

LOUISE A. HENSHAW, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE : DECISION

TOWN OF HAMMONTON, ATLANTIC :
COUNTY, :

RESPONDENT. :

SYNOPSIS

Petitioner, a tenured school psychologist with an endorsement as a school social worker, was notified in March 2010 that she would not be offered a contract for the 2010-2011 school year due to a reduction in force (RIF). The respondent Board subsequently hired a new school social worker. Petitioner asserted rights to the position of the non-tenured social worker. The parties filed cross motions for summary disposition.

The ALJ found, *inter alia*, that: there are no material facts in dispute and the matter is ripe for summary decision; petitioner holds an educational services certificate with endorsements for school psychologist and school social worker, and obtained tenure while working as a school psychologist in respondent’s district; tenure under any one endorsement entitles an educator to tenure under all endorsements obtained under his or her certificate; petitioner did not need to work as a school social worker in order to achieve tenure in that title; the district interviewed petitioner for the position of school social worker in September 2010, but did not rehire her and instead hired a new school social worker in October 2010; petitioner has over 15 years of experience as a school social worker with other districts; and petitioner has seniority rights and is entitled to the school social worker position over a non-tenure staff member in that title pursuant to *N.J.S.A. 18A:28-12*. Accordingly, the ALJ granted petitioner’s motion for summary decision and ordered that petitioner be reinstated to the position of school social worker, including back pay and all other benefits and emoluments – adjusted for mitigation as appropriate – to the day the non-tenured social worker was hired over petitioner.

The Commissioner concurred with the ALJ that summary decision in favor of petitioner is appropriate as it is without question that petitioner’s tenure rights were violated, as a matter of law, when the Board abolished her position of school psychologist in a RIF and subsequently employed a non-tenured individual as school social worker without first offering the position to petitioner. In so doing, however, the Commissioner corrected the ALJ’s statement that petitioner has seniority. Since petitioner never held the social worker title, she has not acquired seniority and does not have superseding seniority rights over other tenured social workers in the district. Accordingly, the Commissioner adopted the Initial Decision of the OAL as the final decision in this matter.

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.

OAL DKT. NO. EDU 14127-10
AGENCY DKT. NO. 698-12/10

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The record of this matter and the Initial Decision on Cross-Motions for Summary Decision of the Office of Administrative Law (OAL) have been reviewed. The Respondent Board filed exceptions to the Initial Decision. The petitioner requested and was granted an extension of time within which to file reply exceptions. These exceptions were filed in accordance with the extended timelines pursuant to *N.J.A.C. 1:1-18.4*.

The Board's exceptions charged that the Administrative Law Judge (ALJ) erred in granting petitioner's motion, thereby awarding her the position of social worker and concluding that petitioner's attainment of tenure as a school psychologist extended to any endorsement within her educational services certification. The Board asserts that the petitioner was required to have worked as a social worker within the district in order to have rights to that position. (Board Exceptions at 2) The attorney for the petitioner, on the other hand, argued throughout the reply exceptions that it was appropriate for the ALJ to preserve petitioner's right to the social worker position over non-tenured individuals since the petitioner had acquired the requisite

tenure in that endorsement by virtue of her attainment of tenure as a school psychologist, the other endorsement under her educational services certification.

Upon his considered review, the Commissioner concurs with the Administrative Law Judge (ALJ) that summary decision is appropriately granted to petitioner. For the reasons cogently presented in the ALJ's decision, it is without question that petitioner's tenure rights – pursuant to *N.J.S.A. 18A:28-5, et seq.* – were violated, as a matter of law, when the Board abolished her position of school psychologist, pursuant to a reduction in force, and employed a non-tenured individual as school social worker without first offering the position to the petitioner. Moreover, the Commissioner reminds the parties that it is not necessary for a staff member to have held a position in each endorsement under the educational services certification in order to have rights to the title. It is enough that the petitioner realized tenure in her position as school psychologist. Tenure enjoyed under one endorsement extends to all other endorsements granted under her educational services certificate. *Dennery v. Board of Education of the Passaic County Regional High School District*, 131 *N.J.* 626, 634 (1993). However, the Commissioner corrects the ALJ's statement that petitioner has seniority (Initial Decision at 10) and distinguishes tenure rights from seniority rights. While the petitioner has acquired tenure rights over non-tenured individuals in the school social worker position, she does not have seniority rights over other tenured social workers who have worked in that title. Since petitioner never held the school social worker position within the Hammonton School District, she has no superseding seniority rights over other tenured school social workers in the district. Her experience in this position elsewhere is of no moment here.

Accordingly, the recommended decision of the OAL is adopted as the final decision in this matter in so far as it relates to a non-tenured individual currently assigned to the

position of school social worker. Respondent is hereby directed to immediately reinstate petitioner to the position of school social worker, including reimbursement for back pay in that title, subject to mitigation, along with all other benefits and emoluments from the date the non-tenured person assumed the very position that should have been granted the petitioner.

IT IS SO ORDERED.*

ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 9, 2011

Date of Mailing: December 12, 2011

* 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*).