

New Jersey Commissioner of Education

Decision

Lisa Armstead,

Petitioner,

v.

Board of Education of the City of Plainfield,
Union County,

Respondent.

Synopsis

Petitioner sought reinstatement to her previous title of principal following a transfer to a vice principal position in the respondent Board's school district. Petitioner contended that she had served in the principal position for more than two years, and therefore is entitled to tenure rights as a principal. The Board argued that petitioner did not fill a "true vacancy" during the two years she served as principal and therefore cannot accrue tenure rights as a school principal.

The ALJ found, *inter alia*, that: the issue here is whether petitioner occupied a truly vacant principal position and thus gained tenure rights as a school principal after having served in that position for more than two years; petitioner was appointed to the position of interim principal on March 4, 2015, after the former principal was promoted to the position of Interim Assistant Superintendent of Educational Services – a position that had been vacated the previous school year by a resignation; petitioner served in the position of principal for the uninterrupted period between March 4, 2015 and July 16, 2017; therefore, under *N.J.S.A.* 18A:28-6(b)(3), petitioner obtained tenure rights due to her service as principal for a period of more than two years; the Board's argument that the petitioner never filled a "true vacancy" because she was appointed to an "interim" position is without merit; and the Board's argument that petitioner must prove two favorable evaluations during the requisite two years in order to gain tenure is barred as this contention was never mentioned until the filing of the Board's summative brief. Accordingly, the ALJ ordered that petitioner be reinstated to her position of principal or, in the alternative, that she be placed on the appropriate salary guide step for principal for the 2019-2020 school year; further, the ALJ ordered that petitioner be awarded the difference between what her earnings and benefits for the 2018-2019 school year would have been had she not been wrongfully demoted, and the salary that she actually received.

Upon review, the Commissioner adopted the Initial Decision of the OAL as the final decision, with the modification that petitioner shall be awarded compensation for the difference in salary she is owed beginning from July 17, 2017, the date upon which she was wrongfully demoted. Further, the Commissioner accepted the evaluations submitted by petitioner for purposes of finding that she met the evaluation requirements of *N.J.S.A.* 18A:28-6(b). The Board was ordered to reinstate petitioner to a principal position and to compensate her for any salary and benefits lost since July 17, 2017.

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.

December 3, 2019

New Jersey Commissioner of Education
Final Decision

Lisa Armstead,

Petitioner,

v.

Board of Education of the City of Plainfield,
Union County,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by petitioner and respondent, and petitioner's reply to respondent's exceptions have been reviewed and considered.

This matter involves a school district employee who served in the position of interim principal for more than two years; she was subsequently transferred to a vice principal position and denied tenure as a principal on the basis that she did not fill a "true vacancy." The Administrative Law Judge (ALJ) found that petitioner served for the requisite period of time, and – regardless of the intention of the Board during that period – petitioner was entitled to tenure as a school principal. Accordingly, the ALJ ordered that petitioner be reinstated to her position as principal or, in the alternative, placed on the appropriate salary guide step for principal for the 2019-2020 school year, and awarded the difference in her earnings and benefits for the 2018-2019 school year.

Petitioner filed exceptions to the Initial Decision. First, petitioner notes that the ALJ awarded the difference in her earnings and benefits for the 2018-19 school year and argues

that her award should date from July 17, 2017, when she was wrongfully demoted. Second, petitioner contends that the Initial Decision incorrectly allows the Board the alternative of placing her on the salary guide step for principal. According to petitioner, she must be reinstated to the principal title, because *N.J.S.A.* 18A:28-5 provides that upon earning tenure, she “shall not be dismissed . . . except for inefficiency, incapacity, or unbecoming conduct . . .”.

Respondent also filed exceptions to the Initial Decision. First, respondent claims that there is no proof that petitioner was actually filling a true vacancy and that she admitted that she served in an interim position. Second, respondent argues that because there was no testimony or evidence of lost wages or wage entitlement, that issue is foreclosed.

In reply to respondent’s exceptions, petitioner argues that the ALJ implicitly found that a true vacancy existed, because tenure rights cannot attach to a position that is not actually vacant. Petitioner also contends that the award of the difference between her wages at the vice principal salary and the principal salary follows from and is commensurate with the legal finding that she earned tenure as a principal, such that no specific testimony about wages or entitlements is required for the ALJ or Commissioner to enter such an order.

Upon a comprehensive review, the Commissioner agrees with the ALJ that the petitioner is entitled to tenure as a principal. The Commissioner does not find the Board’s exceptions, which cite no statutes, regulations, or case law, to be persuasive. The Tenure Act, *N.J.S.A.* 18A:28-1 *et seq.*, “should be liberally construed to achieve its beneficent ends.” *Spiewak v. Board of Education of Rutherford*, 90 *N.J.* 63, 74 (1982). Permitting a board of education to avoid tenure rights by using “interim” or “acting” titles for over two years, under the guise of “mulling over” permanent assignments, contravenes the intent of the Tenure Act.

