

#285-07 (OAL Decision: Not yet available online)

PATERSON EASTSIDE HIGH SCHOOL :
PARENT/ALUMNI COMMITTEE AND :
MYRON BAUGH, :

PETITIONERS, :

V. : COMMISSIONER OF EDUCATION

STATE OPERATED SCHOOL DISTRICT : DECISION
OF THE CITY OF PATERSON, PASSAIC :
COUNTY, DR. MICHAEL GLASCOE, STATE :
DISTRICT SUPERINTENDENT, AND :
TOMMIE PATTERSON, :

RESPONDENTS. :

SYNOPSIS

Petitioners claim that the appointment of Tommie Patterson as the head basketball coach for Paterson Eastside High School is not in conformance with the law, alleging that: there were qualified and certified applicants for the position pursuant to *N.J.A.C. 6A:9-5.19*; Patterson is not properly certified; and no application for waiver was made to – or granted by – the State district superintendent to allow his hiring, as is required by *N.J.A.C. 6A:9-5.19(c)*.

The ALJ found that: the petitioners have standing to bring the lawsuit; the November 2006 petition was timely filed, as the 90-day limitation period began with the State district superintendent's approval – on August 31, 2006 – of the decision to hire Patterson; Patterson does not hold a New Jersey teaching certificate, and therefore does not meet the first criteria of *N.J.A.C. 6A:9-5.19*; Tony Reed was properly certified and qualified for the position of head basketball coach; therefore the respondent district is prohibited by *N.J.A.C. 6A:9-5.19* from hiring Patterson over Reed. The ALJ vacated the appointment of Patterson as head basketball coach, and appointed Reed to the position.

The Commissioner concurs with the ALJ that: the petitioners had standing to challenge the hiring of Patterson by virtue of their interest as taxpayers, and parents and alumni actively involved with the student athletes at Eastside High School; the petition was timely filed; Patterson had no New Jersey teaching credentials at the time of his hiring as head coach; Reed possessed all requisite requirements for the head coaching position, as the job description did not expressly require candidates to have previous experience as a head high school coach. Accordingly, the Commissioner vacated the appointment of Patterson to the position of head basketball coach; however, she declined to appoint Reed to the position as part of this decision because he was not a party to this matter, and petitioners did not request his appointment as part of their demand for relief in the petition.

<p>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.</p>

July 13, 2007

OAL DKT. NO. EDU 11847-06
AGENCY DKT. NO. 415-11/06

PATERSON EASTSIDE HIGH SCHOOL :
PARENT/ALUMNI COMMITTEE AND :
MYRON BAUGH, :
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The record of this matter, the Initial Decision, and respondent’s exceptions have been reviewed.¹

The facts in this case have been sufficiently set forth by the Administrative Law Judge (ALJ) in the Initial Decision, and need only be summarized. Three individuals, Michael Baker, Tommie Patterson and Tony Reed, applied for the position of head basketball coach in respondent’s district. All three candidates had significant experience coaching basketball, but only Reed possessed a standard teaching certification. Baker possessed a certificate of eligibility to seek provisional employment. Patterson had no New Jersey teaching credentials at the time he applied for the coaching position, but received county substitute

¹ According to correspondence between the parties, petitioners received respondents’ exceptions on June 8, 2007. Petitioners were thus required – under *N.J.A.C.* 1:1-18.4(d), together with *N.J.A.C.* 1:1-1.4 – to file any reply exceptions with the Commissioner by June 15, 2007, five business days after their receipt of the initial exceptions. However, the Commissioner did not receive petitioners’ reply exceptions until June 18, 2007. Because they were untimely, they were not considered.

credentials in August 2006, after being selected by respondent for the job (subject to the approval of the district superintendent).

