

#227-13 (OAL Decision: Not yet available online)

JOANN PAVIA-MUSI,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE	:	DECISION
BOROUGH OF CARTERET,	:	
MIDDLESEX COUNTY,	:	
	:	
RESPONDENT.	:	

SYNOPSIS

Petitioner, a tenured secretarial employee whose position was abolished in a reduction in force (RIF), alleged that the respondent Board violated her tenure and seniority rights when it retained less experienced tenured secretaries. Petitioner had been notified by letter dated May 13, 2011 that her position would be eliminated effective June 30, 2011; the within petition of appeal was filed on September 2, 2011. The Board initially approved a plan to RIF a number of employees, including 20 secretaries – including the petitioner – on May 12, 2011. At a subsequent Board meeting on June 21, 2011, the respondent rescinded its action regarding 19 of the secretarial positions. Petitioner was not among the 19 retained secretaries. The respondent Board contended that the petitioner’s appeal was time-barred under *N.J.A.C.* 6:3-1.3. The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: petitioner’s appeal is not time-barred because she had no way of knowing until June 21, 2011 that a less senior secretary was to be retained by the Board; therefore, the 90 day time frame for the filing of appeals must be calculated from that date; however, secretaries and clerical employees – unlike teachers and custodial staff – do not have seniority rights in New Jersey; the Board does not employ any non-tenured secretaries; there are no genuine issues of material fact in this case, and the matter is ripe for summary decision. Accordingly, the ALJ granted the Board’s motion for summary decision and dismissed the petition.

The Commissioner concurred with the ALJ that the petition was not time-barred, but also concurred that summary decision is appropriately granted to the Board. Accordingly, the Initial Decision was adopted as the final decision in this matter. In so deciding, the Commissioner stated that – in the context of a RIF – well-settled case law makes clear that secretaries are not terminated or reinstated on the basis of seniority.

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.

June 18, 2013

JOANN PAVIA-MUSI, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties did not file exceptions to the Initial Decision.

Petitioner in this matter – a tenured secretary with the Board – charges that the Board’s termination of her employment pursuant to a reduction in force (RIF), while retaining less experienced secretaries, was a violation of her tenure and seniority rights.

The Board in reply asserts affirmative defenses, *inter alia*, of: 1) untimeliness of the petition, maintaining petitioner was served with notice of her termination on May 13, 2011 and, as such, the 90-day limitation to file a petition pursuant to *N.J.A.C.* 6A:3-1.3(i) expired on August 9, 2011, while the instant petition of appeal was not filed until September 2, 2011; and 2) the Board does not employ any non-tenured secretaries.

Upon his full review and consideration, the Commissioner initially concurs with the Administrative Law Judge (ALJ) that the instant petition of appeal is not time-barred. Notwithstanding that petitioner received notification of her RIF on May 13, 2011, she could not

have known – until the Board’s June 21, 2011 action rescinding its May 12, 2011 action as to 19 of the 20 secretaries it had rified – that the Board had chosen to retain a less senior secretary as one of these 19. Consequently, it is at this point in time that the 90-day timeline of *N.J.A.C.* 6A:3-1.3(i) began running.

The Commissioner similarly agrees with the ALJ, however, that summary decision is appropriately granted to the Board. In the context of a RIF, well-settled case law makes it abundantly clear that secretaries – unlike tenured teachers and custodians – are not terminated or reinstated on the basis of seniority. The record confirms that all of the individuals employed as secretaries by the Board obtained tenure prior to petitioner’s termination; as such, whether these individuals may have had less experience, *i.e.* less “seniority,” is of no import here. Consequently, petitioner can claim no violation of her rights in this regard.

Accordingly, the recommended decision of the OAL is adopted as the final decision in this matter and the instant petition of appeal is hereby dismissed.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: June 18, 2013

Date of Mailing: June 18, 2013

* 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).