“(T)he word ‘vacancy’ is commonly understood to mean an unoccupied position for which an incumbent does not intend to return, as contrasted with a leave of absence that ‘connotes continuity of the employment status.’” *Lammers v. Bd. of Educ. of the Borough of Point Pleasant*, 134 N.J. 264, 272 (1993), quoting *Bowers v. Am. Bridge Co.*, 43 N.J. Super. 48, 57 (App. Div. 1956), *aff’d* 24 N.J. 390 (1957). Prior to the events at issue in this case, the position of assistant superintendent was held by Margaret Morales, and it became truly vacant when she left the district. When Shirley Johnson-Tucker assumed the interim superintendent position, a true vacancy was created in her former position of principal. Her assumption of a different position in the district cannot be categorized as a leave of absence. Therefore, when petitioner assumed the interim principal position, she was assuming a truly vacant position. Petitioner filled that position for more than two years, meeting the time requirement to obtain tenure as a principal. Accordingly, she must be reinstated as principal and is entitled to the difference between the salary and benefits she received after her transfer to vice principal and what she would have received as principal. While the Initial Decision orders this payment for the 2018-2019 school year, the Commissioner agrees with the argument set forth in petitioner’s exceptions that the award should date from July 17, 2017, when she was wrongfully demoted.

The Initial Decision notes that respondent’s closing brief argued that petitioner did not meet her burden to prove that she received two favorable evaluations, as required by *N.J.S.A.* 18A:28-6(b).¹ The ALJ found that the argument was barred because respondent had not raised it at any time prior to its summation brief and had affirmed at the outset of the hearing that the only issue in dispute was whether petitioner had filled a true vacancy. The Commissioner acknowledges that, in order for an individual to receive tenure as a principal, *N.J.S.A.* 18A:28-

¹ Notably, respondent did not argue that petitioner had not received the required favorable evaluations, but rather merely that petitioner did not demonstrate that she had.

6(b) requires two annual summative evaluations of “effective” or “highly effective” within the first three years of employment in that position. In reply to respondent’s closing brief, which raised this issue for the first time, petitioner submitted evidence of favorable evaluations from the 2016-2017 and 2017-2018 school years. Respondent did not contest, or even respond to, this evidence in any subsequent filing with the OAL or the Commissioner. As such, the Commissioner accepts the evaluations submitted by petitioner for purposes of finding that she met the evaluation requirements of *N.J.S.A.* 18A:28-6(b).

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter, as modified herein. The Board is ordered to reinstate petitioner to a principal position and to compensate petitioner for any salary and benefits lost since July 17, 2017.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: December 3, 2019
Date of Mailing: December 3, 2019

² 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).



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 14058-17

AGENCY DKT. NO. 171-8/17

LISA ARMSTEAD,

Petitioner,

v.

**CITY OF PLAINFIELD BOARD OF
EDUCATION, UNION COUNTY,**

Respondent.

Andrew Schwartz, Esq., for petitioner (Schwartz Law Group, attorneys)

Robert M. Tosti, Esq., for respondent (Law Offices of Purcell, Mulcahy and
Flanagan, attorneys)

Record Closed: October 15, 2019

Decided: October 23, 2019

BEFORE **JUDE-ANTHONY TISCORNIA, ALJ:**

STATEMENT OF THE CASE

Petitioner, Lisa Armstead, was appointed to serve as an elementary school principal on March 4, 2015, by the City of Plainfield Board of Education (district or board). Petitioner remained in that position until July 16, 2017, at which time she was transferred to the position of vice principal at the Plainfield High School. Petitioner

argues that since she remained in the principal position for more than two years, she gained tenure rights as a principal. The district argues that petitioner did not fill a “true vacancy” during the two years that she served as principal and can therefore not accrue tenure rights as a school principal.

ISSUE

Did petitioner occupy a truly vacant principal position and thus gain tenure rights as a school principal after having served in that position for more than two years?

PROCEDURAL HISTORY

Petitioner filed the instant Petition with the New Jersey Commissioner of Education on or about August 3, 2017. The matter was transmitted as a contested case on September 20, 2017, to the Office of Administrative Law (OAL) where it was received on September 22, 2017. Petitioner filed a Motion for Summary Decision pursuant to N.J.A.C. 1:1-12.5 on or about August 30, 2018. Petitioner’s Motion for Summary Decision was denied by Letter Order dated December 20, 2018. A hearing on the merits was set down for July 10, 2019. Final Submissions were received by the undersigned on October 15, 2019, at which point the record was closed.

