

#153-13 (OAL Decision: Not yet available online)

PEGGY PREZIOSO, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
POLYTECH CAREER ACADEMY,
HUNTERDON COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner appealed the decision of the respondent Board to eliminate her position as a certified school nurse and enter into a shared services agreement for the provision of nursing services with another school district. The petitioner alleged that this action was violative of her tenure and seniority rights, and that the Board's shared service agreement is illegal and violates the requirement that a school board must employ at least one certified school nurse. The respondent contended that the non-renewal was pursuant to a valid reduction in force (RIF) for purposes of economy. The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts in question as to petitioner's position being eliminated for reasons of economy; pursuant to *N.J.S.A. 40A:65-1 et seq.*, the Uniform Shared Services and Consolidation Act, the Board had legal authority to implement the shared services agreement for certified school nurse services and the corresponding RIF for reason of economy; petitioner's argument that summary decision should be denied because genuine issues of material fact exist regarding details of how nursing services are being provided on one of the school's campuses is without merit, as local grievance procedure is the appropriate course for remedy in this circumstance; and the matter is ripe for summary decision. The ALJ concluded that petitioner's tenure rights were not violated and the Board had the legal authority to enter into the shared services agreement. Accordingly, the ALJ granted the Board's motion for summary decision and denied petitioner's cross motion.

Upon considered review, the Commissioner concurred with the ALJ's findings and conclusions and, accordingly, adopted the Initial Decision of the OAL as the final decision in this matter. In so determining, the Commissioner noted that the Board's actions were fully consonant with applicable existing law and regulation, *i.e.*, *N.J.S.A. 18A:40-1*, *N.J.S.A. 18A:40-3.3*, *N.J.A.C. 6A:16-2.3(b)* and *N.J.S.A. 40A:65-1 et seq.*

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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April 26, 2013

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner requested and was granted an extension of time within which to file exceptions to the Initial Decision.¹ These were fully considered by the Commissioner in reaching his determination herein.

Petitioner's exceptions – in relevant part – essentially replicate her arguments advanced below. In that it is determined that these have been adequately considered and addressed in the Initial Decision, they do not require further elaboration here.

Upon a considered review, the Commissioner concurs with the Administrative Law Judge (ALJ) that summary decision is appropriately granted to the Board as he similarly concludes that the Board had the legal authority to implement a shared services agreement for certified school nurse services and correspondingly eliminate petitioner's nursing position through a reduction in force for reasons of economy. In so determining, the

¹ By letter faxed to the Agency on February 27, 2013, counsel for the petitioner reported that he had just – on that date – received a copy of the Administrative Law Judge's (ALJ) decision in this matter and, therefore, requested thirteen days from this date to file exceptions. To allow for receipt and consideration of these exceptions and replies, the Commissioner was compelled to seek an extension of time for completion of his decision.

Commissioner notes that this result is fully consonant with applicable existing law and regulation, *i.e.*, *N.J.S.A.* 18A:40-1, *N.J.S.A.* 18A:40-3.3, *N.J.A.C.* 6A:16-2.3(b) and *N.J.S.A.* 40A:65-1 *et seq.*

N.J.A.C. 6A:16-2.3(b) states:

The district board of education shall employ a certified school nurse to provide nursing services while school is in session pursuant to *N.J.S.A.* **18A:40-1 and 3.3**...(emphasis added)

Although *N.J.S.A.* 18A:40-1 – enacted in 1967 – directs in pertinent part, that “[e]very board of education...shall **employ** one or more school nurses...” (emphasis added), the second referenced provision – *N.J.S.A.* 18A:40-3.3, enacted in 1999 – in pertinent part specifies:

A school district shall only **utilize or employ** for the provision of nursing services in the public schools of the district persons holding an educational services certificate with an endorsement as a school nurse issued by the State Board of Examiners, except for those non-nursing personnel who are otherwise authorized by statute or regulation to perform specific health related services....A school district may supplement the services provided by the certified school nurse with non-certified nurses, provided that the non-certified nurse is assigned to the same school building or school complex as the certified school nurse. (emphasis added)

The use of the words **utilize or employ** in this latter enactment clearly indicates that the Legislature did not intend to preclude the appointment of otherwise qualified certified school nurses pursuant to the utilization of a shared services agreement.

Finally, the last relevant statutory provision is the Uniform Shared Services and Consolidation Act (the Act), *N.J.S.A.* 40A:65-1 *et seq.*, adopted in 2007, which, as the ALJ recognizes “was intended to ‘effectuate agreements between local units for any service or circumstance intended to reduce property taxes through the reduction of local expenses’ as previous efforts to permit shared services between local units had not been very effective in promoting the broad use of shared services as a technique to reduce local expenses funded by property taxpayers. *N.J.S.A.* 40A:65-2. The Act expressly applies to school districts.

N.J.S.A. 40A:65-3.” (Initial Decision at 8) The Act includes specific language which authorizes local units to enter into shared service agreements that cover local personnel appointed to positions requiring State certification. Specifically:

Any local unit may enter into an agreement with **any** other local unit or units to provide or receive **any** service that each local unit participating in the agreement is empowered to provide or receive within its own jurisdiction, including services incidental to the primary purposes of **any** of the participating local units.

N.J.S.A. 40A:65-4(a)(1) (emphasis added)

In the case of an agreement for the provision of services by an officer or employee of a local unit who is required to comply with a State license or certification requirement as a condition of employment, the agreement shall provide for the payment of a salary to the officer or employee and shall designate one of the local units as the primary employer of the officer or employee for the purpose of that person’s tenure rights...

N.J.S.A. 40A:65-6(a) (emphasis added)

Full consideration of all these provisions persuades the Commissioner that the Board was within its legal authority to implement the shared services agreement for certified school nurses with Central High School and effectuate the corresponding reduction in force of petitioner’s position for reasons of economy as by so doing, they fully satisfied their obligation under *N.J.S.A. 18A:40-3.3* to **utilize or employ** a certified school nurse.

Accordingly, the recommended decision – as expanded upon above – is adopted as the final decision in this matter as it is determined that petitioner’s tenure and seniority rights were not violated, and that the Board had the legal authority to enter into the shared services agreement. The instant petition of appeal is hereby dismissed.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: April 26, 2013

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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*).