

THOMAS MATARAZZO, :
 :
 PETITIONER, :
 :
 V. :
 : COMMISSIONER OF EDUCATION
 BOARD OF EDUCATION OF THE :
 BOROUGH OF CLIFFSIDE PARK, : DECISION
 BERGEN COUNTY. :
 :
 RESPONDENT. :
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SYNOPSIS

Petitioner challenged the Board's filling of supervisor positions. Petitioner sought appointment to the position of Supervisor of Instruction in the 2002-03 school year.

Upon review of the job descriptions for the old Supervisor of Instruction and new District-wide Supervisor of Instruction, the ALJ concluded that the new requirements did not create a position sufficiently different to give rise to a separately tenurable position. The ALJ concluded that petitioner, previously tenured in the position of Supervisor of Instruction, was entitled to the position of District-wide Supervisor of Instruction over the nontenured teaching staff member assigned by the Board to that position.

The Commissioner adopted the Initial Decision as his own.

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.

March 18, 2004

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The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. The Board’s exceptions and petitioner’s reply thereto are duly noted as submitted in accordance with *N.J.A.C.* 1:1-18.4.

In its exceptions, the Board continues to argue that there are “substantial differences between the two supervisory positions at issue” so as to require that they be considered as “separate for purposes of determining tenure rights***.” (Board’s Exceptions at 2) In so doing, the Board renews its contention that the additional responsibilities in the job description for the new positions (Exhibit J-7) render these new positions “district wide” and, therefore, the tenure rights earned by petitioner during his prior service as a supervisor do not transfer to them. (*Id.* at 6-8) Additionally, the Board now contends that implicit within its posting and job description for the new supervisor positions was the requirement for an instructional endorsement in the level or area to which the successful candidate was assigned; consequently, petitioner, who is not endorsed as a K-8 instructor, cannot properly be appointed to the position held by Ms. Merrill. (*Id.* at 3, 10-11, 20-21)

To this, petitioner counters that the job description for each of the three supervisory positions is identical and does not indicate that a teaching assignment will be, or must be, within the individual's area of certification. (Petitioner's Reply at 3) Neither does it require any additional certificate or endorsement. (*Id.* at 7) Petitioner further contends, as argued before the ALJ, that his "tenure as a Supervisor extends to any other position requiring Supervisor certification since the position of District-Wide Supervisor of Instruction (J-7) is not among those [separately tenurable positions] enumerated in *N.J.S.A.* 18A:28-5." (*Id.* at 6) Since Ms. Merrill has not achieved tenure as a supervisor, petitioner maintains that he is entitled to be appointed to the position she holds. Petitioner urges the Commissioner, therefore, to adopt the Initial Decision as it was correctly decided on both the facts and the law.

Upon careful and independent review of the record in this matter, the Commissioner concurs with the ALJ that petitioner has demonstrated he is entitled to the supervisor position now held by Ms. Merrill, a nontenured teaching staff member. In so doing, the Commissioner is not persuaded by the Board's characterization of the new supervisor positions as "substantially different" so as to thwart petitioner's tenure entitlement.

Accordingly, the Initial Decision is adopted for the reasons expressed therein.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: March 18, 2004

Date of Mailing: March 18, 2004

* 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.*