

#81-12 (OAL Decision: Not yet available online)

DARREN PALMER, :
PETITIONER, : COMMISSIONER OF EDUCATION
V. : DECISION
BOARD OF EDUCATION OF THE :
CITY OF PLEASANTVILLE, :
ATLANTIC COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner – a tenured assistant principal, who had been employed by the Board as Assistant Principal at the district middle school – filed a petition contending that respondent violated his seniority rights when it failed to rehire him to his former position following a reduction in force (RIF). Petitioner asserts that respondent instead offered the position to another former vice principal who lacked seniority in this position at the middle school. The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: it is undisputed that petitioner was a tenured administrator in respondent’s district; the person hired to replace petitioner after the RIF had a greater number of years of service in the district, but no seniority as a vice principal in the middle school; petitioner had over three and one-half years seniority as the middle school principal; *N.J.A.C. 6A:32-5.1(b)* mandates that seniority in the specific category of employment – not total length of service in the district – controls the recall process; petitioner had predominant seniority rights in the middle school vice principal position, and should have been recalled. Accordingly, the ALJ ordered petitioner reinstated to his former position effective October 8, 2010, with back pay and seniority

Upon comprehensive review, the Commissioner concurred with the ALJ’s findings and granted petitioner’s cross motion for summary decision. The petitioner was reinstated to the position of middle school principal, together with back pay and benefits.

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.
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March 5, 2012

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Petitioner achieved tenure as an Assistant Principal at the middle school in respondent's district, but was terminated when the position was abolished in the Spring of 2010. In October 2010 respondent reactivated the Assistant Principal position at the middle school but filled it with a different employee. Petitioner appealed that action.

Upon review of the record, the Initial Decision of the Office of Administrative Law (OAL), and respondent's exception thereto, the Commissioner concurs with the Administrative Law Judge (ALJ) that petitioner was entitled to the restored Assistant Principal position. While both petitioner and his fellow employee had served for over three years as assistant principals in respondent's district,¹ petitioner had served in the category of "Junior high school vice principal or assistant principal," *see*, *N.J.A.C.* 6A:32-5.1(l)(14), while the other employee had served primarily in the category of "High school vice principal or assistant principal," *see* *N.J.A.C.* 6A:32-5.1(l)(11). As seniority rights are organized according to categories, *N.J.S.A.* 18A:28-13, it was petitioner who had the seniority in the appropriate category for the position of Assistant Principal of respondent's middle school.

¹ The other employee had served as an assistant principal for two months longer than petitioner.

Accordingly, petitioner's cross motion for summary disposition is granted, respondent's cross motion for summary disposition is denied, and petitioner is herewith reinstated to the position of middle school assistant principal, together with back pay and benefits.

IT IS SO ORDERED.²

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 5, 2012

Date of Mailing: March 6, 2012

² 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)*