

ROBERT LAGRUTTA, :
 :
 PETITIONER, :
 : COMMISSIONER OF EDUCATION
 V. :
 : DECISION
 BOARD OF EDUCATION OF THE :
 MORRIS COUNTY VOCATIONAL :
 SCHOOL DISTRICT, MORRIS COUNTY, :
 :
 RESPONDENT. :

SYNOPSIS

Petitioner claims that respondent Board violated his tenure rights by failing to appoint him to a part-time position of Apprentice Coordinator for the 2005-2006 school year. The petitioner holds an Educational Services certificate with endorsement as a Coordinator of Industrial Education (C.I.E.), and had been employed by respondent as a part-time Apprentice Coordinator for its Adult Education Program between 1995 and 2004. Petitioner does not hold an endorsement as Apprentice Coordinator. Respondent Board contends that petitioner is not tenured because he does not hold the proper certification pursuant to *N.J.A.C. 6A:9-13.21*.

The ALJ found, *inter alia*, that: the regulations clearly differentiate the County Apprenticeship Coordinator endorsement from the C.I.E. endorsement; petitioner does not possess the proper endorsement for the Apprenticeship Coordinator position; petitioner's prior employment as Apprenticeship Coordinator was based on waivers granted by the New Jersey Department of Education to the district, and cannot be construed as service under an appropriate certificate; petitioner did not take steps towards securing the appropriate endorsement, contending that it was impossible to attain, nor did he apply for an emergency County Apprenticeship Coordinator certificate. The ALJ concluded that petitioner had not gained tenure in the position of Apprenticeship Coordinator because he did not possess the required endorsement, and therefore cannot assert a seniority right to the part-time Apprentice Coordinator position reinstated for the 2005-2006 school year. The ALJ dismissed the petition.

Upon a thorough and independent review of the record, the Commissioner concurred with the ALJ that petitioner has no tenure rights and adopted the Initial Decision as the final decision in this matter. In so doing, the Commissioner noted that the referenced waivers permitted the district to employ a less-than-fully certified person, but did not operate to confer upon petitioner the certification necessary to meet the requirements of *N.J.S.A. 18A:28-5*. The Commissioner also noted that petitioner's contentions regarding the requirements for the Apprentice Coordinator certificate should have been directed to the State Board of Examiners in the context of an application for certification.

<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>

June 7, 2007

OAL DKT. NO. EDU 3291-06
AGENCY DKT. NO. 379-12/05

ROBERT LAGRUTTA, :
 :
 PETITIONER, :
 : COMMISSIONER OF EDUCATION
 V. :
 : DECISION
 BOARD OF EDUCATION OF THE :
 MORRIS COUNTY VOCATIONAL :
 SCHOOL DISTRICT, MORRIS COUNTY, :
 :
 RESPONDENT. :

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have exceptions filed by petitioner pursuant to *N.J.A.C.* 1:1-18.4. The Board of Education’s reply was untimely filed¹ and consequently has not been considered.

On exception, petitioner reasserts his claim to both tenured status and the position of part-time Apprentice Coordinator, substantially reiterating the arguments of his post-hearing brief as summarized in the Initial Decision. (Petitioner’s Exceptions at 1-7) He urges rejection of the OAL’s decision because the Administrative Law Judge (ALJ) failed to take sufficient account of the “specific, somewhat unique facts of this case,” ignoring that: 1) the Department of Education made it impossible, by including a course that was “simply was not taught in the state,” to meet the academic requirements for certification as an Apprentice Programs Coordinator; and 2) the Board was issued a

¹ Pursuant to *N.J.A.C.* 1:1-18.4(d), any reply to exceptions is due within five business days of receipt thereof. Petitioner’s exceptions were served on the Board by regular mail on May 9, 2007; the Board’s reply – dated May 22, 2007 – was filed with the Commissioner on May 30, 2007 with neither an explanation for its late date nor an extension having previously been requested pursuant to *N.J.A.C.* 1:1-18.8.

waiver allowing petitioner to work as Apprentice Coordinator under his C.I.E. Coordinator certificate, so that he did, in fact, possess an “appropriate certificate” for purposes of acquiring tenure in the position. The narrow reading of the law espoused by the ALJ, petitioner opines, results in “another example of an employee who plays by the rules [but] is denied tenure protections because of the actions, or inactions of other entities, whether the respondent or the Department of Education.” (*Id.* at 3)

Upon review, the Commissioner finds that the ALJ did, in fact, consider the circumstances stressed by petitioner, but concluded nonetheless – correctly – that petitioner did not hold the requisite certificate to obtain tenure as an Apprentice Coordinator, nor did he take steps to acquire it while employed with the district. (Initial Decision at 12-13.) The Commissioner notes in this regard that the waivers in question were granted to the *district* to permit it to employ a less-than-fully certified person in the position of Apprentice Coordinator, and such action does not – indeed, *cannot*, in view of the process for issuance of certificates by the State Board of Examiners – concomitantly confer upon petitioner as an *individual* the certification necessary to fulfill the requirements of *N.J.S.A.* 18A:28-5. Moreover, petitioner’s contention that the correct certificate was “impossible” to obtain because one required course was not easily available could and should have been raised before the State Board of Examiners in the context of an application for certification, the Examiners’ decision on which could then have been appealed to the Commissioner if petitioner believed it to be arbitrary or unlawful. Thus lacking the requisite certificate, as found by the ALJ, petitioner has no entitlement to tenure status, nor to the ancillary relief sought in the Petition. (Initial Decision at 14-15)

Accordingly, the Initial Decision of the OAL is adopted for the reasons expressed therein, and the Petition of Appeal is dismissed.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: June 7, 2007

Date of Mailing: June 7, 2007

² 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.*