

**New Jersey Commissioner of Education**

**Final Decision**

Catherine Parsells,

Petitioner,

v.

Board of Education of the Borough of Somerville,  
Somerset County,

Respondent.

**Synopsis**

Petitioner filed an appeal alleging that the respondent Board violated her tenure and seniority rights by depriving her of full-time employment after she voluntarily transferred to a new part-time position with benefits for the 2016-17 school year. Petitioner subsequently took an approved maternity and childcare leave and sought to continue in her part-time position with benefits for the 2017-18 school year. When she was told that she would need to return to a full-time position in order to keep her health care benefits, petitioner opted to extend her maternity leave through the 2017-18 school year. When petitioner sought to return for the 2018-19 school year, she was told that she was entitled to a part-time position with no benefits, but not to a full-time position with benefits, and if such a position opened up, she would need to apply for it. The matter was transmitted to the OAL as a contested case.

The ALJ found, *inter alia*, that: pursuant to *N.J.S.A.* 18A:28-9, a tenured teacher may be dismissed through a reduction in force (RIF) for economic reasons; when a teacher has been subject to a RIF, she has the right to return to her prior position when a vacancy occurs; a reduction of a full-time teacher's hours to part-time constitutes a RIF; however, fundamental to a finding that a RIF occurred is a determination that the action at issue was initiated by the school board, not by the impacted teacher; it is undisputed that in this case, petitioner voluntarily moved to a part-time position because it suited her family's needs; and petitioner's contention that she should be entitled to return to a full-time position because the Board failed to warn her of the consequences of her decision to move to a part-time position is without merit, as she has cited no statutory provision that could require the notice she claims ought to have been provided. The ALJ concluded that the petitioner is not eligible to return to her full-time position because she was not the subject of a RIF and had voluntarily accepted her part-time position; accordingly, the petition was dismissed.

Upon comprehensive review, the Commissioner found, *inter alia*, that: petitioner did not knowingly and voluntarily waive her right to a full-time teaching position, and her choice to continue her maternity leave for the 2017-18 school year did not constitute a waiver of her tenure rights. Accordingly, the Commissioner reversed the Initial Decision of the OAL, and ordered the Board to reinstate petitioner to her position as a full-time teacher retroactive to the 2018-19 school year, with full back pay, benefits, and emoluments of employment, less mitigation.

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.

February 19, 2020

**New Jersey Commissioner of Education**

**Final Decision**

Catherine Parsells,

Petitioner,

v.

Board of Education of the Borough of  
Somerville, Somerset County,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by petitioner pursuant to *N.J.A.C.* 1:1-18.4, and the Board's reply thereto have been reviewed.

Petitioner was employed by the Board as a full-time preschool teacher for six years before voluntarily taking a part-time position with health benefits for the 2016-17 school year. In February 2017, just before beginning a maternity leave and child care leave of absence that was planned to extend through June 2017, petitioner expressed her interest in continuing as a part-time teacher for the 2017-18 school year, provided that the position continued to include health benefits. In July 2017, petitioner was informed by the outgoing superintendent that the part-time position no longer offered health benefits, so petitioner had to choose between a part-time position with no benefits or a full-time position with benefits. Petitioner chose to extend her maternity leave for another year. In April 2018, the new superintendent spoke with petitioner regarding her return to school for the 2018-19 school year and informed her that she was entitled to a part-time position with no benefits and that if a full-time position were to become available, she would need to apply for it.

Petitioner completed an application and participated in interviews, but the Board did not select her for either of the two full-time positions that were open and instead hired non-tenured individuals who had not previously worked in the district.<sup>1</sup> Petitioner appealed, arguing that the Board violated her tenure rights by hiring untenured teachers for the full-time positions and that she had not voluntarily relinquished her tenure rights by accepting a temporary placement in a part-time position. The ALJ found that the job change was voluntarily undertaken by petitioner and not mandated by the Board, so petitioner was not the subject of a reduction in force (RIF), and she was therefore not eligible to return to her full-time position.

In her exceptions, petitioner argues that the ALJ improperly framed the issue as whether she voluntarily reduced her hours rather than whether she voluntarily waived tenure rights to her full-time position. Petitioner cites to cases holding that the waiver of tenure rights must be voluntary and intentional to be effective. According to petitioner, the facts are clear that she never knowingly or voluntarily waived her tenure rights to her full-time position, but instead moved to part-time status on what she believed and intended to be a temporary basis. Petitioner argues that although she was not RIF'd when she initially moved to part-time status, she was effectively RIF'd when the Board denied her the opportunity to return to full-time status after her leave of absence. Petitioner contends that the ALJ incorrectly held that the New Jersey Supreme Court's decision in *Bridgewater-Raritan Educ. Ass'n v. Bd. of Educ. of Bridgewater-Raritan School Dist., Somerset Cty.*, 221 N.J. 349 (2015), requires the petitioner to identify a statutory provision obligating the Board to provide her with notice of the tenure consequences of her decision to move to part-time status. Petitioner points out that the Bridgewater-Raritan Board of Education argued in that case that notice could not be required because the statute did not expressly require it, but the Court rejected that argument. Petitioner cites to the Court's statement that "keeping teachers in the dark" is inconsistent with the broader purpose of the tenure statute and argues that this principle should apply to prevent

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<sup>1</sup> Petitioner has also applied for approximately six open full-time positions in the district since then, but she was not selected for any of them.

the school board and administrators – who have training and experience in tenure and seniority law that she lacks – from depriving her of tenure rights to her full-time position.

In reply, the Board argues that petitioner was not subject to a RIF and the Board did not take any action that would have triggered her tenure rights, as her move to a part-time position was voluntary. The Board further contends that the ALJ correctly interpreted the decision in *Bridgewater-Raritan, supra*, to require petitioner to identify a statutory provision obligating the Board to give teachers notice regarding their tenure status. According to the Board, because petitioner did not identify any such statutory provision, it had no notice obligation to petitioner.

