

WILLIAM BERGHOF, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
ATLANTIC COUNTY VOCATIONAL :
SCHOOL DISTRICT, :
ATLANTIC COUNTY, :
RESPONDENT. :
_____ :

SYNOPSIS

In May 2010, petitioner received written notification that his position as a teacher of diesel mechanics would be eliminated as of June 30, 2010 as part of a Reduction in Force (RIF). On October 22, 2010, petitioner filed this appeal contending that the respondent Board deprived him of his position teaching diesel mechanics, notwithstanding that he possessed superior seniority and should therefore have been entitled to teach the second year of this course. Petitioner sought reinstatement to his former position, which would compel the Board to reinstate the diesel technology program – a program that has experienced declining enrollment. The Board filed a motion for summary judgment.

The ALJ found that: there are no material facts in dispute, and the matter is ripe for summary judgment; petitioner was provided written notice of the Board's decision to eliminate his position on May 5, 2010, but did not file his petition until October 22, 2010; therefore, petitioner failed to comply with the 90 day requirement of *N.J.A.C. 6A:3-1.3(i)*; further, petitioner does not have seniority rights to teach the second year of the diesel class or the general auto mechanics class. Accordingly, the ALJ concluded that the petition should be dismissed for failure to comply with the requirements of *N.J.A.C. 6A:3-1.3(i)*, and granted the Board's motion to dismiss the appeal.

Upon full consideration, the Commissioner concurred with the ALJ that the petition was not timely filed and must be dismissed on that basis. Accordingly, petitioner's seniority claim was not reached.

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 13409-10
AGENCY DKT. NO. 609-10/10

WILLIAM BERGHOF, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE : DECISION
 ATLANTIC COUNTY VOCATIONAL :
 SCHOOL DISTRICT, :
 ATLANTIC COUNTY, :
 :
 RESPONDENT. :
 _____ :

Upon review of the Initial Decision of the Office of Administrative Law and the record of this matter,¹ the Commissioner concurs with the Administrative Law Judge that the instant appeal was untimely filed and must be dismissed. Accordingly, it is not necessary to address the merits of petitioner's seniority claim.

The petition is hereby dismissed.

IT IS SO ORDERED.²

ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 2, 2011

Date of Mailing: June 2, 2011

¹ No exceptions were filed.

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)