

PAT BROWN-KNEISEL, :  
 :  
 PETITIONER, : COMMISSIONER OF EDUCATION  
 :  
 V. : DECISION  
 :  
 BOARD OF EDUCATION OF THE :  
 TOWNSHIP OF WAYNE, :  
 PASSAIC COUNTY, :  
 :  
 RESPONDENT. :

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SYNOPSIS

Petitioner – formerly a non-certified, non-tenured employee in respondent’s school district – filed a complaint in Superior Court which alleged that when her position as respondent’s coordinator of community programs was eliminated in a reduction in force and her contract was not renewed, her rights under the Conscientious Employee Protection Act (CEPA) and the New Jersey Law Against Discrimination (LAD) were violated, and she was subject to the tortious infliction of emotional distress. The respondent Board challenged the appropriateness of Superior Court as the forum for hearing this controversy. The Judge retained jurisdiction, but temporarily transferred the matter to the Commissioner for an opinion on the validity of the school district’s reduction in force.

The ALJ found, *inter alia*, that: the petitioner was employed by the respondent Board in several titles over a span of approximately ten years, but never held any certificate issued by the State Board of Examiners; because she never held a certificate, she was not a “teaching staff member” as defined by education law; New Jersey’s reduction in force statute, *N.J.S.A. 18A:28-9*, is not applicable to the Board’s decision not to renew petitioner’s contract for the 2012-1013 school year because she was not a teaching staff member; similarly, petitioner was not entitled to tenure protection under *N.J.S.A. 18A:28-5*, nor reemployment due to seniority under *N.J.S.A. 18A:28-12*; the Board was therefore not constrained to eliminate petitioner’s position solely for reasons of economy, efficiency or good cause shown under *N.J.S.A. 18A:28-9*; and the instant matter does not arise under the school laws, as no specific interpretation of any New Jersey education law by the Commissioner is necessary. The ALJ concluded that since the Commissioner lacks jurisdiction in matters that do not implicate New Jersey school laws, the present matter should be dismissed.

Upon independent review, the Commissioner determined that he does lack jurisdiction over the underlying controversy, as the questions raised therein do not implicate education law. Accordingly, the Commissioner: denied the respondent’s motion to dismiss; dismissed the instant petition; and referred the case back to Superior Court for disposition.

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.
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The instant matter presents a threshold issue, *i.e.*, whether the Commissioner has jurisdiction to adjudicate the parties' dispute. Upon review of the record, including the Initial Decision of the Office of Administrative Law (OAL),<sup>1</sup> the Commissioner concludes that he lacks such jurisdiction.

Petitioner initially filed an action in Passaic County Superior Court in June 2012, alleging that when her position as respondent's coordinator of community programs was eliminated via a reduction in force and her contract with respondent was not renewed, her rights under the Conscientious Employee Protection Act (CEPA) and the New Jersey Law Against Discrimination (LAD) were violated – and she was subject to the tortious infliction of emotional distress. Respondent challenged the appropriateness of Superior Court as the forum for the controversy. The assigned Superior Court Judge retained jurisdiction over the case but temporarily transferred it to the Commissioner, opining that the Commissioner's evaluation of

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<sup>1</sup> Neither party filed exceptions to the Initial Decision.

the correctness of the reduction in force would guide the court in respect to petitioner's other claims.

On September 26, 2013 a petition was filed and on October 4, 2013, the matter was transmitted to the OAL. After an agreed-upon exchange of discovery, the OAL adjudicated the case by way of summary disposition. It found that the material issues do not fall under the Commissioner's jurisdiction, and recommended dismissal of the petition and return of the case to Superior Court. The Commissioner concurs.

Employment matters are brought under the Commissioner's jurisdiction by way of the laws and regulations concerning tenure and seniority. Many of those statutes and rules, by their own terms, pertain to "teaching staff members" only. The definition of "teaching staff member," in turn, does not include employees – such as petitioner – who are not certificated.

*See, N.J.S.A. 18A:1-1:*

"Teaching staff member" means a member of the professional staff of any district or regional board of education, or any board of education of a county vocational school, holding office, position or employment of such character that the qualifications for such office, position or employment, require him to hold a valid and effective standard, provisional or emergency certificate, appropriate to his office, position or employment, issued by the State Board of Examiners . . . .

Indeed, examination of *N.J.S.A. 18A:28-9* – the statute governing reductions in force (RIFs) – reveals that it covers the elimination or diminution of positions filled specifically by **tenured teaching staff members**, as opposed to employees like petitioner who are uncertificated or hold positions which do not require certification. Because petitioner is not protected by *N.J.S.A. 18A:28-9*, there is no education law issue for the Commissioner to adjudicate regarding the elimination of petitioner's position.

Correlatively, it is well established that, absent constitutional constraints or the reach of tenure laws, boards of education have an almost complete right not to renew contracts for the services of employees. *See, e.g. Dore v. Board of Education*, 185 N.J. Super. 447, 456 (1982). Since tenure law is inapposite to this controversy, respondent's action in non-renewing petitioner must be evaluated either by reference to constitutional standards or by analysis of the elements of the causes of action invoked in petitioner's pleadings, *i.e.*, petitioner's claims that she was non-renewed for "blowing the whistle" about alleged inaccuracies in the audits of respondent's adult school program, or because of gender and age discrimination.

In summary, the questions raised in the instant matter do not implicate education law and consequently do not fall under the jurisdiction of the Commissioner of Education. Accordingly, respondent's motion to dismiss petitioner's claims is denied, the petition before the Commissioner is dismissed, and the case is referred back to Superior Court for disposition.

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

ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 3, 2014  
Date of Mailing: November 3, 2014

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