Upon review, the Commissioner reverses the Initial Decision and finds that petitioner did not knowingly and voluntarily waive her right to a full-time position and the compensation associated with it; she is therefore entitled to return to a full-time position. The Tenure Act, *N.J.S.A.* 18A:28-1 *et seq.*, “should be liberally construed to achieve its beneficent ends.” *Spiewak v. Board of Education of Rutherford*, 90 *N.J.* 63, 74 (1982). That liberal construction has resulted in a long line of cases holding that tenure rights can only be waived knowingly and voluntarily through a clear, unequivocal, and decisive act. *See, e.g., O’Toole v. Forestal*, 211 *N.J. Super.* 394, 402 (1986); *Rieder v. Bd. of Educ. of Caldwell-West Caldwell, Essex County*, Commissioner Decision No. 70-99, decided March 10, 1999, *aff’d* State Bd. of Educ, July 7, 1999. The Initial Decision is based on the fact that petitioner’s move to a part-time position was voluntary and thus not a RIF. But by framing the issue around whether a RIF occurred, the Initial Decision fails to answer the critical question of whether petitioner knowingly and voluntarily waived her tenure rights to her full-time position.

The New Jersey Supreme Court recently cautioned against “the ability of labels to cloud an analysis.” *Melnyk v. Bd. of Educ. of the Delsea Reg’l High School Dist., Gloucester Cty.*, slip op. at 1 (2020). In that matter, labeling a position as “extracurricular” and finding that the position was not tenurable based on that label resulted in “short-circuiting” the analysis and improperly ignoring the statutory criteria for obtaining tenure. *Id.* at 4. Here, the Initial Decision

ended the analysis by labeling petitioner's decision to move from a full-time position to a part-time position as "voluntary," thereby disregarding the circumstances surrounding her decision – which clearly demonstrate that she did not knowingly and voluntarily waive her right to a full-time position. Under *N.J.S.A.* 18A:6-10, compensation for a tenured position cannot be reduced "without compliance with the procedural protections of the Tenure Act." *Id.* at 27. Those procedural protections must include a determination regarding whether any alleged waiver of petitioner's right to compensation associated with a full-time position was voluntary.

In finding that petitioner did not waive her tenure rights, the Commissioner distinguishes the facts of this case from those of *DeFrehn v. Bd. of Educ. of Wildwood Crest Sch. Dist.*, 94 *N.J.A.R.2d* (EDU) 194 (December 30, 1993), in which a teacher who had voluntarily transferred from a teaching position to a learning disabilities teacher-consultant position was not entitled to return to her original position when the transfer was voluntary and "lacking in any indication of temporary intent."<sup>2</sup> Here, petitioner made her temporary intent clear, writing in her first letter to the administration that she was interested in a part time position "until my family decides that full-time work would be in our best interest again" and referring to her son's "precious first few years." It was also clear from this letter that the availability of health benefits was critical in petitioner's decision to move to the part-time position, and she reiterated this information in her second letter later that year in which she indicated that she would be interested in continuing in the part-time position if it continued to provide health benefits. Moreover, the ALJ found as fact that petitioner assumed that the part-time position would include health benefits beyond the first year and found credible her testimony that she would not have pursued the part-time position if it did not offer health benefits. Even the choice presented to petitioner at the end of her original period of maternity

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<sup>2</sup> There is also no indication in *DeFrehn* that the transfer involved a reduction in compensation, as the move from full-time to part-time did for petitioner here, so the analysis did not implicate the protection against reduction in compensation provided for by *N.J.S.A.* 18A:6-10.

leave was one between a part-time position without benefits or a full-time position with benefits, reinforcing her belief that she could return to a full-time position.

The Commissioner disagrees with the ALJ's interpretation of the Court's holding in *Bridgewater-Raritan, supra*. The teachers in *Bridgewater-Raritan* argued that time served as replacement teachers should count toward their acquisition of tenure because they had been told by high-level district administrators that it would. The Board contended that other school-related statutes expressly require notice to teachers, but the replacement teacher statute did not, so the Legislature did not intend to require notice to replacement teachers. The Supreme Court held that *N.J.S.A.* 18A:16-1.1 requires a board of education to "designate" the replacement employee, and that the plain meaning of "designate" includes an obligation to give the replacement employee notice that time serving in the position will not count towards the acquisition of tenure. Here, the ALJ interpreted the *Bridgewater-Raritan* decision to mean that boards of education must only provide notice if a statute requires such notice. But this interpretation ignores the fact that the Court rejected essentially the same argument from the Bridgewater-Raritan Board of Education, stating, "[w]e are unpersuaded that the specific type of notice required in [other] statutes compels the conclusion that the Legislature intended to forgo any notice obligation under" the statute at issue. *Bridgewater-Raritan, supra*, at 362.

Here, the Commissioner is similarly unpersuaded that the Board has no notice obligation in the circumstances at issue. Petitioner made clear that her interest in a part-time position was temporary and contingent on the continued inclusion of health benefits. In the face of that information, the Board approved her transfer to a part-time position that included benefits, only to take away those benefits one year later; it then offered her a full-time position with benefits, only to take away that option one year later. The Court in *Bridgewater-Raritan* noted that "keeping teachers in the dark as to their employment status effectively negates what the Legislature has endeavored to address by the tenure statute, namely, 'prevent[ing] school boards from abusing their superior

bargaining power over teachers in contract negotiations.” *Id.* at 361. Petitioner knowingly moved to a part-time position, but it is evident that she did not know that the Board would refuse to allow her to return to her full-time position. The Board, on the other hand, had all of the information and nonetheless kept petitioner in the dark. The fact that the Legislature has not enacted a statute to define a board of education’s notice obligations regarding changes from full-time to part-time employment is not dispositive in light of the broad protective purpose of the Tenure Act.

