

EDU #8280-95
C # 321-96
SB # 53-96

SANDRA BJERRE, :
PETITIONER-APPELLANT, :
V. : STATE BOARD OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
BOROUGH OF HAMPTON, :
HUNTERDON COUNTY, :
RESPONDENT-RESPONDENT. :

Decided by the Commissioner of Education, July 22, 1996

For the Petitioner-Appellant, Zazzali, Zazzali, Fagella & Nowak (Richard A. Friedman, Esq. and Edward H. O'Hare, Esq., of Counsel)

For the Respondent-Respondent, Parker, McCay & Criscuolo (John E. Collins, Esq., of Counsel)

Sandra Bjerre (hereinafter "petitioner") had been employed part-time since February 1991 by the Board of Education of the Borough of Hampton (hereinafter "Board") as a "Library Skills Teacher" under her instructional certification in elementary education. However, following monitoring by the Department of Education, the Board was notified by letter dated June 30, 1995 from the Hunterdon County Superintendent of Schools that, in order to offer library studies/services to students, it was required to employ an individual who possessed certification as either an educational media specialist or an associate educational media specialist. On July 11, 1995, the Board voted to terminate the petitioner's employment since she did not hold the appropriate certification for the position as determined by the County Superintendent.

The petitioner filed a petition of appeal with the Commissioner of Education, alleging that she had achieved tenure as a teacher as a result of her employment in the district and that the Board had violated her tenure rights when it terminated her employment and failed to assign her to a full-time position within the scope of her teaching certificate.

The Board filed a motion for summary decision with the Administrative Law Judge (“ALJ”), contending that the petitioner’s employment had properly been terminated and that she had no tenure rights to a teaching position.

On June 3, 1996, the ALJ, finding that there were no material facts in dispute, recommended granting the Board’s motion and dismissing the petition. The ALJ found that the petitioner had been put on notice by the Board in 1991 that it was necessary for her to work towards acquiring an educational media specialist endorsement and that she had failed to do so. He asserted that “[w]hen the Board terminated the petitioner, she did not hold the required certificate for the position, she had not made good faith efforts to acquire the certification for the position and she could not remain in the position.” Initial Decision, slip op. at 7. The ALJ stressed: “When the County Superintendent sent notice that the petitioner was not properly certified for her position, her employment relationship ceased as a matter of law. Even if the Board had taken no official action, her contract with the Board was void.” Id. at 8.

In reliance upon Wallen v. Rancocas Valley Reg’l High School Board of Education, decided by the Commissioner of Education, 92 N.J.A.R.2d (EDU) 670, aff’d, State Board of Education, 92 N.J.A.R.2d (EDU) 303, the ALJ further determined that the petitioner had no entitlement by virtue of tenure to reinstatement in a teaching position,

observing that “the positions of ‘teacher’ and ‘media specialist’ are substantially distinct.” Id. at 9.

On July 22, 1996, the Commissioner adopted the findings and conclusions of the ALJ and dismissed the petition. The ALJ agreed that “regardless of whether petitioner performed instructional duties, petitioner did not possess the requisite certification for her position and that without such certification, petitioner could not accrue tenure....Thus, whether petitioner held an instructional certificate and performed instructional duties is not determinative of the petitioner’s tenure rights where the county superintendent has duly determined that the position in question requires the educational services certificate.” Commissioner’s Decision, slip op. at 13-14. The Commissioner further agreed with the ALJ that “the Board’s failure to ‘specifically mandate’ that petitioner obtain appropriate certification as a media specialist does not justify an alternate finding.” Id. at 14. The Commissioner pointed out that the regulations governing educational media specialists were “specific in their scope,” and he was “unpersuaded by petitioner’s argument that the Board failed to provide her with notice that certification was necessary, as such notice, which, even assuming arguendo and contrary to the ALJ’s findings, petitioner had not received, would not be determinative in the present matter.” Id.

The petitioner filed the instant appeal to the State Board, arguing that the Commissioner had improperly granted summary decision to the Board.

After a thorough review of the record, we affirm the decision of the Commissioner as clarified herein.

Under the standard established In Brill v. Guardian Life Ins. Co., 142 N.J. 520, 540 (1995), “a determination whether there exists a ‘genuine issue’ of material fact that

precludes summary judgment requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party....If there exists a single, unavoidable resolution of the alleged disputed issue of fact, that issue should be considered insufficient to constitute a 'genuine' issue of material fact....The import of our holding is that when the evidence 'is so one-sided that one party must prevail as a matter of law,' [citation omitted] the trial court should not hesitate to grant summary judgment." The Court emphasized that the thrust of its decision was "to encourage trial courts not to refrain from granting summary judgment when the proper circumstances present themselves." Id. at 541.

On the basis of the parties' submissions, we conclude that there exists a "single, unavoidable resolution of the alleged disputed issue of fact," warranting grant of the Board's motion. Even granting all favorable inferences to the petitioner, we find that she has not set forth a genuine issue of material fact under the standard articulated in Brill, and we agree that the Board was entitled to summary decision.

