

#154-15(OAL Decision: Not yet available online)

CHRISTOPHER KECHULA, :  
PETITIONER :

V. :

BOARD OF EDUCATION OF THE TOWNSHIP :  
OF PISCATAWAY, MIDDLESEX COUNTY, :  
RESPONDENT. :

COMMISSIONER OF EDUCATION  
DECISION

AND

ALAN HUDSON, :  
PETITIONER, :

V. :

BOARD OF EDUCATION OF THE TOWNSHIP :  
OF PISCATAWAY, MIDDLESEX COUNTY, :  
RESPONDENT. :

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SYNOPSIS

In this consolidated case, petitioners – formerly employed as custodians for the respondent Board – alleged that their tenure rights were violated when their employment was terminated. The Board asserted that the petitioners’ appeal rests solely on contractual claims – which do not require an interpretation of school law – and filed a motion to dismiss for failure to state a claim and lack of subject matter jurisdiction. Petitioners failed to answer the motion.

The ALJ granted the Board’s motion to dismiss, finding that: petitioners were custodial workers employed by the Board before their respective termination dates; petitioners’ positions did not require a certificate from the State Board of Examiners; and petitioners also filed grievances pursuant to their collective bargaining agreement. The ALJ concluded that, in light of petitioners’ failure to respond to the motion to dismiss or provide any contrary legal or factual basis, the respondent’s motion to dismiss must be granted. Accordingly, the petitioners’ appeal was dismissed.

The Commissioner rejected the Initial Decision and remanded the matter for further proceedings, finding, *inter alia*, that: in order to determine whether the Commissioner has jurisdiction here, it is necessary to establish whether the Board appointed petitioners for a fixed term; Title 18A grants Boards of Education the discretion to determine which custodians, if any, will receive tenure benefits; and custodians appointed for a fixed term are excluded from statutory tenure, but may still negotiate contractual tenure rights over which the Commissioner lacks jurisdiction. Accordingly, the Commissioner remanded this matter to the OAL to determine whether petitioners were appointed for a fixed term and thereby excluded from statutory tenure under *N.J.S.A. 18A17-3*.

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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May 12, 2015

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PETITIONER	:	
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V.	:	
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BOARD OF EDUCATION OF THE	:	
TOWNSHIP OF PISCATAWAY,	:	
MIDDLESEX COUNTY,	:	
	:	COMMISSIONER OF EDUCATION
RESPONDENT.	:	
	:	DECISION
	:	
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	:	
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TOWNSHIP OF PISCATAWAY,	:	
MIDDLESEX COUNTY,	:	
	:	
RESPONDENT.	:	
_____:	:	

The record in this matter, along with the Initial Decision of the Office of Administrative Law (OAL), have been reviewed. This controversy concerns whether petitioners, formerly employed as custodians for the Piscataway Board of Education (Board), possessed tenure rights pursuant to *N.J.S.A. 18A:17-3* which were violated when the Board terminated their employment. Arguing that petitioners lacked tenure under *N.J.S.A. 18A:17-3*, the Board filed motions to dismiss the petitions of appeal for failure to state a claim upon which relief can be granted and lack of subject matter jurisdiction. Ultimately, the Administrative Law Judge (ALJ) granted the Board's motions and dismissed both petitions. For the reasons stated herein, the Commissioner rejects the ALJ's Initial Decision and remands the matter for further proceedings.

Title 18A grants Boards of Education “discretion to determine which custodians, if any, are to receive the benefit of tenure.” *Wright v. Bd. of Educ.*, 99 N.J. 112, 119 (1985).

Custodians appointed for a fixed term are excluded from statutory tenure under *N.J.S.A. 18A:17-3*, which provides: “Every public school janitor of a school district shall, unless he is appointed for a fixed term, hold his office, position or employment under tenure during good behavior and efficiency and shall not be dismissed” except for a reduction in force or “neglect, misbehavior or other offense.” Custodians excluded from statutory tenure by virtue of fixed term appointment may, however, negotiate contractual tenure rights – over which the Commissioner lacks jurisdiction. *See Wright, supra*, 99 N.J. at 116 (holding contractual provision granting tenure to custodians after three years of employment is not barred by *N.J.S.A. 18A:17-3* and falls within the scope of collective negotiations). Therefore, in order to determine whether the Commissioner lacks jurisdiction to hear and decide this matter under *N.J.S.A. 18A:17-3*, it is necessary to establish whether the Board appointed petitioners for a fixed term.

Upon her review of the record, the ALJ made the following three findings of fact:

1. Petitioners were employed with the Board as custodial workers until Hudson was terminated on December 19, 2013 and Kechula was terminated on January 9, 2014.
2. Their positions did not require certification from the New Jersey State Board of Examiners.
3. Petitioners have also filed grievances pursuant to their collective bargaining agreement. (Initial Decision at 2)

Based upon those findings, the ALJ granted the Board’s motions and dismissed the petitions of appeal “in light of the petitioners’ failure to respond to the motion or provide any contrary legal or factual basis” and determined that the Board’s motions were “sufficient to support judgment in its favor as to the lack of jurisdiction of the subject of the petitioners’ appeals.” (Initial Decision at 2).

Notably, neither the petitions nor the Board’s certification in support of its motion indicated whether petitioners were appointed for a fixed term of employment.

Because the record is devoid of information as to whether petitioners were appointed by the Board for a fixed term of employment, the Commissioner cannot conclude that petitioners lacked tenure rights under *N.J.S.A.* 18A:17-3. Absent a finding that petitioners were appointed for a fixed term – and thereby excluded from statutory tenure under Title 18A – the ALJ lacked the requisite factual basis to dismiss the petitions for lack of subject matter jurisdiction. Initially, the fact that custodians do not require certification from the New Jersey State Board of Examiners is an irrelevant, insufficient factual basis upon which to find that petitioners are not tenured custodial employees under *N.J.S.A.* 18A:17-3. In addition, it cannot be assumed that petitioners possess contractual tenure – and not statutory tenure – simply because they filed grievances and failed to respond to the Board’s motions.

Accordingly, this matter is remanded to the Office of Administrative Law for a determination as to whether petitioners were appointed by the Board for a fixed term of employment and thereby excluded from statutory tenure under *N.J.S.A.* 18A:17-3.

IT IS SO ORDERED.\*

COMMISSIONER OF EDUCATION

Date of Decision: May 12, 2015

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\*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).