Finally, the Board argued below that petitioner relinquished her tenure rights when she declined the offer to return to a full-time position for the 2017-18 school year.<sup>3</sup> The ALJ did not reach this issue because the case was resolved by the conclusion that petitioner was not the subject of a RIF and thus was not entitled to return to the full-time position. However, as the Commissioner has reversed that portion of the decision, it is necessary to address the question of whether a waiver occurred at the time the superintendent offered petitioner a full-time position for the 2017-18 school year. The Commissioner finds that petitioner’s choice to continue her maternity leave for the 2017-18 school year does not constitute a waiver of her tenure rights.<sup>4</sup> While an employee who has been placed on a recall list can waive her tenure rights if she is offered a position and declines it, those circumstances are simply not equivalent to an employee choosing to continue a maternity leave, which she has a right to do under her contract. A leave of absence is, by definition, a temporary situation, and petitioner expressly stated her intention to return to employment with the district

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<sup>3</sup> It is not clear from the testimony whether a full-time position was available for the 2017-18 school year. The outgoing superintendent informed petitioner in a voicemail that she had to “be full-time [with benefits] or part-time without the benefits.” The incoming superintendent informed petitioner that the district might add a full-time position but that he would not know for two weeks. Because the Board has argued that petitioner declined an offer, the Commissioner presumes that a full-time position was available and was offered to petitioner. However, if no offer was actually made to petitioner, then she could neither be deemed to have rejected an offer of employment nor found to have knowingly waived her tenure rights. *Tribbett v. Bd. of Educ. of the Twp. of Willingboro, Burlington Cty.*, Commissioner Decision No. 301-12, decided August 1, 2012.

<sup>4</sup> However, having chosen to continue her maternity leave for the 2017-18 school year, petitioner is limited for that school year to the pay, benefits, and emoluments to which she is entitled under her contract or applicable law during a period of leave. There is no indication in the record that the Board has outstanding obligations to the petitioner during the time of her leave.

following her leave. She had no reason to believe that she would not have the same options upon her return for the 2018-19 school year as those offered to her for the 2017-18 school year: a full-time position with benefits or a part-time position without benefits.

Accordingly, the Initial Decision of the OAL is reversed. The Board is ordered to reinstate petitioner to her position as a full-time teacher retroactive to the 2018-19 school year, with full back pay, benefits, and emoluments of employment, less mitigation.

IT IS SO ORDERED.<sup>5</sup>

COMMISSIONER OF EDUCATION

Date of Decision: February 19, 2020  
Date of Mailing: February 20, 2020

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<sup>5</sup> 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*).





**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

OAL DKT. NO. EDU 09744-18

AGENCY DKT. NO. 119-5/18

**CATHERINE PARSELLS,**

Petitioner,

v.

**BOARD OF EDUCATION OF THE**

**BOROUGH OF SOMERVILLE,**

**SOMERSET COUNTY,**

Respondent.

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**Keith Waldman**, Esq., for petitioner (Selikoff and Cohen, attorneys)

**Marc H. Zitomer**, Esq., for respondent (Schenck, Price, Smith and King, LLP,  
attorneys)

Record Closed: October 11, 2019

Decided: November 25, 2019

BEFORE **JUDITH LIEBERMAN**, ALJ:

**STATEMENT OF THE CASE**

Petitioner, Catherine Parsells, filed a petition in which she alleged that the respondent, Somerville Borough Board of Education, violated her tenure and seniority rights by depriving her of full-time employment.

## **PROCEDURAL HISTORY**

Petitioner was notified of the respondent's determination concerning her employment status on April 6, 2018. She filed an appeal on May 15, 2018, and the Office of Controversies and Disputes transmitted the matter to the Office of Administrative Law (OAL), where it was filed on July 9, 2018, as a contested case. N.J.S.A. 52:14B-1 to-15; N.J.S.A. 52:14F-1 to-13. On April 8, 2019, the respondent filed a motion for summary decision. Petitioner filed an opposition brief on May 6, 2019, and the respondent filed a reply brief on May 23, 2019. An Order Denying Summary Decision was issued June 28, 2019.

A hearing was held on August 5, 2019, and August 7, 2019, and the record was held open for parties to receive transcripts and submit post-hearing briefs. All briefs were received by October 11, 2019, and the record closed that day.

## **FACTUAL DISCUSSION AND FINDINGS**

The parties jointly stipulated to the following. Accordingly, I **FIND** the following **FACTS**:

1. The Somerville Public School District ("District") is a pre-K to 12 district located in Somerset County, New Jersey.
2. Dr. Timothy Teehan has served as Superintendent of Schools for the District since July 1, 2017. Prior to that time, Teehan served as the District's Academic Achievement Officer for approximately five years.
3. Dr. Timothy Purnell was the prior Superintendent of Schools. He commenced employment in February 2011, and separated from employment on or about June 30, 2017.
4. Petitioner Catherine Parsells has been employed by the Somerville Board of Education ("Board") as a full-time preschool teacher serving under her pre-K

endorsement from September 2010 to June 2016 and as a part-time preschool teacher at Van Derveer Elementary School from June 2016 to the present.

