

EAST RUTHERFORD EDUCATION :
ASSOCIATION, on behalf of KAREN :
DOLINSKY, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE : DECISION
BOROUGH OF EAST RITHERFORD, :
BERGEN COUNTY, :

RESPONDENT. :

SYNOPSIS

Petitioning education association contended that, pursuant to *N.J.S.A.* 18A:17-2, the respondent Board violated the tenure rights of Karen Dolinsky by reducing her salary when it eliminated her ten-month secretarial position and hired her as a twelve-month secretary. Respondent Board denied that Dolinsky's salary had been reduced, and claimed that the terms and conditions of the position of twelve-month secretary are clear under the collective negotiation agreement between the Board and the petitioner. The Board also claimed that this matter should be dismissed on grounds of *res judicata* and collateral estoppel, and should be barred by the entire controversy doctrine.

The ALJ found that: the petition should not be dismissed on the grounds of *res judicata* or collateral estoppel, nor should the petitioner's claim be barred by the entire controversy doctrine; Dolinsky's per diem rate in her ten-month position for the 2007-2008 school year was \$192.57, compared to her per diem rate in the twelve month position of \$184.64 for the 2008-2009 school year; and that the Board reduced Dolinsky's compensation in violation of the tenure statute for secretaries, despite the fact that her pay has been in accordance with the 2008-2009 school year salary of a twelve-month secretary under the collective negotiation agreement. Accordingly, the ALJ ordered that the Board pay Dolinsky for the 2008-2009 school year and thereafter at a salary consistent with a per diem rate of \$192.57 until the salaries of the other twelve-month secretaries catch up.

The Commissioner adopted the Initial Decision as the final decision in this matter.

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.

OAL DKT. NO.EDU 12709-08
AGENCY DKT. NO. 285-9/08

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed.¹ The Commissioner adopts the Initial Decision for the reasons set forth therein, with the following comment.

In 1995 the State Board of Education issued a decision in a case with a similar fact pattern to the instant matter, *i.e. Patricia Casey v. Board of Education of the Township of Cinnaminson, Burlington County, 95 N.J.A.R.2d (EDU) 585*. Noting that the petitioner therein was not transferred from one tenurable position to another, but rather was reassigned within the same tenurable position (there “clerk”, herein “secretary”) and contrasting the case with the facts in *Kigerl v. Board of Education of the Borough of South Plainfield, 1981 S.L.D. 889, 895, aff’d 1981 S.L.D. 896*, where the petitioner’s reduction in compensation resulted from her “own choice of a [lesser paying] position rather than available higher paid assignments,” the State Board explained:

¹ No exceptions were received from the parties.

Petitioner herein was not given a choice of positions, but rather was reassigned by the Board from a 10-month to a 12-month assignment within her tenured clerical position. As a consequence, while petitioner's annual salary increased as a result of her extended work year, the rate at which she was compensated decreased. Such a reduction, in the absence of tenure proceedings, is expressly prohibited by [N.J.S.A. 18A:17-2](#).

Casey, supra, at 586.

Accordingly, respondent's motion for dismissal or summary disposition is denied; petitioner's cross motion for summary decision is granted; and respondent is ordered to pay petitioner at the *per diem* rate of \$192.57 for the 2008-2009 school year. As neither party has excepted to the Administrative Law Judge's recommendation that petitioner's *per diem* pay rate remain at \$192.57 until the salaries of the other twelve-month employees 'catch up,' the Commissioner adopts that recommendation.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: March 30, 2009

Date of Mailing: March 31, 2009

² This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36*.