

New Jersey Commissioner of Education
Final Decision

Jennifer Rome,

Petitioner,

v.

Board of Education of the Township of
Willingboro, Burlington County,

Respondent.

Synopsis

Petitioner alleged that the respondent Board violated her tenure rights by terminating her employment at the end of her contract term in June 2022. Petitioner asserted that she obtained tenure as the result of her four years of non-consecutive employment within a five-year period with the Board, pursuant to *N.J.S.A. 18A:28-5*. The Board contended that petitioner did not obtain tenure because her initial short-term employment was to fill an absence, which is an exception to the tenure accrual statute and not entitled to credit towards tenure. The Board filed a motion for summary decision, which was opposed by the petitioner.

The ALJ found, *inter alia*, that: there are no material facts at issue here, and the matter is ripe for summary decision; petitioner was hired as a computer teacher on August 30, 2017, to fill a long-term absence; the contract for this temporary position provided that it could be terminated by either party upon thirty days' notice; petitioner served in the position as computer teacher until January 2018; in a subsequent application for employment with the school district, petitioner indicated that her prior position with the Board had been as a "long-term sub"; petitioner was retained as an elementary school teacher on October 15, 2018; and her employment continued under annual contracts for the 2019-2020, 2020-2021, and 2021-2022 school years; petitioner was advised on April 22, 2022 that the District would not renew her contract for the following school year; and *N.J.S.A. 18A:16-1* specifically addresses the tenure acquisition rights of employees filling long-term substitute positions, providing in relevant part that "no person so acting shall acquire tenure in the office or employment in which he acts pursuant to this section when so acting." The ALJ concluded that the petitioner did not obtain tenure rights in the District through benefit of the long-term substitute contract in the 2017-2018 school year, and therefore did not have sufficient time to acquire tenure in the district.

Upon review, the Commissioner concurred with the ALJ that petitioner did not acquire tenure because her position during the 2017-2018 school year as a long-term substitute cannot be included in the calculation of her years of service pursuant to *N.J.S.A. 18A:16-1.1*. Accordingly, the Board's motion for summary decision was granted, and the petition of appeal 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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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed and considered. The parties did not file exceptions.

Upon review, the Commissioner concurs with the Administrative Law Judge (ALJ) that petitioner did not acquire tenure because her position during the 2017-2018 school year was a long-term substitute position that is not included in the calculation of her years of service pursuant to *N.J.S.A. 18A:16-1.1*.

Accordingly, the Board's motion for summary decision is granted, and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.¹


ANGELINA ALLEN McMILLAN, Ed. S.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: June 27, 2023

Date of Mailing: June 28, 2023

¹ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A. 18A:6-9.1*. Under *N.J.Ct.R. 2:4-1(b)*, a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDU 07452-22

AGENCY DKT. NO. 174-7/22

JENNIFER ROME,

Petitioner,

v.

**WILLINGBORO TOWNSHIP BOARD OF
EDUCATION, BURLINGTON COUNTY,**

Respondent.

Jennifer Rome, petitioner, pro se

Mark W. Starsle, Esq., for respondent (Madden & Madden, PA, attorneys)

Record Closed: April 12, 2023

Decided: May 17, 2023

BEFORE **SARAH G. CROWLEY**, ALJ:

STATEMENT OF THE CASE

Petitioner, Jennifer Rome alleges the respondent, Willingboro Township Board of Education (Board or District) violated her tenure rights by terminating her at the end of her contract term in June 2022. Petitioner alleges that she obtained tenure due to her four years of non-consecutive employment within a five-year period with the Board

pursuant to N.J.S.A. 18A: 28-5. The Board counters that the petitioner did not obtain tenure due to her initial short-term contract to fill an absence, which is an exception to the tenure accrual statute, and not entitled to credit towards tenure. The petitioner filed a due process complaint and the matter was transmitted to the Office of Administrative Law (OAL), where it was filed for hearing as a contested case on August 29, 2023, pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to 3. The Board filed a motion for summary decision on March 21, 2023. Opposition was filed by the petitioner and oral argument was heard via Zoom on April 12, 2023, and the record closed.

FACTUAL DISCUSSION AND FINDINGS

Based on the documents and certifications filed in this matter, I **FIND** the following as **FACTS**:

1. Petitioner was retained by the District on August 30, 2017, to fill a long-term absence as a computer teacher.
2. The contract provides that it may be terminated by either party upon thirty-days' notice.
3. The petitioner served in this position from August 30, 2017, until January 2018.
4. In a subsequent application for employment with the District, petitioner indicated that her prior position was a "long-term sub."
5. Thereafter, on October 15, 2018, petitioner was retained as an elementary school teacher. Subsequent elementary school teacher contracts were executed for the 2019–2020, 2020–2021, and 2021–2022 school years.
6. Petitioner worked for less than four years in a tenure eligible position for the District.

7. On April 22, 2022, the District advised the petitioner of its intention not to renew petitioner's contract for the following school year.

LEGAL ANALYSIS AND CONCLUSIONS

It is well-established that if there is no genuine issue as to any material fact, a moving party is entitled to prevail as a matter of law. Brill v. The Guardian Life Insurance Co. of America, 142 N.J. 520, 540 (1995). The purpose of summary decision is to avoid unnecessary hearings and their concomitant burden on public resources. Under the Brill standard, a fact-finding hearing should be avoided "when the evidence is so one-sided that one party must prevail as a matter of law." Brill guides us thusly:

[A] determination whether there exists a "genuine issue" of material fact that precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party.

[Id. at 540.]

In this case, the petitioner argues that she obtained tenure under N.J.S.A. 18A:28-5. The petitioner argues that the time in which she was retained for the short-term contract for a long-term substitute constitutes time toward her tenure. The District argues that her time as a long-term substitute does not count towards the accrual of tenure under the language of N.J.S.A. 18A:16-1.1.

The petitioner has argued that she obtained her tenure under N.J.S.A. 18A:28-5, and that her long-term substitute position should count toward her accumulation of time for tenure. She argues, without any support, that this was a full-time position which should count toward tenure. However, she was terminated at the end of the contract period in December 2018, and acknowledged in her application for a new position with the District that she was "a long-term substitute" during the 2017–2018 school year. N.J.S.A.18A:16-1 specifically addresses the tenure acquisition rights of employees filling long-term substitute positions. The statute provides in relevant part that "no

person so acting shall acquire tenure in the office or employment in which he acts pursuant to this section when so acting. Spiewak v. Bd. of Education of Rutherford, 90 N.J. 63 (1982).

Accordingly, I **CONCLUDE** that the petitioner did not obtain tenure rights in the District due to the long-term substitute contract in the 2017–2018 school year, and accordingly insufficient time to acquire tenure.

ORDER

For the foregoing reasons, I **ORDER** that the motion of respondent Willingboro Township Board of Education is **GRANTED**, and the petition is **DISMISSED**.

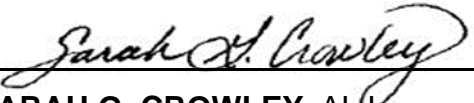
I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

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.

May 17, 2023

DATE



SARAH G. CROWLEY, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

SGC/nn