

#396-08 (OAL Decision: Not yet available on-line)

STEPHANIE TAIBI, :  
PETITIONER, :  
V. : COMMISSIONER OF EDUCATION  
BOARD OF EDUCATION OF THE : DECISION  
TOWNSHIP OF UNION, :  
HUNTERDON COUNTY, :  
RESPONDENT. :

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SYNOPSIS

Petitioner – a tenured basic skills instructor continuously employed from October 1994 until June 30, 2007 by the Board under certification as an elementary school teacher – contended that she had achieved tenure and that respondent violated her seniority rights by non-renewing petitioner while retaining non-tenured full-time elementary teachers after the district eliminated its basic skills program. Respondent argued that petitioner’s appeal is time-barred because the 90-day period began to run when she received notice in May 2006 that her position as a basic skills instructor was eliminated; further, respondent contends that because petitioner’s experience was limited to basic skills instruction, she is not entitled to claim tenure or seniority rights over any elementary school teacher. Both parties filed motions for summary decision.

The ALJ found that: there are no material facts in dispute, and the matter is ripe for summary decision; the petitioner’s appeal was timely filed, as she did not – in May 2006 – receive appropriate notice pursuant to *N.J.A.C. 6A:3-1.3(i)* that she would not be offered a new contract, but rather received such notice on April 24, 2007 when the Board resolved not to renew her contract; and petitioner had acquired tenure under her instructional certificate and endorsement as an elementary school teacher. Accordingly, the ALJ ordered that petitioner be reinstated with associated emoluments and back pay, less mitigation.

Upon a thorough and independent review of the record, the Commissioner concurred with the ALJ’s findings and conclusions, and adopted the Initial Decision as the final decision in this matter.

<p>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.</p>
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September 24, 2008

OAL DKT. NO. EDU 8090-07  
AGENCY DKT. NO. 191-7/07

STEPHANIE TAIBI, :  
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 PETITIONER, :  
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed.<sup>1</sup> The Commissioner concurs with the Administrative Law Judge (ALJ) that respondent's May 30, 2006 letter to petitioner – which stated that her position was being eliminated, but advised that she could apply for other positions in the district and enjoy continued benefits – did not constitute the type of notice of employment discontinuance that would commence the limitations period for filing appeals to the Commissioner under *N.J.A.C. 6A:3-1.3(i)*.

The Commissioner further agrees with the ALJ that – in accordance with *Ellicott v. Bd. of Educ.*, 251 *N.J. Super.* 342, 349 (App. Div. 1991) – petitioner, as a RIF'd tenured teacher seeking reinstatement within the endorsements under her instructional certificate, was entitled to preference over non-tenured teachers with the same certification. This was so

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<sup>1</sup> No exceptions were filed.

whether or not she had previously taught under the endorsement corresponding to the open position. *Ibid.*<sup>2</sup>

Accordingly, summary disposition is granted in favor of petitioner, and respondent's motion to dismiss is denied. Petitioner is reinstated, and shall receive any back pay, benefits and pension adjustments that are due her, less mitigation.

IT IS SO ORDERED.<sup>3</sup>

COMMISSIONER OF EDUCATION

Date of Decision: September 24, 2008

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<sup>2</sup> In point of fact, it appears that petitioner was employed as a full-time elementary education teacher during the 2006-2007 school year. Further, there is information in the record which indicates that there is no separate endorsement for the subject "basic skills," which petitioner taught in the district for twelve years. "Basic skills" is taught by certified teachers with elementary education endorsements. Consequently, petitioner's thirteen years of experience in petitioner's district was accrued under the elementary education endorsement – the same endorsement required for the positions apparently filled by non-tenured teachers after the basic skills program was ended.

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