

RITA HIBO AND SUSAN ARILLO, :

PETITIONERS, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE : DECISION

WEST ESSEX REGIONAL SCHOOL :
DISTRICT, ESSEX COUNTY, :

RESPONDENT. :

_____:

SYNOPSIS

Petitioners, two part-time employees, alleged the Board violated their tenure rights by abolishing their positions while retaining nontenured individuals in secretarial or clerical positions to which they were entitled.

ALJ found that petitioners accrued tenure in secretarial positions and were qualified to perform the duties assigned to nontenured individuals. Thus, the Board was ordered to reinstate petitioners to secretarial positions with mitigated compensation.

Commissioner concurred with findings and conclusion of the ALJ and ordered petitioners reinstated with their compensation to be offset by their actual earnings and unemployment compensation received during the period, directing the Board to reimburse the New Jersey Department of Labor for the unemployment compensation offset.

December 29, 1997

OAL DKT. NO. EDU 1226-96
AGENCY DKT. NO. 459-11/95

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The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. Exceptions of the Board¹ ²and petitioners' reply thereto were timely filed pursuant to *N.J.A.C.* 1:1-18.4 and were duly considered by the Commissioner in making his determination in this matter.

Upon his careful and independent review of the record, the Commissioner affirms the findings and conclusion of the Administrative Law Judge, that the within petitioners accrued tenure in secretarial positions and are qualified to perform the duties assigned by the Board to nontenured employees and the Board, therefore, is required to reinstate these petitioners to secretarial positions in the District and restore full back pay and emoluments which they would

¹The Board's exception submission included audio tapes of the hearing conducted at the OAL on January 29, 1997 and February 7, 1997.

²By letters dated December 1, 1997, December 3, 1997 and December 4, 1997, respectively, Intervenor June Dietz, Deborah Restaino and Mary Ann Dailey advised that they joined the exception letter filed by the Board. By letter dated December 8, 1997, Intervenor Cheryl Philower directed the Commissioner's attention to her post-hearing brief submitted to the ALJ in this matter.

have received had the Board not acted improperly in discontinuing their employment. The Commissioner further finds that the Board is entitled to offset petitioners' awards by their actual earnings and the unemployment compensation which they received during this period and it is responsible for reimbursing the New Jersey Department of Labor for the total amount of such unemployment compensation.

Accordingly, the initial decision of the OAL is adopted as the final decision in this matter for the reasons clearly articulated therein. The Board is hereby ordered to reinstate petitioners to secretarial positions in the District and restore their back pay and emoluments less the offsets directed herein.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

December 29, 1997