

MARY MCKENNEDY, :
PETITIONER, : COMMISSIONER OF EDUCATION
V. : DECISION
BOARD OF EDUCATION OF THE :
BOROUGH OF BRIELLE, :
MONMOUTH COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner – a tenured teacher employed by the respondent Board, who holds a standard instructional certificate with endorsements as a Teacher of Social Studies and as an Elementary School Teacher – alleged that a less senior tenured teacher was retained over petitioner when her position was eliminated during a reduction in force (RIF), in violation of *N.J.A.C. 6A:32-5.1*. The Board contended that petitioner was not qualified for any position in which a non-tenured or less-senior tenured teacher was retained.

The ALJ found, *inter alia*, that: the issue to be determined here is whether petitioner proved by a preponderance of evidence that the Board violated her tenure rights by not returning her to work in the 2010-2011 school year and offering positions to other people less qualified and with less seniority; petitioner began working part-time in the district in September 2005, teaching Spanish and art; petitioner continued in a part-time capacity through the 2007-2008 school year, employed variously as a teacher of Spanish, Study Skills/World Languages, and K-5; petitioner was transferred to a full-time position as Enrichment teacher for the 2008-2009 and 2009-2010 school years, and was tenured in respondent’s district at the time of the RIF in June 2010; the teachers retained by the Board for the 2010-2011 school year either had earned more seniority than petitioner or were qualified to teach subjects for which petitioner did not have appropriate credentials. Accordingly the ALJ concluded that petitioner’s tenure and seniority rights were not violated, and recommended dismissal of the petition.

Upon review of the record and Initial Decision issued by the OAL, the Commissioner concurred with the ALJ’s conclusion that respondent did not violate petitioner’s tenure and/or seniority rights. Accordingly, the petition was dismissed.

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.

December 29, 2014

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Before the Commissioner is petitioner’s claim that she was improperly subject to a reduction in force for the 2010-2011 school year while non-tenured teachers or teachers with less seniority remained employed in respondent’s school district. A hearing was held in the Office of Administrative Law (OAL) on February 25, 2014,¹ and on November 10, 2014 the Administrative Law Judge (ALJ) assigned to the case issued an Initial Decision. The ALJ found that the teachers whom respondent retained for the 2010-2011 school year either had earned more seniority than petitioner, or were qualified to teach subjects for which petitioner did not have the appropriate credentials. Consequently, the ALJ concluded that petitioner’s tenure and seniority rights had not been violated, and recommended that the petition be dismissed. Upon review of the available record and the Initial Decision, the Commissioner agrees.

In timely filed exceptions, petitioner challenges the Initial Decision as it relates to petitioner’s colleague, Peter Petosa. Petosa was retained in the 2010-2011 school year to teach 6th and 7th grade social studies, and petitioner maintains that she should have been offered that position. The basis for her contention is that she holds both elementary education and social studies endorsements to her instructional certificate, while Petosa holds only an endorsement for elementary education which, in

¹ The Commissioner was not provided with the transcripts of said hearing.

petitioner's view, limits Petosa to teaching grades K-5. Petitioner further alleges that Petosa is not a "highly qualified" teacher and that this status should have prevented respondent from appointing him to the social studies position in the 2010-2011 school year.

It is undisputed that Petosa has accumulated more seniority than petitioner as an elementary teacher in respondent's district. Further, notwithstanding that petitioner has a social studies endorsement to her instructional certificate, she cannot show that she had a greater right to the 6th and 7th grade social studies position in 2010. First, there is no support in the record for petitioner's assertion that Petosa's "Elementary School Teacher" certificate barred him from teaching 6th and 7th grade social studies. Second, since a staff member must have actual experience in a particular subject area or field in order to earn seniority, *Ressler v. Saddle Brook Bd. of Educ.*, OAL Dkt. Nos. EDU 0705-92 & EDU 5018-92 (May 13, 1994), adopted (Comm'r June 27, 1994), petitioner's lack of teaching experience under her social studies endorsement precluded her from acquiring seniority in that category.²

Accordingly, the Commissioner adopts the ALJ's conclusion that respondent did not violate petitioner's tenure and/or seniority rights, and dismisses the petition.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: December 29, 2014

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² Petitioner's arguments concerning whether Petosa was a highly qualified teacher are not dispositive of the issues in this case. There is nothing in the record which proves or disproves petitioner's supposition that Petosa is not a highly qualified teacher. Moreover, the classification "highly qualified" refers to a requirement in the federal "No Child Left Behind" legislation that does not inform the instant controversy about seniority under the school laws of New Jersey.

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.*