

IVEY AVERY, PERCY DARE, AND :  
JANICE WILLIAMS, :

PETITIONERS, :

V. :

COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE :  
CITY OF TRENTON, MERCER :  
COUNTY, :

DECISION

RESPONDENT. :  
\_\_\_\_\_ :

SYNOPSIS

Petitioners, tenured teacher specialists whose 12-month positions which required instructional certificates were abolished in July 1993, contested their reassignment to 10-month classroom teaching positions, averring that the Board continued their 12-month positions staffing them with nontenured individuals, thus, violating petitioners' tenure and seniority rights.

ALJ considered the duties required by fourteen positions to which petitioners claimed entitlement. ALJ determined that petitioners had no rights to five positions that were vacant or abolished as of the RIF and were never filled. Also, they had no entitlement to hold two positions, Bilingual Parent-Community Liaison and Computer Technician, which required unique qualifications. The scope of the determination of petitioners' tenure and seniority rights was limited, therefore, to seven positions. However, the ALJ made no finding as to entitlement to two positions which were never submitted to the county superintendent for a determination of the proper certification required. ALJ found that Petitioners Dare and Avery were entitled to four of the five remaining positions with the difference in compensation. Petitioner Williams had no entitlement to any of the above positions as her position as personnel specialist was more administrative in nature, requiring no interaction with students or parents, and not implementing plans or programs that have a direct effect on curriculum and school policy. Her claims were dismissed.

Commissioner reversed in part the initial decision as he was not persuaded that the circumstances herein supported the conclusion that petitioners were subjected to a RIF. Petitioners were never dismissed from employment; rather, the Commissioner found that the Board acted pursuant to its managerial prerogative to transfer teaching staff members within the scope of their certification. Commissioner found, however, that petitioners were subject to a reduction in salary violating their tenure rights. Commissioner directed that petitioners must be reinstated to their respective salaries as of April 1993, and given the differential of what they actually received and what they should have received in subsequent years. Commissioner noted that the Board may elect to freeze petitioners at their prior salary until such wages are in accord with the teachers' salary guide.

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The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. Petitioners’ and respondent’s exceptions, and petitioners’ reply thereto, are duly noted as submitted in accordance with *N.J.A.C.* 1:1-18.4, and were considered by the Commissioner in rendering the within decision.

Upon careful and independent review, the Commissioner determines to reverse the initial decision of the ALJ, for the reasons set forth below, in that he is not persuaded that the circumstances herein support the conclusion that petitioners were subjected to a reduction in force (RIF), pursuant to *N.J.S.A.* 18A:28-9.

Initially, the Commissioner observes that *N.J.S.A.* 18A:28-9 provides:

Nothing in this title or any other law relating to tenure of service shall be held to limit the right of any board of education to *reduce the number of teaching staff members, employed in the district* whenever, in the judgment of the board, it is advisable to abolish any such positions for reasons of economy or because of reduction in the number of pupils or a change in the administrative or

supervisory organization of the district or for other good cause upon compliance with the provisions of this article. (emphasis added) *N.J.S.A.* 18A:28-9.

The Commissioner is further mindful that the meaning of a statute is first derived by looking at its plain language. Where that language “is clear and unambiguous, it will be given effect ‘absent any *specific* indication of legislative intent to the contrary.’” (emphasis in text) *Chase Manhattan Bank v. Josephson*, 135 *N.J.* 209, 225, 227 (1994). As the State Board of Education noted in *Gainer*, “It is well established that such reduction occurs whenever the *number* of teaching staff is reduced. *Downs v. Board of Education of Hoboken Dist.*, 13 *N.J. Misc.* 853 (1935).\*\*\*” (emphasis in text) *Gainer, supra*, at 223. Although petitioners note that a RIF has been found to have occurred where a staff member’s position was reduced from full-time status to part-time status, see *Bednar, supra*,<sup>1</sup> *Klinger, supra*,<sup>2</sup> and *Popovich v. Bd. of Ed. of the Borough of Wharton*, 1975 *S.L.D.* 737, 745,<sup>3</sup> such is not the case herein.

In the instant matter, although petitioners’ former 12-month positions as “teacher specialists” were abolished in April of 1993, petitioners affirmed that “[a]t the same time, Respondent informed [them] that they would be placed in 10-month positions as Classroom Teachers,<sup>4</sup> effective for 1993-94 school year, and that they would not be employed or

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<sup>1</sup> In *Bednar*, petitioner’s full-time position as an elementary art teacher was reduced to a part-time elementary art teaching position. *Bednar, supra*, at 240.

<sup>2</sup> In *Klinger*, notwithstanding that the Appellate Division cites to *Popovich, infra*, for the broad principle that a “[r]eduction in hours of employment is considered a reduction in force,” *Klinger, supra*, at 357, both the petitioners in *Klinger* and in *Popovich* were specifically full-time teachers reduced to part-time employment. In *Klinger*, petitioner was a full-time physical education teacher whose position was reduced to part-time as a result of declining enrollment. *Klinger* at 356.

