

CAREY SAVAGE, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
CITY OF VINELAND,
CUMBERLAND COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner – a tenured, certificated supervisor in respondent’s district – claimed that the decision of the respondent Board to appoint a non-tenured person as supervisor of early childhood education violated his tenure rights. Petitioner’s position was eliminated in a reduction in force in July 2006 and he subsequently applied for a newly posted position as supervisor of early childhood education; the Board selected another candidate purportedly because petitioner did not possess the requisite experience in preschool education pursuant to *N.J.A.C. 6A:10A-2.2(a)(19)*.

The ALJ found that: the only issue to be determined in this matter is whether or not petitioner has the required experience in preschool education; it is appropriate to review petitioner’s experience as far back as may be relevant; petitioner’s experience between 1976 and 1979 in a Philadelphia learning center for preschoolers unquestionably qualifies as preschool experience and is not precluded by regulation; and the wording of the regulation does not require hands-on experience. The ALJ concluded that petitioner’s experience meets the regulatory requirements for experience in preschool education, and ordered that the Board provide the petitioner with back pay and emoluments due him from the date he was removed from their employ, September 20, 2006, until the date he returned to the district in another supervisory position, July 2, 2007; the ALJ also ordered that any income received during that period be considered in mitigation.

Upon a thorough and independent review of the record, the Commissioner concurred with the ALJ’s findings and conclusions, and adopted the Initial Decision as the final decision in this matter, with amplification regarding the appropriate standard of review and the ALJ’s order for relief.

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.
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May 23, 2008

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The record of this matter, the Initial Decision of the Office of Administrative Law (OAL) and the parties’ exceptions have been reviewed. No hearing transcript was provided to the Commissioner.

The parties stipulate that petitioner was a tenured, certificated supervisor in respondent’s district. His job title was “supervisor of whole school reform and data analysis,” and the description for that title is attached as Exhibit A to a Stipulation of Facts that was submitted by the parties prior to the January 4, 2008, hearing at the OAL (the Stipulation). On July 19, 2006, respondent abolished that and other positions in the course of a legitimate reduction in force. Petitioner was advised that his last day of employment would be September 20, 2006.

Later in July 2006, respondent’s district posted the position of “supervisor of early childhood education.” Petitioner applied, but a Ms. Bleistine – another employee who was qualified for the job, but not a tenured supervisor – was given the position. In response to petitioner’s inquiry as to why he was not selected for the job, respondent’s interim

superintendent – in a letter dated September 7, 2006, which is annexed to the Stipulation as Exhibit D – cited two criteria set forth in *N.J.A.C. 6A:10A-2.2(a)(19)*, which identifies qualifications for supervisors of preschool education. More specifically, the interim superintendent directed petitioner’s attention to the following two job requirements:

Each district Board of Education shall ensure that Supervisors of Preschool programs hold a New Jersey Supervisor’s Certificate and have a background and experience in Preschool Education.

The interim superintendent advised petitioner that “it was determined that [petitioner’s experience working from 1976-1979 in a Philadelphia learning center for preschoolers] did not satisfy the criteria of ‘a background and experience in Preschool Education’.”

Petitioner filed his appeal with the Commissioner on October 26, 2006. In its answer, respondent conceded that petitioner holds a New Jersey administrative certificate with a supervisor endorsement, but once again alleged that he lacked “the requisite background and experience in preschool education.” In Paragraph 12 of the pre-hearing Stipulation it was reiterated that the reason for petitioner’s rejection was that he did not have the background and experience in preschool education called for in *N.J.A.C. 6A:10A-2.2 (a) (19)* for the position of supervisor of early childhood education.

In the case file forwarded to the Commissioner is an unsigned and undated “Stipulated Statement of Facts” (Stipulated Statement) which appears to summarize the testimony given at the OAL hearing. Paragraph 21 of the Stipulated Statement recites that “[t]he only issue to be decided in this matter is whether petitioner had experience in preschool education, as required by *N.J.A.C. 6A:10A-2.2 (a) (19)*.” Paragraph 22 states:

If petitioner had “experience in preschool education” as required by *N.J.A.C. 6A:10A-2.2 (a) (19)* and was in competition with a non-tenured applicant, such as Ms. Bleistine, for the position of

supervisor of early childhood education, he would have been awarded the job because of his tenured status.

These two paragraphs can also be found on page 5 of the Initial Decision, at the end of the section entitled “Stipulated Facts.”

The Administrative Law Judge (ALJ) concluded, after considering the hearing testimony and petitioner’s job descriptions and educational certificates, as follows:

[T]he experience described by petitioner meets the regulatory requirements of “experience in preschool education” found at *N.J.A.C. 6A:10A-2.2 (a) (19)*.

Initial Decision at 10-11.

In light of the facts concerning petitioner’s administrative, supervisory and analytical experience relating to early childhood education, and for the reasons set forth in the Initial Decision, the Commissioner concurs that it was unreasonable for respondent to determine that petitioner’s experience relating to preschool education was inadequate. *See, e.g., Kopera v. West Orange Board of Education*, 60 *N.J. Super.* 288, 294-96 (App. Div. 1960); *G.M. on behalf of minor child T.M. v. Board of Education of the Borough of Roselle Park, Union County*, 95 *N.J.A.R.* 2d (EDU) 107, 109 (It is well established that actions of local boards that lie within their discretionary powers may not be upset unless they are arbitrary, without rational basis or induced by improper motives.)

Nor will the Commissioner disturb the ALJ’s determination to disregard respondent’s argument that it’s decision to reject petitioner’s application for the early childhood supervisor position was justified by petitioner’s alleged failure to have participated in annual training specific to preschool program implementation. This argument is untimely, as it

appeared for the first time in respondent's post-hearing brief.¹ The Commissioner, therefore, adopts the Initial Decision of the OAL.

In considering the ALJ's order for relief, the Commissioner notes that it does not correspond with the relief that petitioner requested in his petition – *i.e.*, placement into the position of early childhood supervisor in respondent's district, with retroactive salary and benefits. This may be explained by facts disclosed on page 5 of the Initial Decision. More specifically, after petitioner's job in respondent's district – as supervisor of whole school reform and data analysis – ended, he worked in the Bridgeton School District for ten months as supervisor of mathematics and science. On July 2, 2007 he returned to respondent's district as “supervisor for Tier I No Child Left Behind Data Analysis and Art.”

The Commissioner assumes that the ALJ's order – solely restoring “back pay and emoluments owed from the date he was removed from employment, September 20, 2006, until the date he returned to employment in Vineland, July 2, 2007,” minus any income he received during that period – reflects that fact that petitioner once again holds a supervisory position in respondent's district and no longer wishes to replace the current supervisor of preschool education. This assumption is buttressed by petitioner's failure to except to the relief ordered by the ALJ.

Accordingly, respondent shall pay to petitioner all back salary and benefits owed from September 21, 2006 through July 1, 2007, less any income petitioner received from employment during that period.

¹ Nor is it clear to the Commissioner from the wording of *N.J.A.C.* 6A:10A-2.2 (a) (19) that it requires a candidate for supervisor of preschool programs to have already participated in annual training in preschool program implementation prior to his or her installation into the supervisor position.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: May 23, 2008

Date of Mailing: May 27, 2008

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.*