

DONNA CUSTODE, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
TOWN OF HACKETTSTOWN, WARREN :
COUNTY, :
RESPONDENT. :

SYNOPSIS

In consolidated matter, petitioning tenured secretary challenged the reduction in her salary for the 1998-1999 and 1999-2000 school years. After fixing petitioner's salary by Board resolution in accordance with the negotiated salary guide, the Board adopted a resolution abolishing petitioner's position and transferring her to a lower paying secretarial position. Petitioner challenged the reduction in salary, arguing that she is entitled to the higher salary fixed by the Board regardless of whether she was transferred to another secretarial position. The Board argues that tenure laws permit a reduction in salary when an employee is transferred as a result of a reduction in force.

The ALJ agreed with petitioner and concluded that petitioner acquired a vested right in the higher salary once the Board established the salary. The ALJ concluded that the Board's subsequent transfer of petitioner to another secretarial position did not divest her of the right to the higher salary because petitioner remained in the same tenurable position (school secretary) after the transfer.

The Commissioner agreed with the ALJ and affirmed the Initial Decision for the reasons set forth therein, emphasizing that the Board could not reduce petitioner's salary in either year at issue absent meeting the requirements of *N.J.S.A. 18A:17-2*, which had not occurred in this case.

October 30, 2000

OAL DKT. NOS. EDU 9827-98 AND 9576-99 (CONSOLIDATED)
AGENCY DKT. NOS. 392-8/98 AND 205-7/99 (CONSOLIDATED)

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The record of this consolidated matter and the Initial Decision of the Office of Administrative Law have been reviewed. The Board's exceptions and petitioner's reply thereto were considered by the Commissioner in reaching his decision.

Upon careful and independent review of the record in this matter, the Commissioner determines to affirm the Initial Decision of the Administrative Law Judge (ALJ). The Commissioner concurs with the ALJ that the Board's action on June 10, 1998 reducing petitioner's salary was without effect because petitioner, a tenured secretary, had acquired a vested right in the salary which the Board established for her on May 13, 1998 when it approved her movement to the 14th step on the "higher level" salary guide for the 1998-99 school year. (Initial Decision at 3) Thereafter, inasmuch as petitioner remained in the *same tenurable position* after the reduction in force, the Board was not permitted to reduce her compensation, absent meeting the requirements in *N.J.S.A. 18A:17-2*.

Accordingly, the Initial Decision of the ALJ is adopted for the reasons expressed therein. The Board is directed to compensate petitioner, within 60 days of the date of this

decision, with back pay and related emoluments for the 1998-1999 and 1999-2000 school years, as set forth in the Initial Decision.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: October 30, 2000

Date of Mailing: November 1, 2000

* This decision, as the Commissioner's final determination, 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. 6A:4-1.1 et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.