Petitioners appealed the hiring of Patterson, and respondents moved for summary decision. The ALJ determined that the position should have been awarded to Reed. More specifically, the ALJ reviewed the provisions of *N.J.A.C. 6A:9-5.19* and found that they allow individuals with substitute teaching credentials to serve as athletic coaches only if there are no qualified and certified applicants. *N.J.A.C. 6A:9-5.19* (c) provides in pertinent part:

(c) In the event there is no qualified and certified applicant, the holder of a county substitute credential pursuant to *N.J.A.C. 6A:9-6.5* is authorized to serve as an athletic coach in the district in which he or she is employed for a designated sports season, provided that:

1. The district chief school administrator demonstrates to the county superintendent that:
 - i. The vacant coaching position had been advertised; and
 - ii. There was no qualified applicant based on the written standards of the district board of education;
2. The district chief school administrator provides a letter to the county superintendent attesting to the prospective employee's knowledge and experience in the sport in which he or she will coach; and
3. The district board of education obtains the county superintendent's approval prior to such employment. The 20-day limitation noted in *N.J.A.C. 6A:9-6.5(b)* shall not apply to such coaching situations.

(Emphasis added)

While respondents do not dispute that Reed was the only candidate with standard certification, they contend in their exceptions that Reed was unqualified for the advertised coaching position because he had never served as the head basketball coach in a high school. This argument is, on this record, without merit. Reed had extensive coaching experience. His experience as an assistant coach in college may well have been more significant than

experience as a high school head coach. More important, however, is the fact that the job description did not expressly require candidates to have previous experience as a head high school coach. It required only that the candidate “show evidence of successful experience in the assigned sport.”

Two other legal issues required resolution, *i.e.*, respondents’ assertion that petitioners’ appeal was untimely, and respondent’s claim that petitioners were without standing to bring the appeal. As to the first issue, which respondents did not challenge in their exceptions, the Commissioner concurs with the ALJ that petitioners’ appeal was timely. It was filed within 90 days of the district superintendent’s approval of Patterson’s employment. Without that approval, Patterson’s employment would not have been secured. *N.J.A.C.* 6A:9-5.19(c)3.

Nor can the Commissioner disagree with the ALJ’s conclusion that petitioners had standing to file the appeal. At the outset, the Commissioner agrees with respondents’ contention, in their exceptions, that one of the cases upon which petitioners and the ALJ relied, *i.e.*, *Richard Harris and Kenton Garay v. Board of Education of the Hunterdon Central Regional High School District*, 96 *N.J.A.R.* 2d (EDU) 312, is not sufficiently apposite to the present case to support petitioners’ arguments about standing. In that case, teachers Harris and Garay were unsuccessful applicants for a coaching job. There can be little doubt that they had direct interests in the propriety of the district’s appointment to the coaching position of an individual who did not have standard teaching certification. By way of contrast, the petitioners in the present case cannot allege direct, personal harm from Patterson’s employment.

However, the Commissioner cannot agree that *Ridgewood Education Association et al. v. Ridgewood Board of Education*, 284 *N.J. Super.* 427 (App. Div. 1995), another case relied upon by petitioners and the ALJ, is unhelpful to petitioners. In *Ridgewood*, an Education

Association (REA) and two individuals challenged a rule promulgated by the local board of education limiting the employment of supplemental teachers to two consecutive years – barring the accrual of tenure. Because none of the current members of the REA were untenured supplemental teachers, the REA was deemed by the Commissioner not to have a direct interest in the challenged rule and, consequently, not to have standing. Further, the Commissioner agreed with the ALJ that the REA members’ status as taxpayers did not provide the REA with standing absent a showing that a public interest was implicated in the challenge.

The State Board of Education affirmed the Commissioner, but the Appellate Division reversed. It observed – citing *Crescent Park Tenants Ass’n v. Realty Equity Corp. of N.Y.*, 58 *N.J.* 98, 101, 107-11 (1971) – that New Jersey has “a venerable tradition of liberal application of standing criteria,” and found that *N.J.S.A. 52:14B-8*,² the provision of New Jersey’s Administrative Procedure Act permitting any interested person to challenge the applicability of any statute or rule enforced or administered by an agency, is grounded in that tradition. *Ridgewood Education Association, supra*, 284 *N.J. Super.* at 431. It also cited *Bell v. Stafford Tp.*, 110 *N.J.* 384, 390-91 (1988), for the proposition that the liberal application of standing criteria has been particularly applied “to taxpayer suits and the like.” *Ridgewood Education Association, supra*, 284 *N.J. Super.* at 431.