5. On or about May 2, 2016, petitioner, who was a full-time preschool teacher at the time, wrote to then-Superintendent Purnell to express her interest in a part-time preschool position with benefits that the District had posted. In her letter, petitioner explained that she, “would be interested in this position for as long as it is available, or until my family decides that full-time work would be in our best interest again” and stated that she was, “very appreciative of being given the opportunity to be considered for a position that would allow me to continue working as a teacher pursuing my career goals while also being able to spend time with my son during his precious few years.” JT<sup>6</sup>-A.
6. Petitioner was not expressly told by any Board member or administrator that she would be entitled to return to her full-time position once she voluntarily took the part-time preschool position, nor was petitioner told by any Board member or administrator that she would be waiving her right to a full-time position by taking the part-time position.
7. At the Board meeting on May 17, 2016, the Board approved petitioner’s transfer from the position of full-time preschool teacher to the position of part-time (.5) preschool teacher for the 2016-17 school year. JT-B.
8. At the Board meeting on July 26, 2016, petitioner was also appointed as a Preschool Team Leader for the 2016-17 school year. JT-C.
9. On or about November 18, 2016, petitioner requested and was subsequently granted maternity leave followed by a child care leave of absence, effective February 2, 2017 to June 30, 2017. JT-D.
10. On February 1, 2017, petitioner expressed her interest in continuing to work as a

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<sup>6</sup> “JT” refers to the exhibits to which the parties jointly stipulated.

part-time teacher during the 2017-18 school year, provided the position continued to include benefits. JT-E.

11. On or about July 5, 2017, former Superintendent Purnell left a voicemail for petitioner that addressed her position during the upcoming school year (*i.e.* 2017-18). He stated she had to either be full-time with benefits or part-time without benefits. JT-F.

12. On or about July 6, 2017, Superintendent Teehan left a voicemail for petitioner explaining that the Board could no longer justify offering benefits with the part-time position and that a full-time position might be added shortly. JT-G.

13. Petitioner ultimately declined the full-time position because she was nursing and the baby would not take a bottle. Therefore, she could not be away from her home from 7 a.m. until 4 p.m.

14. On July 13, 2017, petitioner wrote to Teehan to extend her maternity leave for the entire 2017-18 school year based on the fact that she would no longer receive health benefits as a part-time employee, and the needs of her family. JT-H. The extension was granted.

15. In mid-April 2018, Teehan spoke to petitioner regarding her work status for the 2018-19 school year. He told petitioner that she was entitled to a part-time position with no benefits and that if a full-time position were to become available, she would need to apply for it.

16. On April 17, 2018, Teehan sent an email about his conversation with petitioner to her Principal, Susan Haynes. In the email, he stated in pertinent part:

So, I spoke with Katie the other day as a return to the call she had made to me. I am not sure why, but she was under the impression that she had the option of coming back full-time if she wanted to. I had never stated any such thing when I told her in the beginning of July that she would not

have benefits anymore. During this recent conversation, I explained as best as I could that she is entitled to the same type of position, which she left - P/T and no benefits. I explained that the position doesn't need to be even preschool - it just needs to be something that she is certified to teach. However, I did explain that an individual was hired to be her replacement until June 30. The person knows that her time in the position will come to an end at that time. It is this position which she would be returning to since the position remains in our preschool structure.  
JT-I.

17. Teehan wrote in the same email:

I spoke with Purnell to find out again why he gave [petitioner] benefits as a part-time employee and why we pulled them away. I understand that as a part-time employee you are not entitled to benefits and shouldn't have them. He explained that [petitioner] was originally given benefits because you [Haynes] and he had discussed how the preschool staff was new, [petitioner] was the team leader, and there was a concern about consistency for the students. It was expected that she would work beyond the normal day to attend to team leader responsibilities, which he justified as the reason why she was more than part-time and would have the benefits. However, when she was no longer the team leader, she no longer would be working extra and would not be entitled to benefits. He said the providing of benefits for the part-time position was not a forever guarantee.  
Ibid.

19. Teehan also wrote in the email:

[Petitioner] shared how she put deposits on daycare and made necessary arrangements. I am not sure why one would do such a things [sic] when they do not have a full-time position. She shared how she thought she had the option of being part-time or full-time, both with benefits. Not the case. She stated that if she had known all of this before changing to part-time, she would not have made the change.  
Ibid.

20. Petitioner returned to her part-time teaching position on or about September 1, 2018.

## Testimony

### For petitioner:

Petitioner, **Catherine Parsells**, became a tenured teacher with the Somerville Board of Education in September 2013. She was a full-time preschool teacher in 2016, when Principal, Susan Haynes, told the preschool teachers the school intended to reduce the number of full-time preschool teachers and add two part-time teachers. Petitioner expressed interest in a part-time position, as long as it offered health benefits. Haynes confirmed that the part-time position would offer health benefits.

Petitioner voluntarily sought the part-time position because she had a four-month old son. A part-time position would enable her to care for her son while continuing with her career. She would not have pursued the part-time position if it did not offer health benefits.

No one discussed tenure with petitioner and she was not advised that she would be unable to return to her full-time position. She would not have pursued the part-time position had she known there was a risk that she would be unable to return to her full-time position.

Petitioner took an extended maternity leave during the 2017-2018 school year. She did not initially plan to do this, as she intended to return to work at the beginning of that school year. However, in July 2017, Purnell advised, by way of a voice mail message, that she would not receive health benefits if she remained in her part-time position. He told her she could apply for a full-time position, which would provide health benefits. Based on Purnell's message, she believed she had the option of returning to a full-time position with benefits or a part-time position without benefits, in September. He did not indicate in his message that she would waive her right to return to the full-time position if she took the part-time position.

Teehan left petitioner a voice mail message in which he explained why the part-time position no longer offered health benefits. He also referenced a possible full-time

position. Based on this, petitioner believed she had the option to return to either a full-time position with benefits or a part-time position without benefits.

Based on these messages, petitioner opted to extend her maternity leave, as her infant daughter was not taking a bottle and additional leave time was authorized. She, thus, planned to return to work as a full-time employee in September 2018. She did not believe she had waived her right to a full-time position.

