

BERNICE WOODS-BROWN,	:	
	:	
PETITIONER,	:	COMMISSIONER OF EDUCATION
V.	:	DECISION
	:	
BOARD OF EDUCATION OF THE	:	
TOWN OF IRVINGTON,	:	
ESSEX COUNTY,	:	
	:	
RESPONDENT.	:	
_____	:	

SYNOPSIS

Petitioning business education chairperson challenged Board's termination of her employment, claiming that, notwithstanding that her continued service on the date of February 1, 1996 was the result of administrative error, she had nonetheless acquired tenure by operation of law through having worked for the requisite period of time as specified in statute.

ALJ found that controlling statute as interpreted by recent court decisions required re-employment for a fourth year to be a necessary condition of tenure acquisition under *N.J.S.A. 18A:28-5*, and that petitioner had neither received such an offer nor been recommended by the superintendent as required by *N.J.S.A. 18A:27-4.1*. ALJ found it unnecessary to reach to petitioner's specific claim of entitlement under *N.J.S.A. 18A:28-5(c)*, service for the equivalent of more than three academic years within a period of four consecutive academic years, based on calculation of length of the academic year. Petition was dismissed.

Commissioner affirmed findings and conclusions of initial decision.

JULY 10, 1997

OAL DKT. NO. EDU 3749-96
AGENCY DKT. NO. 75-2/96

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The record of this matter and the initial decision of the Office of Administrative Law have been reviewed. Timely exceptions were filed by petitioner pursuant to *N.J.A.C.* 1:1-18.4, as were replies by the respondent Board of Education (Board).

In her exceptions, petitioner renews her contention, which she claims was erroneously ignored by the ALJ, that she acquired tenure by operation of *N.J.S.A.* 18A:28-5(c). She did so, she claims, through being employed for the equivalent of more than three academic years within a period of four academic years as required by statute. Academic years, according to petitioner, are to be uniformly reckoned as thirty months, so that petitioner acquired tenure by virtue of having performed her duties on February 1, 1996 and, thus, having been employed for thirty months and one day.

In reply, the Board urges acceptance in full of the initial decision, but argues that, even accepting petitioner's stance that *N.J.S.A.* 18A:28-5(c) controls the present inquiry in its entirety, petitioner did not acquire tenure because she was not employed for the requisite number of days based on the academic calendar of the district during the years in question.

Upon review, the Commissioner concurs with the ALJ, for the reasons well expressed in the initial decision, that the State Board's analysis in *Martucci, supra*,

controls this matter in its entirety. Notwithstanding any differences in the manner of calculating the length of an academic year for purposes of tenure acquisition pursuant to *N.J.S.A.* 18A:28-5(c), the *Martucci* analysis clearly requires a valid offer of reemployment as a condition precedent to the granting of tenure under *any* provision of 18A:28-5. Thus, the ALJ did not err in finding it unnecessary to reach to petitioner's specific contentions regarding the precise length of an academic year when applying 18A:28-5(c).

Accordingly, for the reasons expressed therein, the initial decision of the Office of Administrative Law dismissing the petition of appeal is adopted as the final decision in this matter.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

JULY 10, 1997