

#289-12 (OAL Decision: Not yet available online)

STEPHEN TROYANOVICH, :

PETITIONER, : COMMISSIONER OF EDUCATION

V. : DECISION

NEW JERSEY STATE JUVENILE :  
JUSTICE COMMISSION, :

RESPONDENT. :  
\_\_\_\_\_:

### SYNOPSIS

Petitioner contended that he was improperly laid off as the result of a 2010 reduction in force (RIF). Petitioner asserted that he had achieved tenure and therefore should not have been subject to layoff. The respondent, New Jersey State Juvenile Justice Commission (JJC) argued that since the petitioner filed for retirement benefits after receiving notice of the RIF, but before the layoff was to take effect, the issue was moot.

The ALJ found, *inter alia*, that: petitioner was employed by the Department of Corrections (NJDOC) from 1974 until 2001, progressing from the position of teacher to Supervisor of Education Programs, the position from which he resigned on August 10, 2001; petitioner's resignation in 2001 from his former tenured, supervisory position with NJDOC to take the position of Education Director with the JJC constituted a "break in service" pursuant to N.J.A.C. 10A:15-2.1 and N.J.A.C. 13:102-1.3; a break in service results in the forfeiture of previously held tenure; petitioner voluntarily forfeited his tenure rights, including any seniority, when he resigned from NJDOC; petitioner went on to earn tenure in the position of Education Specialist 1 with JJC; however, petitioner's seniority at the time of the 2010 RIF was limited to the time he had served in the tenurable position of Education Specialist 1 with the JJC, which must be counted from June 2002 – the date when he assumed that position; of the five employees retained by JJC in the Educational Specialist 1 title at the time of the RIF, all had greater seniority than petitioner; and, accordingly, no tenure violation occurred. The ALJ concluded that petitioner's within appeal should be dismissed, and the issue of petitioner's retirement resignation need not be addressed.

Upon careful and independent review – and finding petitioner's exceptions to the Initial Decision to be without merit – the Deputy Commissioner, to whom this matter has been delegated pursuant to N.J.S.A. 18A:4-33, concurred with the ALJ's findings and conclusions, and dismissed the petition. In so doing, the Deputy Commissioner found that: petitioner forfeited any tenure he had accrued at the NJDOC when he left that agency in 2001; petitioner began to accrue tenure with the JCC in June 2002 when he commenced the position of Education Program Specialist 1; and at the time of the RIF, there were five other employees working under this title at the JCC with seniority greater than petitioner's. Accordingly, no tenure violations were perpetrated and petitioner is not entitled to be reinstated.

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.

July 19, 2012

OAL DKT. NO. EDU 2755-11  
AGENCY DKT. NO. 21-1/11

STEPHEN TROYANOVICH, :  
PETITIONER, : COMMISSIONER OF EDUCATION  
V. : DECISION  
NEW JERSEY STATE JUVENILE :  
JUSTICE COMMISSION, :  
RESPONDENT.  
\_\_\_\_\_ :

Petitioner seeks an order reinstating him to the position of Educational Program Specialist 1 with the respondent Juvenile Justice Commission, from which he was removed as the result of a reduction in force (RIF). Upon review of the record, the Initial Decision of the Office of Administrative Law (OAL), and the parties' exceptions thereto, the Deputy Commissioner – to whom this matter has been delegated pursuant to N.J.S.A. 18A:4-33 – concludes that the Administrative Law Judge (ALJ) correctly determined that petitioner failed to prove entitlement to reinstatement.

The ALJ's conclusion rested upon his determination that petitioner's departure in 2001 from his former tenured, supervisory position with the New Jersey Department of Corrections (NJDOC) to take the position of Education Director with respondent constituted a "break in service" pursuant to N.J.A.C. 10A:15-2.1 and N.J.A.C. 13:102-1.3. Such a break in service results in the forfeiture of previously held tenure. *See, N.J.A.C. 10A:15-2.1; N.J.A.C. 13:102-2.1* Thus, the result of adopting the ALJ's determination would be that petitioner's seniority for purposes of respondent's November 2010 RIF would be limited to the time he had served in tenurable positions with respondent. Under those circumstances, his

seniority would be less than that of the five employees who were retained when four Education Specialist 1 positions were abolished by respondent, and he would not be entitled to reinstatement.

The primary argument in petitioner's exceptions is that no "break in service" occurred because in 2001 petitioner "seamlessly" moved from one State position to another State position that required similar qualifications and responsibilities. (Petitioner's Exceptions at 2-4) The Deputy Commissioner disagrees.

Tenure is earned by virtue of service in a particular position which is, necessarily, in a particular school district or State agency. Like each school district in New Jersey, each co-equal State agency hires its own teachers and educational administrators. While co-equal State agencies are all creatures of the administrative arm of the State and all receive funds from the public fisk, so are local school districts all recipients of State funding and subject to oversight by the State Department of Education. Yet there is no authority that binds one local school district to another district's employment decision. It is the same for State agencies – a fact which is reflected, for example, in the existence of separate regulations governing teaching staff members in the Department of Corrections *vis-a-vis* the Juvenile Justice Commission of the Department of Law and Public Safety.

