

DELORES KOPKO, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE : DECISION
 TOWNSHIP OF MIDDLETOWN, :
 MONMOUTH COUNTY, :
 :
 RESPONDENT. :

SYNOPSIS

Petitioner appealed the termination of her employment as a secretary in respondent Board's district as the result of a reduction in force (RIF). She contended that she had acquired tenure protection through her prior position in the school district as an assistant traffic coordinator (ATC), and was entitled to be retained over other non-tenured employees. The Board asserted that petitioner has no claim to employment as she did not acquire tenure in her prior position as ATC, and had not yet acquired tenure in the secretarial position.

The ALJ found, *inter alia*, that: the central issue in this case is whether the duties of the position of ATC formerly held by petitioner could be considered secretarial or clerical in nature, such that petitioner would have obtained tenure in that position pursuant to *N.J.S.A. 18A:17-2*; review of petitioner's responsibilities as an ATC reveals that she routinely exercised independent authority and coordinated the transportation department in her supervisor's absence; petitioner's duties in the ATC position went well beyond the role of a secretarial or clerical employee, whose function is to assist those in authority with carrying out their duties; and the preponderance of evidence proves that petitioner had more duties and responsibilities than a secretarial or clerical employee, and cannot be considered as having been employed as a secretary or clerk while in the ATC position. Accordingly, petitioner did not acquire tenure in her position as an ATC and has no claim to employment based upon tenure rights. The ALJ ordered the petition dismissed.

The Commissioner concurred with the ALJ that petitioner's position as an ATC cannot be characterized as secretarial or clerical in nature, and she therefore did not acquire tenure in this position. Accordingly, petitioner has no justified claim to employment with the Board based on a violation of her tenure rights. The Commissioner adopted the Initial Decision as the final decision in this matter.

<p>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.</p>

OAL DKT. NO. EDU 7302-10
AGENCY DKT. NO. 123-6/10

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner’s exceptions and the Board’s reply thereto – filed in accordance with the requirements of *N.J.A.C. 1:1-18.4* – were fully considered by the Commissioner in reaching his determination herein.

Petitioner’s exceptions essentially recast and reiterate her arguments advanced before the Administrative Law Judge (ALJ) below. As it is determined that such arguments were fully considered and addressed by the ALJ in her decision, they will not be revisited here.

Upon his full consideration of the record in this matter, which included a transcript of the hearing conducted at the OAL on March 21, 2011, the Commissioner concurs with the ALJ – for the reasons presented on pages 13-14 of her decision – that petitioner’s position as an Assistant Traffic Coordinator with the Board cannot be characterized as secretarial or clerical in nature and, consequently, petitioner did not acquire tenure in this position. As such, petitioner has no justified claim to employment with the Board based on a violation of her tenure rights.

Accordingly, the recommended decision of the OAL is adopted as the final decision in this matter and the instant petition of appeal is hereby dismissed.

IT IS SO ORDERED.*

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 7, 2011

Date of Mailing: September 8, 2011

* 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).