

DAVID A. SMITH, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
GREAT MEADOWS REGIONAL SCHOOL :
DISTRICT, WARREN COUNTY, :
RESPONDENT. :
_____ :

SYNOPSIS

Petitioner – a tenured school administrator formerly employed by the Board – contends that the respondent violated his statutory rights by failing to offer him a position as assistant principal for the 2004-2005 school year, while retaining a non-tenured assistant principal. Petitioner had been employed by the district in the position of assistant principal from August 2000 through August 2002, at which time respondent promoted petitioner to the position of principal in another school. Petitioner held the position of principal from August 2002 through June 2004, at which time his contract was not renewed “due to economy and efficiency”. Subsequently, respondent retained a non-tenured assistant principal without offering petitioner the vacant position. Petitioner claims tenure and seniority rights based on the tacking provision of *N.J.S.A. 18A:28-6*.

The ALJ found that undisputed facts establish that petitioner was employed for a sufficient period of time to acquire tenure as an assistant principal under the tacking provision of *N.J.S.A. 18A:28-6*, and that the respondent terminated his employment while retaining a non-tenured individual in the same position. Accordingly, the ALJ concluded that petitioner is entitled to summary decision, and ordered that the respondent pay petitioner for lost salary and benefits retroactive to July 1, 2004, subject to appropriate mitigation.

Upon a full and independent review of the record, the Commissioner concurs with the determination of the ALJ, and adopts the Initial Decision 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 9192-04
AGENCY DKT. NO. 252-7/04

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The Board sought and was granted an extension of time within which to submit exceptions and, subsequently, filed them in accordance with the modified timelines. Petitioner did not file reply exceptions.

The Board's exceptions essentially recast and reiterate its arguments advanced below, which the Commissioner determines were fully considered and addressed by the Administrative Law Judge (ALJ) in his decision and, therefore, will not be revisited here.

Upon a full and independent review of the record, the Commissioner concurs with the determination of the ALJ – for the reasons clearly presented in his decision – that petitioner achieved tenure as an assistant principal while serving as a principal pursuant to the tacking provision of *N.J.S.A. 18A:28-6*. As such, the Board's failure to offer petitioner an assistant principal position for the 2004-2005 school year, while retaining a non-tenured assistant principal, was violative of his tenure rights.

Accordingly, the recommended decision of the OAL is adopted as the final decision in this matter. It is hereby Ordered that the Board of Education of the Great Meadows Regional School District reinstate petitioner to the position of assistant principal and award him back pay and emoluments less mitigation.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: November 2, 2006

Date of Mailing: November 2, 2006

* 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.*