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NJ SUPREME COURT REQUIRES SCHOOL BOARDS TO NOTIFY EMPLOYEES WHO ARE SERVING IN NON-TENURABLE REPLACEMENT CAPACITY

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The New Jersey Supreme Court recently held that when a board of education fails to notify a long-term substitute that he or she is serving as a replacement for another staff member, the substitute's service will count towards attainment of tenure. In the decision, *Bridgewater-Raritan Education Association v. Board of Education of the Bridgewater-Raritan School District*, Dkt. No. A-85-13 (May 6, 2015), the Supreme Court reiterated the longstanding legal precedent that a teaching staff member's service in temporary or replacement positions will not be credited towards tenure accrual. The Court also added a new requirement that this rule will only apply where the school district has provided notice to the employee that the service is being performed in a replacement capacity.

In *Bridgewater*, three teaching staff members were hired for leave replacement positions for teachers out on maternity or sick leave. Although each teacher was later hired as a permanent teacher in the district, their contracts were eventually non-renewed. The teachers' union filed a Petition of Appeal with the Commissioner of Education, alleging that the teachers were tenured employees and that the Board was required to notify the teachers of their status as replacements for each year served in that capacity pursuant to N.J.S.A. 18A:16-1.1. That statute states a board may "designate some person to act in place of any officer or employee during the [employee's] absence, disability or disqualification," but specifies that such service will not count towards tenure acquisition.

An Administrative Law Judge initially dismissed the Petition, finding that the teachers' service in a replacement capacity was not eligible for tenure. That decision was adopted by the Commissioner and later affirmed by the Appellate Division. The Supreme Court then both partially affirmed and partially reversed the lower court's decision.

In issuing its ruling, the Supreme Court examined tenure acquisition for replacement teachers and explored whether those employees must receive notice that their service is not tenure-eligible. The Court stated that previously, only two requirements had to be met under N.J.S.A. 18A:16-1.1 for service to be designated as replacement service not eligible for tenure: (1) the individual must be acting in place of a teacher; and (2) the teacher for whom the individual is acting must be absent or disabled, albeit with a contemplation of returning to work at some point.

In a reversal of the decisions below, the Court interpreted the Legislature's use of the words "designate" and "designated" in the statute to require a new, third component to be met: a board of education must make an employee aware that he or she is being employed as a replacement before that service will fall within the statute's exception to tenure accrual.

Applying this rule, the Court found that two of the teachers were properly notified of their replacement status and therefore were not tenured. However, the Court determined that it was unclear whether the Board appropriately notified the third teacher that one of her years of service was in a replacement capacity. The Court directed the Commissioner to determine whether the teacher received the newly-required notice, specifically holding that the teacher "is entitled to receive credit for the school year in question if she succeeds in her claim that no notice or other source of information of her replacement status was provided to her."

This decision squarely places an obligation upon boards of education to affirmatively notify employees of their status as replacement teachers, and clarifies that a failure to do so will render such service eligible towards tenure acquisition. In light of this case, school boards should review their practices to ensure that notation of the replacement status is included in any appointment resolution and written notice is specifically provided to every replacement employee in the employee's contract, hiring letter or some other clear format, advising the employee that his or her service is in a replacement capacity and is not tenure-eligible.

If you have any questions regarding this decision, please do not hesitate to contact the School Law Attorneys at SPSK.

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