

GREGORY T. DONAHUE, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE CITY : DECISION
 OF OCEAN CITY, CAPE MAY COUNTY, :
 :
 RESPONDENT. :
 :

SYNOPSIS

Petitioner, a tenured teaching staff member, alleged that the Board failed to recognize his tenure rights as a principal with the school district and his entitlement to the vacant position of principal in the Board's high school.

The ALJ granted summary decision to petitioner, concluding that petitioner was entitled to the position of high school principal by virtue of his tenure rights as principal.

The Commissioner affirmed the recommended decision of the ALJ, particularly in light of the court's holding in *Schienholz et al. v. Board of Education of the Township of Ewing, Mercer County*.

AUGUST 12, 1999

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The record and initial decision issued by the Office of Administrative Law have been reviewed. No exceptions were filed by the parties.

Upon review of the record, the Commissioner agrees with the recommended decision of the Administrative Law Judge granting summary decision to petitioner based upon his tenure rights as a principal, particularly in light of the court’s holding in *Schienholz et al., supra*. Moreover, even accepting *arguendo* that the agreement, entered into by the parties as a result of a reduction in force in 1992 which “bumped” petitioner from his tenured position as principal, is the only factor controlling this matter as the Board asserts, the Commissioner concludes that the plain wording of the agreement does not in any way contravene the relief sought by petitioner. The agreement explicitly states that petitioner “*will not lose any tenure rights whatsoever by accepting the position of vice-principal at the Intermediate School.*” (emphasis supplied) In 1998, when the first principal’s position came open to which petitioner was entitled by virtue of his tenure rights, he chose to exercise his right to that position because,

in accordance with the terms of the agreement, he had not lost any of his tenure rights when he acquiesced to the Board's desire to retain a nontenured staff member in the position to which he had been entitled in 1992.

Accordingly, summary decision is hereby granted to petitioner.¹

IT IS SO ORDERED.

ACTING COMMISSIONER OF EDUCATION

AUGUST 12, 1999

¹ This decision, as the Commissioner's final determination in the instant matter, may be appealed to the State Board of Education pursuant to *N.J.S.A. 18A:6-27 et seq.* and *N.J.A.C. 6:2-1.1 et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.