After her maternity leave, Haynes and Teehan told petitioner she could not return to the full-time position and she would need to apply for a full-time position. She was told employees who move between full-time and part-time positions must apply for new positions. She was “blindsided” and shocked, as she believed she had tenure in a full-time position and because her family relied upon her for health benefits.

Petitioner applied online for her former position and all other positions for which she was certified. She was interviewed and gave a demonstration lesson. She was not selected for a full-time position. Instead, two people were hired from outside the district for preschool positions. She applied for approximately six full-time positions each year and was not selected for any of them. She also applied for positions in other districts but none was offered to her. Consequently, petitioner and her family have incurred substantial medical expenses, including monthly premiums for health insurance. P-1.

On cross-examination, petitioner acknowledged that her February 1, 2017, letter, in which she expressed interest in continuing as a part-time position, did not specify an end date. She did not believe she was required to provide an end date. She explained that she would have stayed in a part-time position indefinitely if it offered health benefits. She acknowledged that, for the 2017-2018 school year, she was able to choose between the full-time position and part-time position, and she chose to extend her maternity leave. In her July 13, 2017, letter to Teehan, in which she advised that she would extend her maternity leave, she did not write that she wished to return to a full-time position.

Petitioner also acknowledged that no one from the Board promised her that she would be able to automatically return to a full-time position whenever she wanted. Further, she did not ask anyone, including her union, whether she would be able to automatically return to her prior job.

Petitioner did not think that she had applied for the part-time position in 2016. She did not submit an application by way of the official online application system or other application process. She, thus, thought she merely transferred to a new position. She did not believe that tenured, full-time employees should be removed from their positions to create an opening for her. However, she believed she had seniority over the untenured teachers who were hired for the full-time positions she sought. She also believed that several positions had openings such that no one would need to be removed.

For respondent:

**Dr. Timothy Teehan**, Superintendent, became Superintendent on July 1, 2017. He explained that petitioner's move from full-time to part-time status was not the result of a reduction in force (RIF). Rather, she applied for the part-time position by way of her letter of interest to Purnell. Her move to the part-time position was voluntary.

Over the preceding "couple" of years, approximately seventeen staff members had moved between full-time and part-time positions. T1<sup>7</sup> 62:3. Such moves were treated as a "brand new hires" and the employees were not asked how long they intended to remain in the new position. T1 61:2. Teehan did not advise those employees that they would not have an automatic right to return to their prior position and would be required to submit an application to return to the prior position. Rather, the Somerville Education Association, an entity associated with the New Jersey Education Association, advised staff concerning leaves of absences, maternity leaves, health, and pension benefits, among other issues.

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<sup>7</sup> "T1" refers to the transcript of the August 5, 2019, hearing in this matter. "T2" refers to the transcript of the August 7, 2019, hearing. The citations include the page and line number(s) of the transcripts referenced in this Initial Decision.



If the school district were required to retain petitioner's full-time position for her until the time she decides to return to it, the district could be required to remove a tenured teacher from that position. The district would be required to "at the very least pay that person sixty days, the only other option we would have would be to add on a position which we wouldn't have budgeted." T1 65:9-12. Alternatively, a leave replacement teacher, who may not earn tenure, could be placed in a temporarily vacant position if there are stated start and end dates for that position. In that instance, the position would be posted as a "leave replacement" position and the hired person would be advised of the start and end dates.

If a teacher who changed from a full to part-time position, or part to full-time position, were permitted to return to his prior position at any time, the district would lose the benefit of candidates who are committed to serving the district. Hired teachers would have an incentive to move to other districts.

With respect to the hiring process for teachers, a personnel committee comprised of teachers screened applicants and selected the applicants to be interviewed. Two rounds of interviews are conducted. A member of the Personnel Committee and an administration representative participate. The applicants also conduct a demonstration lesson. One to three candidates are selected for an interview by the superintendent, who makes a recommendation concerning the selected candidate to the Board of Education, which determines whether a job offer will be extended to the candidate. Petitioner's applications for full-time positions were not referred to him for his review.

On cross-examination, Teehan clarified that, at the time of the hearing, there were seventeen staff members who had moved between full and part-time positions. Eight teachers made this type of change while he was superintendent. Other staff members did so before he became superintendent. While he was superintendent, he did not advise any of the teachers that this type of change would cause them to waive tenure rights. The teachers who moved from full to part-time would have been told by an administrator, if the teacher did not already know, that the change would impact their health benefits, and health benefits were not associated with part-time positions. With

respect to those teachers who moved from full to part-time, none, other than petitioner, inquired about returning to their full-time positions.

**Dr. Timothy Purnell** was the District Superintendent until June 30, 2017. He served in that capacity for seven and one-half years. Haynes told him she discussed restricting of the preschool staff with the teachers and that petitioner wanted to move from her full-time position to a part-time position. Purnell did not interview petitioner for the part-time position; his understanding of the transaction was limited to his conversation with Haynes and a brief conversation he had with petitioner when she delivered her May 2, 2016, letter. Their conversation was limited to an exchange of “pleasantries.” T2 28:10. He understood from her letter that her goal was to spend time with her infant son.

This, “was a restructuring of the preschool positions so, to my knowledge, we didn’t post any new positions, but rather, used internal personnel to shift that personnel to best meet the needs of the community, based on their interest and the conversations that Susan Haynes had with her team.” T2 22:10-15. Purnell explained, “This was not a new position posted for external applicants, so our regular application procedures would not apply to this situation.”<sup>8</sup> T2 23:7-10.