In finding that the REA had standing, the Appellate Division referred to the test which is set forth in *New Jersey State Chamber of Commerce v. New Jersey Election Law*

² *N.J.S.A. 52:14B-8* provides, in pertinent part:

Subject to the provisions of section 4(b) and 4(e) of Chapter 20, laws of 1944, as amended and supplemented . . . an agency upon the request of any interested person may in its discretion make a declaratory ruling with respect to the applicability to any person, property or state of facts of any statute or rule enforced or administered by that agency. A declaratory ruling shall bind the agency and all parties to the proceedings on the state of facts alleged. Full opportunity for hearing shall be afforded to the interested parties. Such ruling shall be deemed a final decision or action subject to review in the Appellate Division of the Superior Court.

Enforcement Comm'n, 82 N.J. 57, 68 (1980), that where a plaintiff association has an obvious, albeit indirect, interest in the effect upon others of statutory and administrative regulations, requirements for standing are met. *Ridgewood Education Association*, *supra*, 284 N.J. Super. at 432. In the Appellate Division's view, the REA's relationship to the board policy under attack was "not that of a total stranger or casual interloper." *Ibid*. The REA's interest in the challenged policy would be triggered by future members who were supplemental teachers without tenure.

Finally, relying upon *Silverman v. Board of Ed., Twp. of Millburn*, 134 N.J. Super. 253, 257-58 (Law Div.), *aff'd o.b.* 136 N.J. Super. 435 (App. Div. 1975), the Appellate Division stated:

"We see no reason why this State's historic liberal approaches to the issue of standing in general . . . should not apply to taxpayer suits challenging the quasi-legislative actions of local boards of education. . . . The official actions of boards of education are identical in the public interest sense to those of local governing bodies. . . . Although the route of review is different . . . , the principles of standing governing facial challenges to official conduct are the same in either context."

Ridgewood Education Association, *supra*, 284 N.J. Super. 433

The Commissioner finds that the foregoing principles are germane to the present case. The record includes a certification by Myron Baugh that he and most of the members of the petitioning organization – which has existed for ten years – are residents and taxpayers of Paterson who have expressed a strong interest in the workings of the high school. (Baugh certification, #2) According to the certification, the organization's members have manifested that interest by supporting the athletic program, by fundraising, by mentoring students, and by generally assisting student athletes in gaining entrance to college. (*Ibid.*) These facts, which were not rebutted by respondent, support the conclusion that petitioners are

taxpayers who have an interest in the respondent district's challenged action and are not strangers or casual interlopers as regards same.

Baugh's certification explained that "the experience and demeanor of a coach is crucial to maximize the opportunities for student athletes."

(Baugh certification, #8) He continued as follows:

"We are familiar with Mr. Patterson's background. He was a coach at a private school and had, unfortunately, what we considered to be significant disciplinary infractions while he was coaching there (he was suspended twice). There were instances of unsportsmanlike conduct known to us. We did not believe it likely that a certified teacher would have those problems."

Baugh certification, #9.

In summary, the petitioners can be reasonably deemed to have a sufficient interest both as taxpayers and persons actively involved with the high school athletes to have standing to challenge respondent's action as a violation of *N.J.A.C. 6A:9-5.19(c)*.

Even more significant, however, is the fact that Baugh certified that many of the members of the petitioning organization are parents of students at the high school – as the name of the organization suggests. (Baugh certification, #2) As such, they have an obvious, albeit indirect, interest in the effect upon their children of respondent's action and respondent's adherence, *vel non*, to *N.J.A.C. 6A:9-5.19(c)*. Thus, in the context of New Jersey's liberal tradition concerning standing, and in light of the facts of this case, the Commissioner finds that petitioners had standing to challenge the hiring of Patterson.

Accordingly, the appointment of Patterson to the position of head basketball coach at Paterson Eastside High School is vacated. While the evidence in the record suggests that Reed is qualified for the coaching position, Reed is not a party to this matter, and petitioners did not request his appointment as part of their demand for relief in the petition.

The Commissioner consequently declines, as part of this decision, to appoint Reed to the position of head basketball coach of Paterson Eastside High School.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: July 13, 2007

Date of Mailing: July 13, 2007

³ 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.*