

ERNESTINE NELSON, :

PETITIONER, : COMMISSIONER OF EDUCATION

V. : DECISION

BOARD OF EDUCATION OF THE :
SOMERSET COUNTY VOCATIONAL :
AND TECHNICAL SCHOOL DISTRICT, :
SOMERSET COUNTY, :

RESPONDENT. :

SYNOPSIS

Petitioner – formerly employed under tenure as an accounts payable clerk in respondent’s school district – alleged that her tenure rights were violated when her position was eliminated in a reduction in force (RIF) in April 2012. Petitioner contended that the respondent retained non-tenured secretaries in positions for which she was qualified. The respondent Board asserted that petitioner did not fulfill the job qualifications for any of the positions for which she claimed entitlement.

The ALJ found, *inter alia*, that: pursuant to *N.J.S.A. 18A:17-2*, a person may acquire tenure in a secretarial or clerical position with a board of education; tenure is not generally interchangeable between the positions of secretary and clerk, though there is precedent in case law for disregarding job titles and determining instead whether an employee has tenure by examining the actual duties an employee has performed over the years and deciding whether those meet the requirements of the desired position, notwithstanding official title designations; in the instant case, a comparison of the duties performed by petitioner in her clerk position with the duties performed by the administrative secretaries reveals that petitioner is not qualified for the positions to which she claims entitlement. Accordingly, the ALJ concluded that there was no violation of petitioner’s tenure or seniority rights, and the petition was dismissed.

Upon careful and independent review, the Commissioner concurred with the ALJ that petitioner’s claim is without merit, and noted that there are no seniority regulations for persons holding tenure pursuant to *N.J.S.A. 18A:17-5*. Accordingly, the petition was dismissed.

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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Before the Commissioner is petitioner Ernestine Nelson’s claim that, subsequent to the elimination of her Accounts Payable Clerk position, which elimination was the result of a reduction in force (RIF), she was entitled – as a tenured clerk in respondent’s district – to take over one of two secretarial positions held by non-tenured employees.¹ Upon review of the record and Initial Decision of the Office of Administrative Law (OAL),² the Commissioner concurs with the Administrative Law Judge (ALJ) that petitioner’s claim is without merit.

Tenure in the position of secretary is not generally interchangeable with tenure as a clerk. *Rita Hibo and Susan Arillo v. Board of Education of the West Essex Regional School District, Essex County*, Commissioner’s Decision No. 659-97, decided December 29, 1997; *Diane Giardina v. Board of Education of the Township of Pequannock, Morris County*, Commissioner’s Decision No. 124-05, decided April 4, 2005. However, there is precedent in the case law for disregarding job titles and, rather, determining whether an employee has tenure in a sought-after position by examining the actual duties and tasks the employee has been performing over the years and deciding whether same

¹ Petitioner has not challenged the legitimacy of the RIF.

² Neither party has filed exceptions to the Initial Decision.

meet the requirements of the desired position – notwithstanding official title designations. *Quinlan v. Board of Education of the Township of North Bergen*, 73 N.J. Super. 40, 50 (App. Div. 1962); *Viemeister v. Board of Education of the Borough of Prospect Park, Passaic County*, 5 N.J. Super. 215, 218 (App. Div. 1949); *Joy Ferronto v. Board of Education of the Township of Weymouth, Atlantic County*, Commissioner’s Decision No. 287-05, decided August 11, 2005, *aff’d* State Board of Education, February 1, 2006.

In this case, however, the record suggests that petitioner’s duties in her Accounts Payable Clerk position were not commensurate with the responsibilities executed by the incumbents in the two administrative secretary positions to which petitioner claims entitlement. The differences in the respective natures of the clerk assignment and administrative secretary assignments are described in written job descriptions and were discussed in the testimony of respondent’s superintendent and petitioner’s former supervisor.

At the outset, the Commissioner finds the goals set forth in the job descriptions for both administrative secretarial positions to be instructive: “performs a variety of complex secretarial duties requiring specialized knowledge of department functions and procedures.” *See*, Petitioner’s Exhibits P-2 and P-3. Administrative Secretary Karen Gleeson’s job description calls for multiple duties relating to a range of specialized personnel matters, such as verification of employee leave entitlements, recording of employee absences, maintenance of records of employee physicals and certifications, tracking of the tenure and seniority status of employees, maintaining faculty performance evaluations, updating job descriptions and salary guides, preparing employment renewal notifications and contracts and, most importantly, processing employee health benefits. (Petitioner’s Exhibit P-3)

