

#301-12 (OAL Decision: Not yet available online)

NADINE TRIBBETT, :
PETITIONER, : COMMISSIONER OF EDUCATION
V. : DECISION
BOARD OF EDUCATION OF THE :
TOWNSHIP OF WILLINGBORO, :
BURLINGTON COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner was notified in May 2011 that her position of Director of Curriculum was to be eliminated in a reduction in force (RIF) effective June 30, 2011. Petitioner subsequently filed an appeal in September 2011 asserting her tenure rights to reinstatement as a school principal or to one of two new administrative positions in respondent Board's school district. The Board contended that petitioner waived her tenure rights when she was offered the position of high school principal or one of two other administrative positions, but rejected them. Petitioner, however, disputed that she had received an official offer of these positions, and instead asserted that the Superintendent had questioned her tenure status and had merely asked if she would be interested in these jobs. When petitioner did not respond in the affirmative, the Board sent her a letter accepting her resignation.

The ALJ found, *inter alia*, that: petitioner was never offered the position of high school principal because the Superintendent did not make a bona fide offer of employment that petitioner could rely upon; the District interpreted petitioner's preference for a middle or elementary school position as a rejection and never fulfilled its duty to actually offer her a position in accordance with her tenure and seniority rights; even after petitioner clarified her position by stating in writing that she would take the high school principal position if it was offered to her, the Board decided to terminate her by sending a letter accepting her resignation; waiver of tenure rights is only effective if the protected employee intended to relinquish them, and in this case petitioner clearly expressed her job preferences; but when it became clear that the Board was interpreting this as a rejection, petitioner clarified any confusion by stating that she would accept the principal position if it was offered to her. Accordingly, the ALJ ordered the Board to reinstate petitioner to the position of High School Principal or a similar position effective June 30, 2011, with back pay, seniority, and any other emoluments to which petitioner is entitled.

Upon review and consideration, the Commissioner adopted the Initial Decision of the OAL as the final decision in this matter for the reasons set forth by the ALJ.

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.

August 1, 2012

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This controversy arose as a disagreement between the parties as to whether, subsequent to the elimination of petitioner’s position as Curriculum Director, she was offered a high school principalship and refused same – resulting in the forfeiture of her tenure in respondent’s district. Review of the record and Initial Decision of the Office of Administrative Law (OAL)¹ reveals that the Administrative Law Judge (ALJ) carefully applied the principles of contract law to the material and relevant facts, correctly concluding that no *bona fide* offer had been made to petitioner. Consequently she could neither be deemed to have rejected an offer of employment nor be found to have knowingly waived her tenure rights. The ALJ ordered petitioner’s reinstatement with back pay and benefits, minus mitigation.

Subsequent to the Initial Decision respondent rehired petitioner, making the controversy concerning her employment status moot. Accordingly, the Commissioner adopts the Initial Decision regarding the remaining issue in controversy, *i.e.*, the payment of back pay and benefits. Petitioner

¹ Respondent’s exceptions and petitioner’s replies thereto were also considered.

shall be paid full salary and benefits – minus mitigation, if any – for the period from July 1, 2011 through the date upon which she was reinstated by respondent.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: August 1, 2012

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² This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36* (*N.J.S.A. 18A:6-9.1*).