Had petitioner not already been a district employee, the district’s application and vetting procedure would have been implemented. The procedure involved an application acceptance period, after which a personnel committee would evaluate the applications and select some applicants for interviews. One or two rounds of interviews would be conducted. Selected candidates would next be interviewed by the principal, and demonstration lessons may be required. Two candidates would be selected for the last round, which involved an interview by the superintendent. The superintendent recommends the selected candidate to the Board of Education, which must approve or reject the selection.

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<sup>8</sup> Each year, around the time of petitioner’s May 2, 2016, letter, school administrative staff inquired, by email, whether staff members were interested in switching positions.

Purnell did not discuss with petitioner whether the move to part-time employment would impact her ability to return to her full-time position. He did discuss with her that she would receive health benefits while in the part-time position because she would serve as team leader. He did not “[look] towards her not having” benefits. This exchange occurred briefly during their conversation when they mostly exchanged pleasantries. Otherwise, petitioner’s conversations about the move were with Haynes. Purnell did not know about the nature of Haynes’ conversation with petitioner and whether it was considered an interview. He was not aware that petitioner was ever told she would need to reapply to return to her full-time position. He would not opine about the impact of petitioner’s move on her full-time employment.

Because the action at issue was a “restructuring of personnel,” Purnell was required to present the “recommendation of the building principal to the Board of Education for approval of the restructuring.” T2 26:19-22. He presented and recommended petitioner’s move to a part-time position to the Board. He recommended “to the Board, with no end of time, for her to be part-time and have benefits and serve as team leader.” T2 30:23-25. The benefits associated with the part-time position were linked to her status as team leader.

Before his employment with the district ended, he learned Haynes or her team determined petitioner would no longer serve as team leader. Purnell left petitioner a phone message in which he explained she would no longer be entitled to health benefits but could take a full-time position that would provide health benefits. He characterized his communication as an “offer” of a “full-time [position], which would include the benefits.” T2 37:17-18. Although he “offered” her the position, he did not know that she wanted to return to a full-time position. T2 38:2. He “offered her a position because – out of concern of well-being, that she may want health benefits, so I offered her a full-time position. I didn’t have any discussions with her at all.” T2 38:4-8. He did not speak with her after he left the message.

On cross-examination, Purnell clarified that petitioner’s May 2, 2016, letter was an application or expression of interest in a transfer. He further clarified that, in May of each year, the district asked employees if they wished to transfer positions within the

district. Such transfers were not guaranteed. An employee who fills a position on a temporary basis – who holds a leave replacement position – would be approved in that position for a specific period of time, subject to Board-approved extensions. Purnell never told an employee who moved from full to part-time or from part to full-time that he would have an automatic entitlement to return to their prior position at any time.

On re-direct examination, Purnell testified that approximately ten to fifteen employees transferred from full to part-time positions while he was superintendent. Tenure was not discussed with any of those staff members. He assumed Haynes discussed health benefits with petitioner. He did not know who “initiated that.” T2 47:15.

He was unaware of any other employee who retained health benefits after transferring to a part-time position. He was also unaware of any case in which a move to a part-time position was considered to be temporary. He did not make personnel changes that were temporary. He was also unaware of a circumstance in which an employee initiated a discussion about returning to a full-time position.

#### Additional Findings

It is the obligation of the fact finder to weigh the credibility of the witnesses before making a decision. Credibility is the value that a fact finder gives to a witness’ testimony. Credibility is best described as that quality of testimony or evidence that makes it worthy of belief. “Testimony to be believed must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as the common experience and observations of mankind can approve as probable in the circumstances.” In re Estate of Perrone, 5 N.J. 514, 522 (1950). To assess credibility, the fact finder should consider the witness’ interest in the outcome, motive, or bias. A trier of fact may reject testimony because it is inherently incredible, or because it is inconsistent with other testimony or with common experience, or because it is overborne by other testimony. Congleton v. Pura-Tex Stone Corp., 53 N.J. Super. 282, 287 (App. Div. 1958).

As the fact finder, I had the ability to observe the demeanor, tone, and physical actions of the petitioner during the hearing. She testified in a clear and straightforward

manner. Her demeanor suggested that she sought to relay all facts honestly. She was not unduly emotional but appeared appropriately upset, given the impact this matter has had on her and her family's life.

Petitioner acknowledged that she did not seek the advice of administrators, other Board personnel, or the Somerville Education Association about the consequences that might flow from her voluntary move to a part-time positions. She also acknowledged that no one from the Board guaranteed that she would be able to return to a full-time position when she wanted. She was also candid about the motivation for her decisions and she recognized that she was offered an opportunity to return as a full-time teacher for the 2017-2018 school year yet chose instead to extend her maternity leave.

Fundamentally, petitioner credibly conveyed that she made decisions based on her understanding of the process, whether that understanding was correct or incorrect, and in response to her family's needs at the time. I find her testimony to be credible.

Teehan testified credibly. He relayed the relevant facts and his involvement in the matter in a straightforward manner. His testimony was consistent with the documentary and other evidence produced during the hearing.

Purnell relayed a reluctance to answer questions. He sought clarification of questions that were concise and clear. Nonetheless, his testimony was credible as it was consistent internally and with the documentary and other evidence produced during the hearing.

#### Additional Findings

Having considered the testimony and documentary evidence, I **FIND** the following additional **FACTS**:

1. Petitioner voluntarily requested to be transferred to a new, part-time teaching position with benefits.

2. Petitioner was not asked by anyone from her school district to resign or otherwise leave her full-time position.
3. The Board approved petitioner's transfer to the new, part-time teaching position.
4. The Board also approved petitioner's appointment as team leader for the 2016-2017 school year.
5. Petitioner accepted the new position as a part-time teacher.
6. Petitioner assumed she would be able to return to her former full-time position when she no longer wanted to have a part-time schedule.
7. Petitioner assumed the part-time position would be accompanied by health benefits after the 2016-2017 school year.
8. On July 5, 2017, and July 6, 2017, the former and current superintendents advised petitioner that she was no longer eligible for health benefits through her part-time position. This was because there was no longer a need for her to serve as team leader. They advised her she was eligible for a full-time position at that time.
9. On July 13, 2017, petitioner advised the current superintendent, in writing, that she would extend her maternity leave through the 2017-2018 school year.
10. Petitioner did not ask her supervisors or other personnel how her voluntary transfer to a part-time position would impact her ability to return to a full-time position.
11. Petitioner did not ask her union representative or other representative of the Somerville Education Association how her voluntary transfer to a part-time position would impact her ability to return to a full-time position.

