

EDU #1756-96  
C # 184-97  
SB # 50-97

SUSAN BESHAW, :  
PETITIONER-RESPONDENT, :  
V. : STATE BOARD OF EDUCATION  
BOARD OF EDUCATION OF THE : DECISION  
BOROUGH OF OAKLAND, BERGEN :  
COUNTY, :  
RESPONDENT-APPELLANT. :

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Decided by the Commissioner of Education, April 14, 1997

For the Petitioner-Respondent, Bucceri & Pincus (Gregory T. Syrek, Esq.,  
of Counsel)

For the Respondent-Appellant, Fogarty & Hara (Stephen R. Fogarty, Esq.,  
of Counsel)

On May 1, 1995, the Board of Education of the Borough of Oakland (hereinafter "Board") voted to abolish the teaching position of Susan Beshaw (hereinafter "petitioner"), a tenured staff member assigned to teach home economics, effective at the end of the 1994-95 school year as the result of a reduction in force ("RIF"). On July 19, 1995, the Board posted notice of a full-time middle school position teaching "Skills for Successful Living," "The World of Work," "Keyboarding" and "Study Skills."<sup>1</sup> The position as posted required "K-8 certification." The County Superintendent subsequently determined in August 1995 that an elementary education endorsement was the

appropriate certification for these courses. Affidavit of Lawrence R. Ksanznak, Superintendent of Schools, at 4. Petitioner held only an endorsement in home economics at the time of the RIF.<sup>2</sup> Petitioner acknowledged that she had learned of the job posting in late August 1995, but maintained that she had not been aware of the substance of the courses or whether they were within the scope of her home economics certification until after she had obtained copies of the curricula several months later.

On January 18, 1996, petitioner filed a petition of appeal with the Commissioner of Education alleging that the Board had violated her tenure rights when it assigned “Skills for Successful Living” and “The World of Work” to a non-tenured teacher for the 1995-96 school year. Petitioner alleged that such courses were within the scope of her home economics endorsement. The Board filed a motion for summary decision, arguing that the petition was not filed in a timely manner pursuant to N.J.A.C. 6:24-1.2(c).<sup>3</sup>

On February 24, 1997, an Administrative Law Judge (“ALJ”) recommended granting the Board’s motion and dismissing the petition. The ALJ concluded that petitioner had notice of a possible claim against the Board on September 5, 1995 when the principal of her school announced at a faculty meeting that a non-tenured teacher had been assigned to teach “Skills for Successful Living” and “The World of Work.” The

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<sup>1</sup> We note that the job posting referred to “Skills for Successful Living” and “The World of Work” as “Success for Living” and “Career Education.”

<sup>2</sup> Although petitioner obtained an elementary education endorsement in July 1995, there is no authority for accrual of additional rights in a tenured position after dismissal therefrom in a RIF. Francey v. Board of Educ. of Salem, decided by the State Board of Education, August 3, 1994, aff’d, 286 N.J. Super. 354 (App. Div. 1996).

<sup>3</sup> N.J.A.C. 6:24-1.2(c) provides that:

The petitioner shall file a petition no later than the 90th day from the date of receipt of the notice of a final order, ruling or other action by the district board of education, individual party, or agency, which is the subject of the requested contested case hearing.

ALJ further found that there were no compelling circumstances that would warrant relaxation of the 90-day rule in this instance. N.J.A.C. 6:24-1.15.

On April 14, 1997, the Commissioner of Education rejected the ALJ's recommendation and remanded this matter to the Office of Administrative Law for further proceedings. The Commissioner found that petitioner could not reasonably have concluded from the job posting that she may have had a claim to the courses at issue and that, as a result, notice could not be reckoned merely from the appointment of a non-tenured individual to teach those courses. The Commissioner found that the record revealed the existence of a fundamental factual dispute which directly impacted upon the timeliness issue, i.e., when petitioner first requested a copy of the curricula for the courses at issue, a fact which he found to be crucial to the underlying determination of when petitioner knew or reasonably should have known that she had a possible claim to teach the courses at issue. Since the ALJ had rendered neither factual findings nor credibility assessments in this regard, the Commissioner remanded this matter to the Office of Administrative Law for further proceedings in order to determine whether petitioner had filed her petition in a timely manner.

The Board filed the instant appeal to the State Board, again arguing that petitioner's claim was time-barred. We agree and, after a thorough review of the record, we reverse the decision of the Commissioner.

In Kaprow v. Board of Education of Berkeley, 131 N.J. 572, 587 (1993), the New Jersey Supreme Court stated:

When a plaintiff knows or has reason to know that he has a cause of action against an identifiable defendant and voluntarily sleeps on his rights so long as to permit the

customary period of limitations to expire, the pertinent considerations of individual justice as well as the broader considerations of repose, coincide to bar his action. [Farrell v. Votator Div., 62 N.J. 111, 115, 299 A.2d 394 (1973).] Adequate notice under N.J.A.C. 6:24-1.2 should...effectuate concerns for individual justice by not triggering the limitations period until the tenured teachers have been alerted to the existence of facts that may equate in law with a post-RIF cause of action. See Burd v. New Jersey Tel. Co., 76 N.J. 284, 291, 386 A.2d 1310 (1978). At the same time, it should further considerations of repose by establishing an objective event to trigger the limitations period in order "to enable the proper and efficient administration of the affairs of government." Borough of Park Ridge v. Salimone, 21 N.J. 28, 48, 120 A.2d 721 (1956).

The final order, ruling or other action by the Board giving rise to petitioner's claim in this case occurred when the Board appointed a non-tenured individual to teach "Skills for Successful Living" and "The World of Work," courses to which petitioner now claims entitlement by virtue of tenure. Petitioner received notice of the Board's action on September 5, 1995, when the principal of the school in which she was employed announced the appointment at a faculty meeting. We find that such notice alerted petitioner to the existence of facts that might equate in law with a cause of action and was sufficient to enable her to pursue a claim, thereby triggering the ninety-day filing period of N.J.A.C. 6:24-1.2.

By virtue of her possession of an instructional certification in home economics, petitioner was authorized to teach:

home economics in all public schools. Home economics normally includes: Homemaking and consumer education, foods and nutrition, family living and parenthood education, child development and guidance, housing and home furnishings, home management, clothing and textiles, and family health and safety.

N.J.A.C. 6:11-6.2(a)(12).

Given the scope of such authorization, we conclude that the course titles in this instance, "Skills for Successful Living" and "The World of Work,"<sup>4</sup> were broad enough to provide petitioner with notice sufficient to enable her to pursue a possible tenure claim against the Board under her home economics certification. The fact that petitioner did not request or review the curricula for those courses until some time later does not under these circumstances enlarge her time period for filing a petition challenging the Board's action.

Consequently, we agree with the ALJ that petitioner had reason to know of her tenure claim to "Skills for Successful Living" and "The World of Work" by September 5, 1995, when she learned that a non-tenured individual had been assigned to teach those courses. Since petitioner did not file her petition until January 18, 1996, 4½ months later, the petition was untimely. Nor do we find any basis in the record for relaxation of the 90-day rule in this case.

In that the facts in dispute pertain to the date on which petitioner requested copies of the course curricula, which we have found to be immaterial to a determination in this matter, we reverse the decision of the Commissioner, grant the Board's motion for summary decision and dismiss the petition. See Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520 (1995).

Attorney exceptions are noted.

February 4, 1998

Date of mailing \_\_\_\_\_

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<sup>4</sup> See supra. note 1.