The foregoing responsibilities require extensive organizational and technical skills, including proficiency in such software programs as AESOP, Systems 3000 Personnel, and FileMaker Pro, and the ability to generate reports from the data which is entered into those systems. (*Ibid.*) The

job also requires strong communication skills and, most importantly in the eyes of respondent, the demonstrated ability to support the superintendent in administering the employee health and dental benefits program – including notification about and processing of enrollment, dissemination of information about available options, updating and maintenance of records, and communication with vendors concerning eligible individuals and changes in employee status or selections. (*Ibid.*; testimony of respondent’s Superintendent Christina Harttraft, 3T122³)

Harttraft also testified that Administrative Secretary Nzinga Basir’s job calls for a wide range of complex and specialized duties, most significant of which is the writing and administration of grants, including but not limited to grants to support a program called TOPS – which provides alternate education for at-risk students. (3T144) Basir’s experience with the grant work and her ability to track grant finances on Excel spread sheets is particularly important to Harttraft. (*Ibid.*) The official job description for Basir’s position calls for such duties as the compilation of complex statistical and financial reports; preparation of documents requiring specialized knowledge of legal requirements, regulations and technical terminology; administration of placement tests; and processing of confidential material, Petitioner’s Exhibit P-2, but the grant support which Basir provides is paramount. At the time of the RIF, Harttraft was familiar with the requirements of petitioner’s payroll clerk position and petitioner’s performance in that job. She testified that the two secretarial positions for which petitioner deems herself eligible require much higher levels of independence, responsibility, creativity and performance than petitioner’s former clerical job. (3T138-50)

In contrast to the above-referenced descriptions of the administrative secretary positions at issue in this case is the evidence about petitioner’s former responsibilities as accounts payable clerk. Valerie Hart – the accountant who supervised petitioner when she held the accounts

³ 1T signifies the transcript of the March 25, 2013 hearing.
2T signifies the transcript of the April 17, 2013 hearing.
3T signifies the transcript of the June 20, 2013 hearing.

payable clerk position – disclosed that petitioner’s duties were limited to the payment of bills generated by respondent’s district. Moreover, Hart testified that the more complex bills, such as those from insurance vendors and Blue Cross/Blue Shield, were handled by Hart herself because respondent’s business administrator “didn’t think that [petitioner] was able to handle that type of financial transaction.” (2T126)⁴ Further, when petitioner was out on medical leave, Hart found that she herself was able to complete petitioner’s weekly duties in 10 to 12 hours. (2T140) Hart’s testimony was corroborated by Superintendent Hartcraft, who characterized petitioner’s position as “a somewhat rote job where . . . information is given to you, and you enter it into a database or you keep a database. You make calls to vendors on occasion.” (3T154)

Considering the foregoing, the Commissioner concludes that petitioner’s duties in her former clerk position are not comparable to, nor interchangeable with, the responsibilities of the secretarial positions to which she seeks to be assigned; accordingly, there is no basis for petitioner to “bump” the incumbents out of their jobs. Petitioner nonetheless urges that she is entitled to one of the two administrative secretarial positions because she meets some of the elements of the job descriptions. But in *Harrington v. Board of Education of the Sussex County Vocational School District*, Commissioner Decision No. 250-11, decided July 7, 2011, the Commissioner rejected such a contention.

In that case, two ‘general’ secretaries sought to “bump” into a payroll benefits assistant position and an accounts-payable assistant position, respectively. The Commissioner dismissed the petition because he found that: the requirements of the positions which the petitioners sought in the Sussex County Vocational School District far exceeded the requirements of the positions from which the petitioners were RIF’ed; the petitioners had had no experience performing the majority of the duties which were central to the sought-after positions; and the sought-after

⁴ Nor was the business administrator confident that petitioner could handle the responsibility of keeping the capital funding account, which Hart had maintained when she had held the position of accounts payable clerk. (*Ibid.*)

positions were hierarchically above the petitioners' prior positions. *Id.* at 2. The petitioner herein also argues that she should be given one of the administrative secretary jobs because she can learn the duties with which she is unfamiliar. However that proposition was also rejected in *Harrington*, wherein the Commissioner determined that respondent had no obligation to place petitioners in positions for which they lacked experience and requisite skills, and then provide them with on-the-job training. *Id.* at 3.

In summary, petitioner is not entitled to employment in the secretarial positions held by Gleeson and Basir, respondent did not violate any provisions of the tenure laws, and there are no seniority regulations for persons holding tenure pursuant to *N.J.S.A.* 18A:17-5. The petition is accordingly dismissed.

IT IS SO ORDERED.⁵

ACTING COMMISSIONER OF EDUCATION

Date of Decision: November 24, 2014
Date of Mailing: November 25, 2014

⁵ 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).