

200-01

DOREEN BARCA, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
TOWNSHIP OF HOLMDEL, MONMOUTH :
COUNTY, :
RESPONDENT, :
AND, :
DIANE PAUSTIAN, :
RESPONDENT-INTERVENOR.:
_____:

SYNOPSIS

Petitioner challenged the Board's determination to employ Respondent Diane Paustien as a teacher of foreign language, arguing that petitioner was entitled to the position based on her tenure and seniority rights. The Board denied that petitioner is entitled to the position.

At the OAL, Paustien moved to intervene, which application was granted by the ALJ. The ALJ, based on stipulated facts, determined that petitioner was entitled to the position, as she had worked in the district under both her supervisor and instructional certificates, and achieved tenure in both positions, prior to being terminated because of a reduction in force several years before the position at issue became available. Because petitioner had a right to the position based on her tenure and seniority, the ALJ concluded that the respondent Board was required to offer the position to her, and improperly hired Paustien instead.

The Commissioner affirmed the decision of the ALJ for the reasons set forth therein, and ordered the Board to reinstate petitioner to a foreign language position to which she is entitled and to provide her all back pay, benefits and emoluments, subject to mitigation, to which she is entitled.

June 22, 2001

OAL DKT. NO. EDU 2192-00
AGENCY DKT. NO. 46-2/00

DOREEN BARCA, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE : DECISION
 TOWNSHIP OF HOLMDEL, MONMOUTH :
 COUNTY, :
 :
 RESPONDENT, :
 :
 AND, :
 :
 DIANE PAUSTIAN, :
 :
 RESPONDENT-INTERVENOR.:
 :
 _____ :

The record and Initial Decision issued by the Office of Administrative Law (OAL) have been reviewed. No exceptions were filed by the parties.

Upon review of the record and Initial Decision, the Commissioner is in full agreement with the Administrative Law Judge's findings and conclusions of law for the reasons well stated in the Initial Decision.

Accordingly, petitioner's Motion for Summary Decision is granted and the summary decision motions of respondent and respondent-intervenor are denied. As correctly determined by the ALJ, petitioner was not only required by the Board to hold a valid instructional certificate in the area of her supervisor position but *she actually taught* under that

certificate; thus, having served the requisite period of time set forth in *N.J.S.A.* 18A: 28-5 under *both* her instructional *and* supervisor certificates, petitioner acquired tenure not only in the position of supervisor, but also in the position of teacher. The Board is, therefore, ordered to reinstate petitioner to a foreign language teacher position to which she is entitled based on her tenure and/or seniority rights, together with all back pay, benefits and emoluments, subject to reasonable mitigation.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: June 22, 2001

Date of Mailing: June 26, 2001

* This decision may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6A:4-1.1 *et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.