

CAROL RIEGEL, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE : DECISION

TOWNSHIP OF BERKELEY HEIGHTS, :

UNION COUNTY, :

RESPONDENT. :

SYNOPSIS

Petitioning school psychologist alleged that an increase in her in-school work year resulted in a reduction in compensation in violation of her tenure rights. Petitioner had been transferred to respondent's employ as a result of the dissolution of the Union County Regional High School District (UCRHSD).

ALJ concluded that the reduction in petitioner's level of compensation was violative of the Tenure Act. ALJ noted that a board has the right to establish hourly rates for supplemental teachers; however, the Court has held that contract terms may not contravene or supersede a specific term or condition of employment set by statute. (*Bassett*) Thus, the ALJ found that there was a reduction in the level of petitioner's compensation as a result of the collective bargaining agreement ratified in November 1997 which required her to work more days than she had been required to work the prior year at UCRHSD. ALJ ordered the restoration of her per diem rate to \$409.86 and retroactive reimbursement of the difference between the two rates (1996-97 and 1997-98 school years).

Commissioner adopted findings and determination in initial decision as his own. Citing *Casey* State Board decision, the Commissioner agreed with the ALJ that petitioner's rate of compensation was improperly reduced. Commissioner noted that the matter herein dealt solely with the applicability of the provisions of *N.J.S.A. 18A:13-64* to the preservation of petitioner's statutory rights as a tenured employee upon the dissolution of a regional school district, in this case UCRHSD.

February 22, 1999

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The record and initial decision rendered by the Office of Administrative Law have been reviewed. Respondent’s exceptions and petitioner’s reply thereto were timely filed pursuant to *N.J.A.C.* 1:1-18.4. Respondent’s exceptions and petitioner’s reply exceptions essentially reiterate and recast the legal arguments put forth before the Administrative Law Judge (ALJ) in the brief in support of the motion for summary judgment submitted by each party and their respective replies thereto.

Respondent’s exceptions assert, *inter alia*, that neither petitioner nor the ALJ cites any precedent to support the proposition that a tenured employee suffers an unlawful reduction in salary if s/he is not paid more on a *per diem* basis than the previous year. It avers that “reduction in salary” has been interpreted to mean that a tenured employee can earn no less in a given month than s/he would have made in a 10-month position and urges that the notion of per diem salary reduction as being violative of tenure laws was specifically rejected in *Breese v. N.J. State Dept. of Corrections*, 97 *N.J.A.R.* 2d (EDU) 33. Respondent further urges that in the instant matter, the Commissioner is being asked to revisit a lawfully negotiated collective bargaining agreement to adjust petitioner’s salary because it is not enough to compensate her for the four extra days or so she is expected to work. According to respondent, if tenured employees

throughout the State calculated their salary on a *per diem* basis, then, based upon changes in school calendars and renegotiated bargaining agreements, they might claim a reduction in salary because they work an extra day or two in a subsequent year. It is respondent's position that awarding petitioner her requested relief would grossly violate the collective bargaining which took place in the instant matter and overturn precedent in the State of New Jersey.

Petitioner's reply exceptions maintain that respondent is attempting to thwart the ALJ's decision by citing *Breese, supra*. She contends, however, that respondent failed to point out that the decrease in Breese's *per diem* salary came about as a result of his own voluntary selection of a new position of employment. Petitioner also points out that the ALJ in *Breese* specifically stated at page 34 of that decision that the tenure laws had not been enacted to protect Breese from his own actions and noted that the result may have been different if he had been coerced into exchanging positions without receiving adequate remuneration. Further, petitioner supports the ALJ's recognition that the Courts have consistently held that the terms of a collective bargaining agreement, irrespective of its lawful negotiation, may not violate the rights of employees which have been established by statute. In the instant matter this includes her statutory rights, as a tenured teaching staff member under *N.J.S.A. 18A:25-5*, not to be reduced in compensation without proceedings under the Tenure Act. Citing *Bassett, supra*, and *Casey v. Board of Education of the Township of Cinnaminson*, decided by State Board of Education 95 *N.J.A.R. 2d* (EDU) 585, petitioner urges that the ALJ properly concluded that respondent's actions in this matter constituted a reduction in salary and thus violated her tenure rights.

Upon careful and independent review of the record in this matter, the Commissioner adopts as his own the conclusion of the ALJ that, given the factual circumstances presented herein, a violation of the Tenure Act occurred. Contrary to respondent's arguments otherwise, the facts support a conclusion that petitioner experienced a reduction in her rate of compensation when, as a result of the dissolution of the Union County Regional High School District (UCRHSD), she was reassigned/transferred pursuant to the provisions of *N.J.S.A. 18A:13-64* to respondent's school district whose work year required more work days than the UCRHSD. Consequently, while petitioner's annual salary and monthly salary were not reduced, the Commissioner concurs with the ALJ that petitioner's salary was, nonetheless, reduced because the *per diem* rate was less than she had earned the previous school year as an employee of UCRHSD. As such, the Commissioner agrees with petitioner that the State Board

of Education's decision in *Casey, supra*, is applicable to the matter herein. The fact that the rate of pay in dispute in the instant matter involves a *per diem* rate, as opposed to a monthly rate as in *Casey*, does not serve to thwart petitioner's claim. Also, the Commissioner is in full agreement with petitioner's position that *Breese, supra*, is distinguishable from the instant matter for the reasons stated above.

Lastly, the Commissioner does not agree with respondent's dire predication that this determination will become precedent setting in future collective bargaining negotiations with boards of education throughout the State. The matter herein deals **solely** with the applicability of the provisions of a specific statute, *N.J.S.A. 18A:13-64*, to the preservation of petitioner's statutory rights as a tenured employee upon the dissolution of a regional school district.

Accordingly, the initial decision granting summary decision to petitioner is affirmed.¹

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

February 22, 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.