

PETER A. KEANEY, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE TOWNSHIP : DECISION
OF BLOOMFIELD, ESSEX COUNTY, :
RESPONDENT. :
_____ :

SYNOPSIS

Petitioner, employed as Supervisor of Maintenance by the Board from 1994 until a reorganization in 2003, claimed tenure entitlement to employment in a supervisory capacity and in a trade position with Bloomfield Township Schools.

The ALJ found, *inter alia*, that: petitioner had attained tenure as a janitorial employee with the Board and never knowingly waived tenure rights when he assumed the position of Supervisor of Maintenance; the Board selected other candidates for position vacancies after the reorganization for legitimate and non-retaliatory reasons; petitioner attained tenure in the general category of janitorial employee, not in any specific assignment within that broad grouping of job titles, and therefore petitioner did not earn tenure rights to a supervisory position. The ALJ ordered the Board to immediately reinstate petitioner to a trade position or other appropriate assignment within the scope of a janitorial employee, along with appropriate back pay and benefits, subject to mitigation.

Upon a thorough and independent review of the record in this matter, the Commissioner adopts the Initial Decision of the OAL as the final decision in this matter, with a clarification as to the nature of the petitioner's reinstatement.

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 5881-03
AGENCY DKT. NO. 128-4/03

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Exceptions of the Board and petitioner's reply thereto¹ were filed in accordance with the requirements of *N.J.A.C.* 1:1-18.4 and these submissions were considered by the Commissioner in making his determination herein.

The Board's exceptions essentially recast and reiterate its arguments advanced below, which the Commissioner determines -- in all material part -- were fully addressed and considered in the Initial Decision and warrant no further discussion here.

Upon his full and independent review of the record in this matter, which included transcripts of only one of the three days of hearing in this case,² the Commissioner adopts the Initial Decision of the Administrative Law Judge (ALJ) for the reasons clearly articulated

¹ It is, however, noted that petitioner's timely reply to the Board's exceptions, filed on August 15, 2005, also included a section identified as petitioner's exceptions to the Initial Decision. This portion of petitioner's submission, purporting to be primary exceptions filed in response to an Initial Decision mailed to the parties on July 29, 2005, is untimely pursuant to *N.J.A.C.* 1:1-18.4 and, therefore, was not considered. By letter dated August 16, 2005, the Board objected to petitioner's submission of untimely exceptions but, notwithstanding its urging that these be rejected, filed replies thereto. In light of the discounting of petitioner's primary exceptions, the Board's reply was similarly not considered herein.

² The record indicates that hearing in this matter was conducted on May 14, October 6 and 14, 2004. Transcripts of the May 14, 2004 hearing date are contained in the record.

therein. In so determining, the Commissioner concludes that the ALJ provided an accurate and comprehensive presentation of existing law in reaching each of his conclusions, with which the Commissioner fully concurs.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter. The Board is hereby directed to reinstate petitioner immediately to an appropriate vacancy or to the position of a non-tenured individual within the scope of a janitorial employee. The Board is further directed to reimburse petitioner back pay and emoluments as may be appropriate (see footnote 1, Initial Decision at 2), offsetting from this award any money petitioner received from alternative employment and/or unemployment compensation during the period of his illegal termination.³

IT IS SO ORDERED.⁴

ACTING COMMISSIONER OF EDUCATION

Date of Decision: August 31, 2005

Date of Mailing: August 31, 2005

³ Although the Board is entitled to offset petitioner's monetary award by any unemployment compensation he may have received, it is obligated, pursuant to *N.J.S.A. 43:21-5(b)*, to reimburse the Department of Labor any monies so offset.

⁴ This decision 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. 6A:4-1.1 et seq.*