed the Initial Decision of the ALJ, finding no evidence to support petitioner's contention that she was subjected to a RIF in the 1998-99 school year since the facts do not indicate that the Board reduced her salary for reasons of economy. The Commissioner further noted that, although the record leads to the inevitable conclusion that the Board adjusted petitioner's salary for the 1998-99 school year to eliminate a disparity in salaries between petitioner and her part-time colleagues, it did so in violation of her statutory protections of tenure. The Commissioner directed the Board to reimburse petitioner \$1,413.77 representing the difference in salary petitioner received for the 1997-98 and 1998-99 school years and to freeze petitioner's salary at its 1997-98 amount (\$18,013) until such time as a 4/9 position at petitioner's step on the salary guide meets or exceeds \$18,013.

OAL DKT. NO. EDU 11669-98
AGENCY DKT. NO. 497-11/98

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The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. Since the Board's exceptions were untimely filed pursuant to *N.J.A.C.* 1:1-18.4(a),¹ they were not considered in the Commissioner's determination of this matter.

Upon careful and independent review of the record in this matter, the Commissioner determines to affirm the Initial Decision of the Administrative Law Judge (ALJ). Like the ALJ, the Commissioner finds no evidence on the record to support petitioner's contention that she was subjected to a RIF in the 1998-99 school year, since the facts herein do not indicate that the Board reduced her salary for reasons of economy.² Instead, the sole issue is whether the Board improperly reduced petitioner's salary in the 1998-99 school year in violation of her tenure rights. In this connection, although the record leads to the inevitable conclusion that the Board adjusted petitioner's salary for the 1998-99 school year to eliminate a disparity in salaries between petitioner and her part-time colleagues, it did so in violation of her statutory

¹ The Initial Decision was mailed to the parties on January 21, 2000 and the exceptions were filed on February 4, 2000.

protections of tenure. *N.J.S.A.* 18A:28-5. The proper means of redress, although less immediate in its result, is to freeze petitioner's salary at its 1997-98 amount. *See DeLyon v. Borough of Old Tappan*, 97 *N.J.A.R.* 2d (EDU) 499, *aff'd in part, rev'd in part*, State Board February 2, 2000.

Accordingly, the Initial Decision of the ALJ is adopted for the reasons expressed therein. The Board is directed to reimburse petitioner the amount of \$1,413.77, representing the difference in salary she received in the 1998-99 school year (\$16,599.23) and her salary for the 1997-98 school year (\$18,013), and to freeze petitioner's salary at this level until such time as a 4/9 position at petitioner's step on the salary guide meets or exceeds \$18,013.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: February 28, 2000

Date of Mailing: _____

² Petitioner does *not* assert that her reduction in hours beginning with the 1997-98 school year constituted a RIF. (Petition of Appeal)

³ This decision, as the Commissioner's final determination, may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6:2-1.1 *et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.