<sup>3</sup> In *Popovich*, petitioner was a full-time vocal music teacher whose position was reduced to three days per week. *Popovich* at 737.

<sup>4</sup> Notwithstanding the ALJ’s statement that the newly-assigned positions “\*\*\*were identical to the abolished positions, except that the new positions were only ten-month positions with the concomitant reduction in salary” (Initial Decision at p. 3), the Commissioner finds noteworthy that petitioners repeatedly assert that the new positions were, in fact, classroom teaching positions, an assignment which they characterized as a “demotion.” (Petitioners’ Brief in Support of Motion For Summary Disposition at pp. 3, 8) In that the Board does not dispute that the new positions were teaching positions, the Commissioner so finds.

compensated during July or August of 1993.” (emphasis added) (Petition of Appeal at p. 3, paragraph 14) Petitioners do not assert, and neither does the record suggest, that they were, at any time, dismissed from employment in the District. Where the board has not reduced the number of staff members employed in the district either by termination of employment or by diminution of full-time positions to part-time positions as in *Bednar, Klinger, and Popovich*, the Commissioner is not convinced that the seniority regulations, which were established to effectuate a RIF pursuant to *N.J.S.A 18A:28-9 et seq.*, must nevertheless attach, as petitioners so contend.<sup>5</sup> To accept petitioners’ argument that the abolishment of their positions, under these circumstances, compels the application of the seniority regulations, would constitute a capitulation to semantics at the expense of sound educational policy. Thus, since the seniority regulations are not implicated in this matter, the Commissioner does not reach to petitioners’ allegations that their seniority rights were subsequently violated.

Rather, the Commissioner finds that the Board acted pursuant to its managerial prerogative to transfer teaching staff members. Petitioners, who acquired tenure as teachers, and not as “teacher/specialists,” were transferred within the scope of their certificates to alternative teaching assignments, *i.e.*, as classroom teachers. The Commissioner recognizes that “a tenured teacher may be ‘transferred’ or reassigned within the scope of the endorsements on his or her Instructional Certificate \*\*\* but may not be transferred involuntarily from one position to another.” *Howley and Bookholdt v. Ewing Township Board of Education*, 1982 *S.L.D.* 1328, 1340, *aff’d* State Board June 1, 1983. Here, petitioners cannot claim that the classroom teaching assignments are different “positions” for the purpose of a tenure analysis. “\*\*\*[T]he

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<sup>5</sup> To the extent the language of the regulations governing seniority found at *N.J.A.C. 6:3-5.1 et seq.* appear to contradict the Commissioner’s conclusion herein, it is noted that such regulations must be read to be consistent

Commissioner has consistently maintained that, with unrecognized titles, the scope of a position for purposes of tenure entitlement is that of the endorsement(s) required to hold it.\*\*\*” *MacMillan, supra*, at 22. The teacher/specialist positions formerly held by petitioners merely required that they hold instructional certificates, with no specific endorsements. Not unlike the State Board’s observations in *Williams*, the certification required of the teacher/specialists and of these classroom teachers is the same, tenure as a teacher can be accrued in both titles, and the duties to be performed as classroom teachers “are of no less importance from an educational standpoint.” *Williams, supra*, at 158.

However, the Commissioner concurs with the ALJ’s view that petitioners were subjected to a reduction in salary and their respective tenure rights, therefore, were violated by the transfer. In this regard, the Commissioner determines that the Board must now reinstate petitioners to their respective salaries as of April 1993, and must reimburse them for the salary differential between what they actually received in the 1993-94, 1994-95, 1995-96, and 1996-97 school years, and what they would have received, had they been compensated with the same salaries and emoluments they enjoyed in their roles as “teacher/specialists.”<sup>6</sup> In so finding, the Commissioner notes that the Board may elect to freeze petitioners at their respective prior salaries until such wages are in accord with the teachers’ salary guide. *Richard Siss v. Board of Education of the City of Long Branch, Monmouth County*, Commissioner’s Decision (unpublished) April 1, 1980, aff’d State Board November 5, 1980, New Jersey Superior Court Appellate Division decision, February 24, 1982, A-1630-80T2.

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with *N.J.S.A. 18A:28-9 et seq. Carpenito v. Rumson Borough Board of Education, Monmouth County*, 96 *N.J.A.R.* 2d (EDU) 959, 963, 964.

<sup>6</sup> In that petitioners have “no vested right in any future increases in salary,” *Williams, supra*, at 162, they are not entitled to salary and emoluments beyond that which they had received as of April 1993.

Accordingly, the initial decision of the ALJ is reversed to the extent set forth herein. The Board is directed to compensate petitioners, consistent with the Commissioner's directive above.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

DATE: November 3, 1997