

#211-12 (OAL Decision: Not yet available online)

MICHAEL SCHWARTZ, :  
PETITIONER, : COMMISSIONER OF EDUCATION  
V. : DECISION  
BOARD OF EDUCATION OF THE CITY :  
OF ELIZABETH, UNION COUNTY, :  
RESPONDENT. :  
\_\_\_\_\_ :

SYNOPSIS

Petitioner – a tenured teacher of the handicapped, employed by the respondent Board since October 1999 – asserted that the Board terminated his employment in a reduction in force (RIF) effective June 30, 2011, while retaining less senior staff members and subsequently hiring new staff in contravention of his tenure and seniority rights under *N.J.S.A. 18A:28-5 et seq.* Petitioner sought reinstatement and back pay retroactive to the date of his termination, and filed a motion for summary decision. In its answer to the petition, the Board contended that it had dismissed petitioner for reasons of economy, in compliance with all applicable laws, and requested dismissal of the petition with prejudice. Subsequently, the Board submitted a brief in opposition to petitioner’s motion for summary decision which clearly indicated that the actual reason that petitioner was terminated was dissatisfaction with his performance.

The ALJ found, *inter alia*, that: there are no material facts in dispute, and the matter is ripe for summary decision; it is undisputed that petitioner was a tenured teacher in respondent’s district; the respondent Board initially asserted in its answer to the petition that Mr. Schwartz was dismissed in a RIF for reasons of economy, but made it clear in later filings that petitioner was actually dismissed because of allegations of misconduct; respondent did not initiate the RIF in good faith, but rather as a ruse to avoid the expense and inconvenience of filing tenure charges pursuant to *N.J.S.A. 18A:6-10 et seq.* Accordingly, the ALJ concluded that petitioner must be immediately reinstated to his position and compensated for all lost salary, benefits and emoluments, less mitigation, retroactive to June 30, 2011. Petitioner’s motion for summary decision was granted, and the Board was ordered to reinstate petitioner to the position of teacher.

Upon comprehensive review, the Commissioner concurred with the ALJ’s findings and adopted the Initial Decision of the OAL in its entirety.

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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May 18, 2012

MICHAEL SCHWARTZ, :  
PETITIONER, : COMMISSIONER OF EDUCATION  
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Petitioner Schwartz alleges that his employment was improperly terminated by respondent when it dismissed him, pursuant to an alleged reduction in force (RIF), while at the same time hiring new teachers for his position. Upon review of the record, the Commissioner agrees.

As noted by the Administrative Law Judge (ALJ) in the Initial Decision<sup>1</sup> of the Office of Administrative Law (OAL), the undisputed facts indicate that respondent was dissatisfied with petitioner's performance and did not wish to expend the resources required for the prosecution of tenure charges – the statutory remedy for disciplining tenured teaching staff members. Clearly, respondent's appointment of new teachers of the handicapped belied any claim that economic exigencies or significant reductions in the student populations had driven the termination of petitioner's employment.

Thus, the ALJ's conclusion that petitioner's dismissal was an effort by respondent to avoid the requirements of *N.J.S.A. 18A:28-5 et seq.* is well grounded in the facts and applicable law. Similarly, the ALJ's recommendation that petitioner be reinstated to the position of teacher, with appropriate salary and benefits less mitigation retroactive to June 30, 2011, is warranted.

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<sup>1</sup> No exceptions to the Initial Decision have been filed.

Accordingly, the Initial Decision is adopted in its entirety, petitioner's motion for summary disposition is granted, and respondent shall reinstate petitioner as a teaching staff member with all salary and benefits – retroactive to June 30, 2011.

IT IS SO ORDERED.<sup>2</sup>

ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 18, 2012

Date of Mailing: May 21, 2012

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<sup>2</sup> This decision may be appealed to the Superior Court, Appellate Division, pursuant to *P.L. 2008, c. 36* (*N.J.S.A. 18A:6-9.1*).