12. None of petitioner's supervisors or other Board personnel advised petitioner how her voluntary transfer to a part-time position would impact her ability to return to a part-time position.
13. None of petitioner's supervisors or other Board personnel promised petitioner that she would be able to return to a full-time position when she requested.
14. Petitioner did not accept the full-time position that she was offered in July 2017.
15. Rather than accept the offered full-time position, petitioner opted to extend her maternity leave.
16. Petitioner understood that she was authorized to extend her maternity leave through September 2018, and intended to return to work then.

#### Parties' Arguments

The Board contends the petitioner was not entitled to return to a full-time position because she was not the subject of a RIF. Her tenure and seniority rights would have been at issue had the Board instituted a RIF or taken other adverse action. However, because she was not subject to a RIF or other adverse action, she was not entitled to return to her full-time position. The Board also argues that petitioner's failure to accept an offer for a full-time position constitutes abandonment of any right she might have had to such employment.

Petitioner contends that she could only relinquish her tenure rights voluntarily and that she did not do so. She did not know that changing from a full-time to a part-time position would impact her tenure rights and the Board did not inform her of this consequence, notwithstanding its obligation to do so. She also argues that she did not request or accept a permanent job change and she was merely placed temporarily in the part-time position rather than hired for a new position. Finally, she claims she did not abandon her position when she extended her maternity leave and she was

effectively subject to a RIF when she was told she could not return to a full-time position.

### **LEGAL ANALYSIS AND CONCLUSION**

The purpose of the teaching staff tenure laws, N.J.S.A. 18A:28-1 to -18, is “to aid in the establishment of a competent and efficient school system by affording teaching staff members ‘a measure of security in the ranks they hold after years of service.’” Carpenito v. Rumson Bd. of Educ., 322 N.J. Super. 522, 528–29 (App. Div. 1999) (quoting Viemeister v. Prospect Park Bd. of Educ., 5 N.J. Super. 215, 218 (App. Div. 1949)). Our courts have held that “the widest range should be given to the applicability of the [tenure statutes] law.” Sullivan v. McOsker, 84 N.J.L. 380, 385 (E. & A. 1913). See also Barnes v. Bd. of Educ. of Jersey City, 85 N.J. Super. 42, 45 (App. Div. 1964). “[B]ecause of its remedial purpose, the Tenure Act should be liberally construed to achieve its beneficent ends. Spiewak v. Bd. of Educ., 90 N.J. 63, 74-75 (1982).

In order to acquire tenure, a teaching staff member “must comply with the precise conditions articulated in the [tenure] statute.” Zimmerman v. Bd. of Educ. of Newark, 38 N.J. 65, 72 (1962). Thus, a teaching staff member “is entitled to tenure if (1) she works in a position for which a teaching certificate is required; (2) she holds the appropriate certificate; and (3) she has served the requisite period of time.” Spiewak, 90 N.J. at 74. N.J.S.A. 18A:28-5 provides:

[t]he services of all teaching staff members employed . . . in the position[ ] of teacher . . . shall be under tenure during good behavior and efficiency and they shall not be dismissed or reduced in compensation except for inefficiency, incapacity, or conduct unbecoming such a teaching staff member or other just cause and then only in the manner prescribed by subarticle B of article 2 of chapter 6 of this Title, after employment in such district or by such board for:

- (1) Three consecutive calendar years, or any shorter period which may be fixed by the employing board for such purpose; or



(2) Three consecutive academic years, together with employment at the beginning of the next succeeding academic year; or

(3) The equivalent of more than three academic years within a period of any four consecutive academic years.

The Tenure Act provides two ways a tenured teacher may be dismissed: 1) for inefficiency, incapacity, conduct unbecoming, or other just cause, pursuant to N.J.S.A. 18A:28-5; and 2) by a RIF for economic reasons, pursuant to N.J.S.A. 18A:28-9.

The latter provision provides that boards are permitted to “reduce the number of teaching staff members, employed in the district whenever, in the judgment of the board, it is advisable to abolish any such positions for reasons of economy or because of reduction in the number of pupils or of change in the administrative or supervisory organization of the district or for other good cause upon compliance with the provisions of this article.” N.J.S.A. 18A:28-9. When a teacher has been subject to such a RIF, he will have a right to return to his prior position when a vacancy occurs:

If any teaching staff member shall be dismissed as a result of such reduction, such person shall be and remain upon a preferred eligible list in the order of seniority for reemployment whenever a vacancy occurs in a position for which such person shall be qualified and he shall be reemployed by the body causing dismissal, if and when such vacancy occurs and in determining seniority, and in computing length of service for reemployment, full recognition shall be given to previous years of service[.]  
N.J. S. A. 18A:28-12.

Seniority is a “mechanism for ranking all tenured teaching staff members so that reductions in force can be effected in an equitable fashion and in accord with sound educational practices.” Lichtman, 93 N.J. at 368, n.4.