STATEMENT OF FACTS

The I **FIND** that the following facts to be the **FACTS** of the case:

The District employed Petitioner beginning on or about December 16, 1987, as a science teacher, serving under the required educational certificate until the District promoted her to the position of School Counselor on or about September 1, 2001. Petitioner served in the position of School Counselor under the requisite certificate, attaining tenure in that capacity, and was thereafter, promoted to the position of Acting Vice Principal in or around August 2012. Petitioner held the requisite Principal certificate, which authorized her to serve in, among other roles, the capacity of principal

and vice principal. Thereafter, on November 21, 2012, the District changed Petitioner's title from "Acting Vice Principal" to that of "Vice Principal."

On March 4, 2015, the District appointed petitioner to the position of interim principal of the Woodland Elementary School. Petitioner was appointed to replace Ms. Shirley Johnson-Tucker, who had been promoted to the position of Interim Assistant Superintendent of Educational Services on February 27, 2015. Ms. Johnson-Tucker was promoted to her role as interim Assistant Superintendent of Educational Services in order to fill the position vacated by Ms. Margaret Morales who was no longer employed by the District as of June 30, 2014. Petitioner remained in her position as principal until July 16, 2017, when she was transferred to the position of Vice Principal at the Plainfield High School, effective July 17, 2017.

LEGAL ARGUMENT

PETITIONER OBTAINED TENURE RIGHTS DUE TO HER SERVICE AS PRINCIPAL UNDER N.J.S.A. 18A:28-6(b)(3)

N.J.S.A. 18A:28-6 Tenure upon transfer or promotion

b. Any such teaching staff member under tenure or eligible to obtain tenure under this chapter, who is transferred or promoted with his consent to another position covered by this chapter on or after the effective date of P.L. 2012, c. 26 (C.18A:6-117), shall not obtain tenure in the new position until after:

...

(3) employment in the new position within a period of any three consecutive academic years, for the equivalent of more than two academic years. . . .

Respondent district does not dispute that petitioner served as principal for the requisite academic years provided for by N.J.S.A. 18A:28-6(b), nor does the district dispute whether such service was under the appropriate certificate. See Spiewak v. Bd. of Educ. of Rutherford, 90 N.J. 63, 81 (1982) ("[A]ll teaching staff members who work in

positions for which a certificate is required, who hold valid certificates, and who have worked the requisite number of years, are eligible for tenure[.]”).

Respondent district only argues that petitioner never filled a “true vacancy” as principal, and thus cannot obtain tenure. In their closing brief, respondent fails to cite any statute, code, or case law that discusses what constitutes a “true vacancy.” Instead, respondent asserts that petitioner was appointed school principal in an “interim” position and states that during the two-plus years petitioner served as principal the district was “mulling over” to whom the position of principal should permanently be assigned. See Board’s Summation Brief attached hereto, without attachments, as Exhibit A. The district is apparently asking this tribunal to infer that because the board was still “mulling over” a permanent appointee for the position of school principal that petitioner did not fill a true vacancy and should, therefore, not gain tenure as a principal. I **FIND** petitioner did actually serve as school principal for an uninterrupted period between March 4, 2015, and July 16, 2017, and thus, I **FIND** that petitioner fulfilled all requirements of N.J.S.A. 18A:28-6(b), regardless of the mindset or intention of the board during that period, and I **CONCLUDE** that she is entitled to tenure rights as school principal as a matter of law.

It should be noted that in their closing brief, respondent argues that, under N.J.S.A. 18A:28-6(b), petitioner must have received favorable evaluations during the requisite two years in order to receive tenure. Without addressing the merits of this argument, I **CONCLUDE** the argument is barred as respondent at no time prior to the filing of their summation brief ever brought into question petitioner’s evaluations when she served as school principal. Indeed, it should be noted that both parties affirmed at the outset of the hearing that the only issue in dispute before this tribunal was whether or not petitioner filled a true vacancy when she served as principal in order to gain tenure rights as principal.

ORDER

It is hereby **ORDERED** that petitioner Lisa Armstead’s petition be **GRANTED** and that she be reinstated to her position of principal or, in the alternative, that she be placed

on the appropriate salary guide step for principal for the 2019-2020 school year. It is further **ORDERED** that Armstead be awarded the difference between what her earnings and benefits for the 2018-2019 school year would have been had she not been wrongfully demoted from her position of principal and what she actually received.

I hereby **FILE** this Initial Decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, P.O. Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

October 23, 2019

DATE



JUDE-ANTHONY TISCORNIA, ALJ

Date Received at Agency:

10/23/19

Date Mailed to Parties:

ld

APPENDIX

LIST OF WITNESSES

For Petitioner:

Lisa Armstead

For Respondent:

Lisa Armstead

LIST OF EXHIBITS IN EVIDENCE

For Petitioner:

None referenced in decision

For Respondent:

Exhibit A: Respondent's summation brief