

#191-11 (OAL Decision: Not yet available online)

JOANNE BURGER, :  
PETITIONER, :  
V. : COMMISSSIONER OF EDUCATION  
BOARD OF EDUCATION OF THE : DECISION  
BOROUGH OF MAYWOOD, :  
BERGEN COUNTY, :  
RESPONDENT. :

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SYNOPSIS

Petitioner, a tenured 10-month secretary working with the District’s Child Study Team, appealed the Board’s decision to reduce her hours of employment from full-time to .6 time as part of a reduction in force in May 2010. Petitioner alleged that the Board maintained the full-time employment of a non-tenured secretary, while reducing petitioner’s employment in violation of her tenure rights pursuant to *N.J.S.A. 18A:17-2*. Respondent contended that petitioner’s rights were not violated, as the non-tenured employee in question – the Administrative Assistant to the Superintendent, a 12-month position with supervisory responsibilities – did not hold the same or similar position as the petitioner, who is employed as a secretary. The respondent Board filed a motion for summary decision.

The ALJ found that: there are no genuine issues of material fact at issue, and the matter is ripe for summary decision; petitioner’s job description for her position as secretary is consistent with the common understanding of the duties of a secretary, while the duties of the Administrative Assistant to the Superintendent are significantly different; the Administrative Assistant is a confidential position which includes supervisory responsibilities and the assumption of the Superintendent’s duties in his absence. The ALJ concluded that the respondent did not violate petitioner’s tenure rights when it reduced her time and compensation while maintaining the Administrative Assistant as a full-time employee because their positions are not substantially similar. Accordingly, the ALJ granted summary decision to the Board, and dismissed the petition.

Upon a thorough and independent review of the record, the Commissioner concurred with the ALJ that respondent did not violate petitioner’s tenure rights when it reduced her time and compensation pursuant to a reduction in force while maintaining the incumbent in the position of Administrative Assistant to the Superintendent. Accordingly, the petition was dismissed.

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.

May 19, 2011

OAL DKT. NO. EDU 7616-10  
AGENCY DKT. NO. 133-6/10

JOANNE BURGER, :  
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Upon review of the record, Initial Decision of the Office of Administrative Law (OAL), petitioner’s exceptions and respondent’s replies thereto, the Commissioner concurs with the Administrative Law Judge (ALJ) that respondent did not violate petitioner’s tenure rights when it reduced her time and compensation pursuant to a reduction in force while maintaining the incumbent employee in the position of Administrative Assistant to the District Superintendent.

Both of petitioner’s exceptions to the Initial Decision relate to the same premise. Petitioner argues that her own position and the Administrative Assistant position that she seeks are both secretarial positions, and that she is consequently entitled to be placed into the latter. Notwithstanding the ALJ’s findings that – despite some overlap in duties – the positions require significantly different responsibilities, petitioner maintains that both positions are exclusively comprised of secretarial tasks and that the Administrative Assistant to the District Superintendent position (AADS) requires no duties that are too specialized for her to perform.

At the outset, the Commissioner cannot base a tenure decision on speculation. Thus, petitioner's contention that there is no task in the AADS job description that she could not perform cannot serve as a basis for determining whether the AADS position is substantially similar to petitioner's secretarial job.

Petitioner's exceptions appear to ignore two significant portions of the job description for the AADS. First, it is a supervisory position. The incumbent is charged with supervising all secretarial and clerical staff assigned to the superintendent's office. (Joint Exhibit J-11) Second, the AADS is charged with coordinating school-level and district-wide administrative activities (emphasis added). (*Ibid.*)<sup>1</sup> As the ALJ found, petitioner's job does not include such responsibilities – which are more comprehensive than the duties set forth in petitioner's job description. (Joint Exhibit J-12)

Based upon the differences in the two positions at issue – which differences are clearly set forth in the record – the Commissioner cannot classify the Administrative Assistant position as strictly secretarial, and cannot find that the two jobs demand identical responsibilities. Consequently, the Commissioner cannot conclude that respondent violated petitioner's tenure rights by not placing her in the AADS position. *See, e.g., Mount v. Board of Education of the Borough of Tinton Falls, Monmouth County*, Commissioner Decision No. 44-01 (Feb. 7, 2001).

Accordingly, the petition is dismissed.

IT IS SO ORDERED.<sup>2</sup>

ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 19, 2011

Date of Mailing: May 23, 2011

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<sup>1</sup> The Commissioner also notes that the Administrative Assistant position is considered a confidential position and the incumbent is not represented by petitioner's union. (Joint Stipulation of Facts #20)

<sup>2</sup> 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*)