

THOMAS DERBY,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE CITY :		
OF CAMDEN, CAMDEN COUNTY,		DECISION
	:	
RESPONDENT;	:	
	:	
AND	:	
	:	
IN THE MATTER OF THE CAMDEN	:	
BOARD OF EDUCATION,	:	
RESPONDENT, AND THOMAS	:	
DERBY, CHARGING PARTY.	:	
	:	

SYNOPSIS

In this consolidated matter, petitioner claimed the Board of Education violated his tenure and seniority rights by not appointing him—following abolition of a teaching staff position he claims to have held under the Reading Specialist endorsement on his Educational Services Certificate—to a newly created Educational Program Specialist position requiring the same endorsement. In his related unfair practice charge before the Public Employment Relations Commission (PERC), petitioner contended he was denied the position he sought in retaliation for engaging in protected activity. Petitioner sought retroactive reappointment to the position in question as his primary relief.

The ALJ found that petitioner acquired tenure as a teacher, and that his lawful reassignment to another position within the scope of his instructional certificate did not constitute a reduction in force so as to implicate his tenure or seniority rights; thus, petitioner had no claim under the school laws. The ALJ further dismissed the entire matter as moot, having found that—since the Educational Program Specialist title was not used in the district after 2001-02 and will not be used again in light of its rejection by the County Superintendent—no purpose would be served by continued proceedings since no relief is available to petitioner even if he prevails in his unfair practice charge.

The Commissioner adopted the ALJ’s decision with respect to petitioner’s tenure and seniority claims, but declined to rule on the mootness of petitioner’s unfair practice charge. Consistent with the Joint Order of Consolidation, the Commissioner forwarded the matter to PERC for final decision on all remaining issues, including the question of mootness of the unfair practice charge.

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.

OAL DKT. NO. EDU 8516-01
AGENCY DKT. NO. 437-10/01;
OAL DKT. NO. PRC 2201-03
PERC DKT. NO. CI-2002-43
(CONSOLIDATED)

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The record of this consolidated matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner's exceptions, which did not comply with the time requirements of *N.J.A.C. 1:1-18.4(a)*,¹ are not considered herein, and no reply to them was filed by the respondent Board of Education (Board).

Upon review and consideration of the school law claims before the Commissioner, the Commissioner concurs with the Administrative Law Judge (ALJ) that petitioner's tenure was achieved under his instructional certificate, not under the reading specialist endorsement on his educational services certificate, so that petitioner has no

¹ Petitioner's exceptions bore a face date of August 16, 2005, and were filed via fax on August 17, 2005 (hard copy August 18, 2005). The Initial Decision was mailed to the parties on August 2, 2005, so that any exceptions to be filed in the absence of an extension requested and granted pursuant to *N.J.A.C. 1:1-18.8* would have been due on or before August 15, 2005.

possible tenure claim to any position other than that of teacher. The Commissioner further concurs that petitioner was not subjected to a reduction in force (RIF), but was instead lawfully transferred to another teaching position within the scope of his instructional certificate, so that neither his tenure nor his seniority rights are implicated in this matter. Consequently, the Commissioner concludes, as did the ALJ, that petitioner has not demonstrated entitlement to relief under the school laws, as sought in his petition before the Commissioner.²

The Commissioner expressly declines, however, to reach the ALJ's recommendation—based on an undisputed finding that the title assigned to the position sought by petitioner in his pleadings is no longer in use and was not approved by the County Superintendent of Schools—that this matter is moot in its entirety. Instead, having ruled on the merits of petitioner's school law claims as set forth above, the Commissioner finds that the final decision on dismissal of petitioner's unfair practice claims is more properly made by the Public Employment Relations Commission (PERC), since, notwithstanding that petitioner has no entitlement by tenure or seniority to the position or back pay he seeks, PERC may not concur that the issues within its jurisdiction are mooted by the fact that the position sought by petitioner no longer exists under the title(s) it had during the period at issue.³

Accordingly, the Initial Decision of the OAL dismissing petitioner's tenure and seniority claims is adopted as the final decision in this matter with respect to

² Finding of Fact No. 2 is corrected to indicate that petitioner was hired by the Board on September 1, 1988, and Finding of Fact No. 18 is corrected to reference R-3, Exhibit 19.

³ The Commissioner recognizes that, should PERC determine that this matter is not moot, and should it subsequently find that petitioner is entitled to relief in the form of appointment to a position that he sought and should have received, but did not because the Board violated employment law, further proceedings before the Commissioner may be necessary to determine the existence of such position(s), regardless of the title(s) assigned to them.

those claims, and—consistent the Joint Order of the Commissioner and the Chair of the Public Employment Relations Commission (PERC)—the Commissioner’s decision herein, together with the full record of this matter, shall now be forwarded to PERC for final decision on all remaining issues, including the mootness of petitioner’s unfair practice charge.⁴

IT IS SO ORDERED.⁵

ACTING COMMISSIONER OF EDUCATION

Date of Decision: September 14, 2005

Date of Mailing: September 14, 2005

⁴ An extension has been requested pursuant to *N.J.A.C.* 1:1-17.8(c) to permit the rendering of a final decision by PERC.

⁵ 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.*