

#283-12 (OAL Decision: Not yet available online)

WENDY J. EBERWEIN-O'DONNELL,	:	
	:	
PETITIONER,	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE	:	DECISION
TOWNSHIP OF WINSLOW,	:	
CAMDEN COUNTY,	:	
	:	
RESPONDENT.	:	

SYNOPSIS

Petitioner appealed the decision of the respondent Board to terminate her employment as a tenured social worker through a reduction in force (RIF) at the end of the 2009-2010 school year. Petitioner contended that the Board continued to employ another social worker – Kimberly McDermott – who had less seniority, thereby violating her tenure rights under *N.J.S.A. 18A:1-1 et seq.* The Board asserted that petitioner surrendered her tenure and seniority rights by tendering her resignation from the school district in 2006. Petitioner rescinded her resignation shortly after she submitted it and before the effective date of the resignation, and the Board granted her request to rescind the resignation. Petitioner filed a motion for summary decision.

The ALJ found, *inter alia*, that: while a teaching staff member may not unilaterally rescind her resignation after the school board accepts the resignation, the teaching staff member and the school board nevertheless may mutually agree to rescind the resignation after the school board accepts the resignation; when the Board accepted petitioner’s offer to rescind her resignation on August 7, 2006 – the effective date of petitioner’s resignation – the parties thereby entered a mutual agreement to rescind the resignation; at the time of the mutually agreed-upon rescinding of the resignation, Kimberly McDermott was not yet employed by the Board as a social worker; when the parties agreed to rescind the resignation on August 7, 2006, the petitioner remained an employee of the school district with no break in service; accordingly, petitioner was continuously employed by the Board from September 1, 2005 to the date of the RIF in 2010 and had more seniority than McDermott, whose employment as a social worker with the Board did not begin until 2006. The ALJ concluded that petitioner should have been retained for the 2010-2011 school year instead of McDermott and granted her motion for summary decision.

Upon careful and independent review, the Commissioner concurred with the ALJ’s findings and conclusions and, accordingly, adopted the Initial Decision of the OAL granting summary decision to petitioner. The Commissioner ordered the Board to compensate petitioner for all salary, benefits and emoluments, less mitigation, that she was entitled to for the 2010-2011 school year. Further, as the social worker position was abolished by the Board in a second RIF effective September 2011, petitioner is entitled to be placed on the preferred eligibility list in accordance with her seniority rights as of that date.

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.

July 16, 2012

WENDY J. EBERWEIN-O'DONNELL,	:	
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_____	:	

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The Board's exceptions and petitioner's reply thereto – submitted in accordance with the directives of *N.J.A.C. 1:1-18.4* – were fully considered by the Commissioner in reaching his determination herein.

The Board's exceptions mirror its arguments advanced before the Administrative Law Judge (ALJ) below. As it is determined that the ALJ fully considered and addressed such arguments in her decision, these will not be revisited here.

Upon full deliberation, the Commissioner concurs with the ALJ that summary decision is appropriately granted to petitioner as he is in full agreement – for the reasons comprehensively detailed in the Initial Decision – that the *mutual* agreement of rescission of petitioner's 2006 resignation did not cause a break in her service with the Board and, absent such break in service, petitioner did not forfeit her tenure and seniority rights at any point during the 2005-06 school year. As such, the Board's termination of petitioner from her social worker position through a RIF at the end of the 2009-10 school year – rather than Kimberly McDermott,

who had less seniority in that position – was a violation of petitioner’s tenure and seniority rights.

Accordingly, the recommended decision of the OAL is adopted as the final decision in this matter. The Winslow Board of Education is hereby directed to compensate petitioner for all salary, benefits, and emoluments, less mitigation, that she was entitled to for the 2010-11 school year absent her improper dismissal at the end of the 2009-10 school year. As the social worker position was abolished by the Board in a second RIF effective September 2011, petitioner is entitled to be placed on the preferred eligibility list in accordance with her seniority rights as of that date.

IT IS SO ORDERED.\*

ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 16, 2012

Date of Mailing: July 17, 2012

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\* This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36* (*N.J.S.A. 18A:6-9.1*).