A reduction of a full-time teacher’s hours to that of a part-time teacher constitutes a RIF. See Bednar v. Westwood Bd. of Educ., 221 N.J. Super. 239 (App. Div. 1987)(school board reduced a tenured teacher’s schedule to part-time; because the

teacher had not volunteered for the reduction in hours, the Board's action was deemed a RIF and the teacher was entitled to a position held by a non-tenured teacher).

Fundamental to a finding that a RIF occurred is a determination that the action at issue was caused by the school board, not by the impacted teacher. See Carpenito v. Bd. of Educ. of Borough of Rumson, Monmouth Cty., 322 N.J. Super. 522 (App. Div. 1999)(A teacher may be dismissed by a RIF only if "her school board reduces her tenure rights through dismissal or a reduction in tangible employment benefits."); Alfieri and Mezak v. Board of Education of the Township of Saddle Brook, 2003 N.J. AGEN LEXIS 1114, \*5-6 (2003), EDU No. 11677-98 and 1161-99 (consolidated) (teachers "did not have a tenure entitlement to the full-time positions they seek because they were not subject to a reduction in staff under N.J.S.A. 18A:28-9").

A part-time teacher may be tenured and have an entitlement to move to a full-time position if he is subject to a RIF. In Lichtman v. Board of Education, 93 N.J. 362 (1983), the teacher was a tenured, part-time librarian. When the part-time position was to be eliminated, she applied for a full-time librarian position, for which she was also certified. The Board determined she held no seniority rights for a full-time position and instead hired a non-tenured applicant for the full-time librarian position. The New Jersey Supreme Court rejected this conclusion, holding that "a tenured part-time teaching staff member with proper certification can claim, as against a non-tenured applicant, seniority rights in seeking appointment to a full-time position that is within the specific categories covered by the certification and that has responsibilities identical to those of the part-time position in which employment was actually held." 93 N.J. at 364.

Here, it is undisputed that the school principal presented petitioner with the option of moving to a part-time position. Neither the principal nor anyone else on behalf of the District mandated the change. Petitioner volunteered for the position, as it suited her family's needs. She submitted a request for approval of the new position, which the superintendent and Board reviewed and approved.<sup>9</sup> The job change at issue, therefore,

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<sup>9</sup> Petitioner contends she did not effectuate a permanent job change but, rather, only changed jobs temporarily. However, the Board approved her application for a new position with no reference to a temporary position or approval.

was voluntarily undertaken by petitioner and not mandated by the Board. Accordingly, I **CONCLUDE** petitioner was not the subject of RIF.

Petitioner contends she should be entitled to return to a full-time position because respondent failed to warn her of the consequences of her decision. Petitioner has not cited, nor have I discovered, any authority for the proposition that school boards must notify tenured employees of the consequences of such actions. The Legislature has required notice in specific contexts: See N.J.S.A 18A:6-4.15 (requiring notice for criminal history background check results); N.J.S.A 18A:6-11 (requiring written notice for dismissals or reductions in salary); and N.J.S.A 18A:27-10 (requiring notice for renewal or non-renewal of employment contracts). Had the Legislature wanted to impose a notice requirement in matters such as this, it would have done so explicitly. See In re Plan for the Abolition of the Council on Affordable Housing, 214 N.J. 444, 470 (2013)(When "the Legislature has carefully employed a term in one place and excluded it in another, it should not be implied where excluded")(citations omitted).

This maxim, however, was not endorsed by the New Jersey Supreme Court in Bridgewater-Raritan Educ. Ass'n v. Board of Educ. of Bridgewater-Raritan School Dist., Somerset County, 221 N.J. 349 (2015). In that case, the Court found that the language of the controlling statute, N.J.S.A 18A:16-1.1, "must be given its plain meaning." 221 N.J. at 361. The statute created an exception to the general tenure eligibility statute and also required designation of temporarily-assigned replacement teachers. This compelled a finding that its plain meaning required districts to provide teachers notice of the designation. Petitioner has not identified a statutory provision that could similarly require the notice she claims ought to have been provided. Accordingly, I **CONCLUDE** petitioner is not eligible to return to her full-time position because she was not the subject of a RIF and she voluntarily accepted her part-time position.<sup>10</sup>

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<sup>10</sup> I note that respondent also contends petitioner relinquished her tenure right when she rejected an offer to return to a full-time position. As the question at issue has been resolved for the reasons stated above, I need not address this argument.

**ORDER**

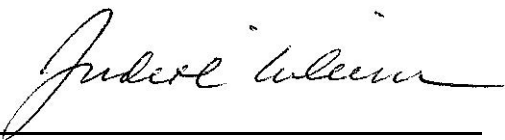
Based upon the foregoing, it is **ORDERED** that petitioner is not entitled to the relief she seeks. It is further **ORDERED** that the petition be and is hereby **DISMISSED**.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

November 25, 2019 \_\_\_\_\_  
DATE

  
\_\_\_\_\_  
**JUDITH LIEBERMAN, ALJ**

Date Received at Agency: \_\_\_\_\_

Date Mailed to Parties: \_\_\_\_\_

/vj

**APPENDIX**

**List of Witnesses**

For petitioner:

Catherine Parsells  
Dr. Timothy Purnell

For respondent:

Dr. Timothy Teehan

**List of Exhibits**

Joint

- JT-A May 2, 2016, letter Parsells to Purnell
- JT-B May 18, 2016, letter Purnell to Parsells with excerpt of Board minutes
- JT-C Excerpt of Board minutes
- JT-D November 18, 2016, letter Parsells to Purnell
- JT-E February 1, 2017, letter Parsells to Purnell
- JT-F Excerpts of interrogatory answers
- JT-G Excerpts of interrogatory answers
- JT-H July 13, 2017, letter Parsells to Teehan
- JT-I April 17, 2018, email Teehan to Haynes

For petitioner:

- P-1 Out of pocket medical expenses summary sheet/supporting documents

For respondent:

None