There is no dispute that a significant portion of the petitioner's duties was instructional in nature. However, Thomas S. Lubben, the Chief School Administrator in the district, averred in a certification filed with the Board's motion that he had directly supervised the petitioner and that, in addition to her instructional duties, the petitioner had also been responsible for the operation and supervision of the school library. In an attachment included with his certification, Lubben elaborated on the specific duties the petitioner had been required to perform, which included: maintaining a system for cataloging media center materials; routinely reviewing and culling the entire media

collection; assisting teachers in the selection of books and other instructional materials; evaluating and selecting new media center materials; coordinating the program with the Hunterdon County public library; preparing and administering the library budget; and supervising the library aide.

In a certification filed in response to the Board's motion, the petitioner countered only that: "I disagree that the purported duties set forth [in Lubben's certification] accurately reflect my responsibilities and assignments." Petitioner's Certification, at 5. She did not provide any specifics regarding which duties she alleged were not part of her job functions. Nor did she offer a counterstatement of her responsibilities, listing only those functions which she contended were instructional in nature. We note in that regard that "[b]are conclusions in the pleadings, without factual support in the tendered affidavits, will not defeat a meritorious application for summary judgment." Gherardi v. Trenton Board of Education, 53 N.J. Super. 349, 358 (App. Div. 1958). Indeed, the petitioner did not deny that a portion of her duties included responsibility for the operation of the library, averring that "[m]uch of the actual 'library responsibilities,' i.e., ordering materials, administering the budget, etc., was completed on my own time." Id. at 3. Moreover, in response to interrogatories expounded by the Board, the petitioner acknowledged that, in addition to her teaching duties, she had also performed functions "relating to the operation of the library," including "collection development, budgeting, interlibrary loans, ordering and arranging books and magazines, supervising aide, reviewing mail and correspondence, and responsibility for organization, procedures, and statistics." Answer to Interrogatories, at 4.

We reject the petitioner's contention that the Commissioner should not have considered the document filed with Lubben's certification in which he detailed the

petitioner's duties. The petitioner argues that this document should have been disregarded since it was not prepared until after she had filed her petition in this matter. We find no merit to the petitioner's contention. There is no proscription to the preparation of such a document in support of the Board's motion for summary decision, and the petitioner, in filing her response to the Board's motion, had a full opportunity to refute the specific duties contained in that document and/or to provide her own version of her job responsibilities.

Nor is this result altered by the petitioner's contention that the Board had viewed her position as instructional in nature and had not required her to acquire certification as an educational media specialist.¹ As previously stated, the County Superintendent determined that the library skills position held by the petitioner required certification as an educational media specialist or an associate educational media specialist in order to be qualified to perform the functions thereof.² Thus, even if the Board had viewed the position as instructional and had not required the petitioner to acquire an educational media specialist endorsement, it is the County Superintendent's judgment as to the appropriate certification which is determinative.³ As a result, once the County

¹ We note that the petitioner was advised by Chief School Administrator Lubben in a letter dated February 3, 1991 that: "It is understood that you will pursue course work toward possibly an Associate Education Media Specialist, (School Librarian)." In a performance evaluation of the petitioner prepared by Lubben in June 1991, he specified as an area needing improvement or development: "Begin to enroll in courses that will enable you to be certificated as a school librarian." In a Professional Improvement/Development Plan provided to the petitioner in June 1992, it was indicated that her attainment of library certification "was delayed and will be repeated in 1992-93."

² N.J.A.C. 6:11-11.17 provides that an educational media specialist endorsement is required "for any person who is assigned to develop and coordinate educational media services in the public schools. Educational media are defined as all print and nonprint resources and the equipment needed for their use."

³ We correct the Commissioner's assertion that the petitioner was required to name the County Superintendent as a party to this matter if she wanted to challenge his certification determination. Although the county superintendent is charged with responsibility in the first instance for determining the appropriate certification for service in an unrecognized position title, N.J.A.C. 6:11-3.3(b), the State Board of Education has the ultimate administrative authority for determining certification requirements, South

Superintendent determined that the position required educational media specialist certification, which the petitioner did not possess, her employment could properly be terminated. “The services of any teaching staff member who is not the holder of an appropriate certificate...may be terminated without charge or trial....” N.J.S.A. 18A:28-14. We stress, in addition, that “[n]o teaching staff member shall acquire tenure in any position in the public schools in any school district or under any board of education, who is not the holder of an appropriate certificate for such position....” N.J.S.A. 18A:28-4.

Accordingly, we affirm the decision of the Commissioner as clarified herein.

Attorney exceptions are noted.⁴

Maud Dahme and Arnold G. Hyndman abstained.

July 5, 2000

Date of mailing _____

River Education Association v. Board of Education of the Borough of South River, decided by the State Board, November 4, 1987, aff'd, Docket #A-1695-87T8 (App. Div. 1990); Pezzullo v. Board of Education of the Township of Willingboro, decided by the State Board, March 1, 1989, appeal dismissed, Docket #A-4006-88T1 (App. Div. 1989), and there is no requirement that a petitioner join the county superintendent in order to challenge a certification requirement. Zachau v. Burlington County Vocational and Technical Schools, decided by the State Board of Education, September 4, 1996.

⁴ We note that our Legal Committee granted the Board's request for leave to file exceptions to the Committee's report in this matter beyond the ten day period established by N.J.A.C. 6A:4-1.17, and that we have therefore considered the exceptions filed by the Board on June 6, 2000 in determining this case.