

#477-08 (OAL Decision: Not yet available online)

TIMOTHY POTOCKI, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
PRINCETON REGIONAL SCHOOL :
DISTRICT, MERCER COUNTY, :
RESPONDENT. :
_____ :

SYNOPSIS

Petitioner, a tenured custodial supervisor employed by the Princeton Regional Board of Education, alleged that the Board's action transferring him from Princeton High School to the Riverside School, which resulted in a loss of his contractual premium of \$1,850, reduced his salary in violation of his tenure rights. The Board contended that the disputed premium was negotiated specifically for the high school assignment in recognition of its greater complexity, and was analogous to an extracurricular coaching stipend to which there is no tenure entitlement.

The ALJ found that: 1) despite the transfer to a different school and regardless of any contractual provision to the contrary, petitioner is serving within the same position for tenure purposes; and 2) the disputed premium represents salary for integral duties rather than a stipend for additional tasks. The ALJ concluded that the reduction in petitioner's compensation as a result of the transfer violates *N.J.S.A. 18A:17-3* and ordered reinstatement of the \$1,850 premium.

The Commissioner adopted the ALJ's decision as the final decision in this matter. However, the Commissioner clarified that petitioner is not necessarily entitled to an additional \$1,850, as ordered by the ALJ, nor is he entitled to the high school premium indefinitely; rather, petitioner is entitled to immediate restoration of the difference between the total salary (including premium) he has been receiving as custodial supervisor at the Riverside School and the total salary (including premium) he was receiving as custodial supervisor at Princeton High School at the time of his transfer, and to be kept at that level of payment until such time as it is surpassed by the duly negotiated total salary for the Riverside assignment.

This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

December 8, 2008

OAL DKT. NO. EDU 6574-07
AGENCY DKT. NO. 197-7/07

TIMOTHY POTOCKI, :
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 PETITIONER, :
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 V. : COMMISSIONER OF EDUCATION
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions of the Board of Education (Board) and petitioner’s reply, both filed pursuant to *N.J.A.C.* 1:1-18.4.

In its exceptions, the Board reargues the correctness of its own position and contends that the conclusion of the Administrative Law Judge (ALJ) is not supported by the decision on which she relies, *Belen v. Woodbridge Township Board of Education*, 142 *N.J. Super.* 486 (App. Div. 1976) – a case in which the court made no determination on the particular question at issue herein.¹ According to the Board, the decision that should control in this matter is *John Manley v. Board of Education of the Township of Old Bridge, Middlesex County*, Commissioner’s Decision No. 450-05, decided December 19, 2005, wherein the Commissioner found no violation of tenure rights where the board ceased paying a teacher his

¹ As noted by the Board, the court deferred to the Commissioner on the question of tenure entitlement because it was then pending in a related administrative matter; however, the June 26, 1975 petition referenced by the court does not appear to have resulted in a Commissioner decision.

subject area coordinator stipend upon the teacher's transfer to a school that did not utilize subject area coordinators. (Board's Exceptions at 1-4)

In reply, petitioner urges adoption of the Initial Decision, conceding that while *Belen, supra*, does not offer specific support for the ALJ's conclusion, the ALJ clearly did not rely on *Belen* alone, but cited several other cases – most notably *Robert Barratt v. Board of Education of the Borough of Glassboro, Gloucester County*, Commissioner's Decision No. 17-01, decided January 10, 2001, affirmed by the State Board of Education, Decision No. 5-1, decided June 6, 2001 – that the Board has ignored in its exceptions. Petitioner further distinguishes *Manley, supra*, from the present matter, noting that in *Manley* the duties attached to the disputed stipend were found to be sufficiently distinct from the teacher's instructional duties so as to constitute a separate "position" that was not "engrafted" to the position in which Manley was tenured; whereas here, the duties for which petitioner formerly received extra compensation were an integral part of his tenured custodial position. Indeed, petitioner stresses, his current position is governed by the same job description as his former, and there is no substantive difference in his duties. (Petitioner's Reply at 1-4)

Upon review, the Commissioner finds that the ALJ fully and fairly considered the arguments of the parties in light of the operative facts and applicable law, and correctly concluded that – since petitioner remained in the same position for tenure purposes despite his transfer, with the premium at issue representing salary for integral duties rather than a stipend for additional tasks – petitioner's total compensation could not be reduced without violating his tenure rights.

With respect to the relief ordered, however, the Commissioner does clarify that vindication of petitioner's rights does not necessarily entitle him to an additional \$1,850, as

ordered by the ALJ, nor does it entitle him indefinitely to the high school premium. Rather, petitioner is entitled to immediate restoration of the difference between the total salary (including premium) he has been receiving as custodial supervisor at the Riverside School and the total salary (including premium) he was receiving as custodial supervisor at Princeton High School at the time of his transfer,² and to be kept at that level of payment until such time as it is surpassed by the duly negotiated total salary for the Riverside assignment.

Accordingly, the Initial Decision of the OAL, as clarified above, is adopted as the final decision in this matter, and the Board is directed to restore petitioner's salary and benefits as set forth herein.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: December 8, 2008

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² The record does not permit a determination of the exact amount of petitioner's entitlement.

³ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36*.