In other words, when petitioner accepted employment with a separate State agency, the tenure/seniority clock was reset. In determining entitlement to positions remaining after a RIF, respondent is not required to count the years of service that an employee has provided to a different agency.

In his second exception, petitioner parses out the definition of "break in service" as it appears in N.J.A.C. 10A:15-1.3 and N.J.A.C. 13:102-1.3. He posits that he did not leave his 'tenured' position at the NJDOC to enter a career service, unclassified service, non-tenured

service or Senior Executive Service position, and that consequently there was no break in service.

At the outset, the Deputy Commissioner notes that the four classes of positions identified in *N.J.A.C. 10A:15-1.3* and *N.J.A.C. 13:102-1.3* are examples. The regulation states that a break in service occurs when an employee leaves a tenured position for any purpose. As to the examples of “purposes” set forth in the above referenced regulations, there appears to be no disagreement among the parties that petitioner did not leave the NJDOC to enter a Senior Executive Service or career service position. However, it appears that petitioner did leave the NJDOC to take an unclassified position since, pursuant to *N.J.S.A. 11A:3-4(e)*, educators in the public schools and State institutions are unclassified employees.

But petitioner maintains that, notwithstanding the unclassified nature of the Director of Education position that he took in the Juvenile Justice Commission upon leaving the NJDOC, the move may not be considered a break in service because that Education Director position was tenurable. He comes to this conclusion by comparing the performance assessment duties of tenured administrators in school districts with the responsibilities that *N.J.A.C. 13:102-2.3* imposes upon the above referenced Education Director position, and declaring them identical.

The argument fails for multiple reasons. First, the responsibilities set forth in *N.J.A.C. 13:102-2.3* do not constitute the entirety of respondent’s Education Director job. Second even assuming *arguendo* that respondent’s Education Director position is tenurable, it is still unclassified, and leaving a tenured position for an unclassified position constitutes a break in service according to the express language of *N.J.A.C. 10A:15-2.1* and *N.J.A.C. 13:102-1.3*. In fact, as mentioned above, both *N.J.A.C. 13:102-1.3* and *N.J.A.C. 10A:15-2.1* expressly state that leaving a tenured position for any purpose is a break in service.

Third, N.J.S.A. 18A:60-1 expressly excludes the Education Director position from those protected by tenure. Thus, petitioner left a supervisory position with tenure at the NJDOC to take an unclassified, expressly non-tenurable position at the Juvenile Justice Commission – a clear break in service under the above cited regulations.

To counter the language of N.J.S.A. 18A:60-1, petitioner urges in his third exception that the exclusion of “Education Director” from the tenurable positions identified in N.J.S.A. 18A:60-1 does not pertain to his position because N.J.S.A. 18A:60-1 was enacted when the Juvenile Justice Commission was part of the NJDOC. Petitioner reasons that since the Juvenile Justice Commission was previously a subdivision of the NJDOC, Director of Education of the Juvenile Justice Commission is a much lower level position than the Director of Education position contemplated by our legislators when they passed N.J.S.A. 18A:60-1. This argument cannot stand, as it must be presumed that our legislature would have – in the last fifteen or more years since the Juvenile Justice Commission was removed from the NJDOC – amended N.J.S.A. 18A:60-1 if it believed that the Commission’s Director of Education position should not be included in the exemption from tenure imposed upon Education Director positions in the NJDOC and other State agencies. *See, e.g., In re Petition for Referendum on City of Trenton Ordinance 09-02*, 201 N.J. 349, 359 (2010) (noting that the **Legislature** is **presumed** to be knowledgeable about its previous enactments).

Petitioner’s fourth exception is also without merit. In it he suggests that respondent’s RIF should be deemed a nullity because respondent did not consult with the Department of Education about it. However, N.J.A.C. 13:102-2.5 gives respondent the right to reduce the number of its educators when there is a reduction in student participation in its educational programs, just as N.J.S.A. 18A:28-9 allows school districts to do. Nor has petitioner cited any authority to the contrary.

In summary, by virtue of petitioner's departure from his tenured position at the NJDOC, he forfeited any tenure he may have accrued at the NJDOC. His tenure with respondent began in June of 2002 when he commenced the tenurable position of Education Program Specialist 1. At the time of respondent's RIF, there were five other Education Program Specialists with seniority greater than petitioner's, which precluded him from claiming one of the five remaining Educational Program Specialist positions. No tenure violations were perpetrated and petitioner is not entitled to be reinstated.

Accordingly, the petition is hereby dismissed.

IT IS SO ORDERED.<sup>1</sup>

DEPUTY COMMISSIONER OF EDUCATION

Date of Decision: July 19, 2012

Date of Mailing: July 20, 2012

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<sup>1</sup> This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36* (*N.J.S.A. 18A:6-9.1*).