

EDU #10767-96S
C # 489-97
SB # 84-97

ALICE H. YUCHT, :
PETITIONER-APPELLANT, :
V. : STATE BOARD OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
BOROUGH OF MILLTOWN,
MIDDLESEX COUNTY, :
RESPONDENT-RESPONDENT. :

Decided by the Commissioner of Education, September 17, 1997

For the Petitioner-Appellant, Klausner, Hunter & Rosenberg (Stephen E. Klausner, Esq., of Counsel)

For the Respondent-Respondent, Borrus, Goldin, Foley, Hyman & Stahl (Anthony B. Vignuolo, Esq., of Counsel)

Alice H. Yucht (hereinafter "petitioner") was employed by the Board of Education of the Borough of Milltown (hereinafter "Board") as a librarian/media specialist until her position was abolished as the result of a reduction in force effective June 30, 1994. It is undisputed that the petitioner had achieved tenure as a result of such employment. On November 6, 1996, the petitioner filed a petition of appeal with the Commissioner of Education alleging that the Board had violated her tenure rights when it failed to reinstate her in a newly-created position of "Librarian/Media Specialist" for the 1996-97 school year. The job description for that position required certification "as any of the following":

(1) Educational Media Specialist, (2) Associate Educational Media Specialist, or (3) such other appropriate certification as may be required by the New Jersey Department of Education, and (4) with preference considered for those also possessing an Elementary School Teacher certificate.

Exhibit A, in evidence.

The responsibilities for the position, as listed in the job description, included:

Developing lesson plans in order to adapt and teach the curriculum to the needs of the pupils including but not limited to library skills, computer education, and general elementary education as the master schedule permits, in cross curricular and interdisciplinary formats.

Id.

The petitioner held the following certifications: Teacher of English, Professional Librarian and Educational Media Specialist. The job description for her abolished librarian/media specialist position specified its "Primary Function" as: "Assumes responsibility for the instruction of assigned students in accordance with the district and school's instructional goals approved by the Board of Education as well as the comprehensive management of the library/media center." Schedule A, in evidence.

On August 6, 1997, an administrative law judge ("ALJ") recommended dismissing the petition, concluding that the petitioner had failed to establish any entitlement to the newly created position. The ALJ found that the job description specifically included instructional duties in general elementary education and that the petitioner was not qualified to perform such responsibilities since her instructional certification was in English rather than elementary education. The ALJ further found that the Board's decision to combine the various functions into a single position was not arbitrary, unreasonable or illegal, observing that the Board was not required to "bifurcate positions to suit the 'desires and maximize its scheduled course offerings to coincide with (petitioner's) areas of certification.'" (Citations omitted.) Initial Decision, slip op. at 4.

On September 17, 1997, the Commissioner adopted the findings and conclusions of the ALJ and dismissed the petition. The Commissioner indicated that he:

cannot find that the Board's dual certification requirement is improper. As the ALJ correctly notes, that the Board decided to combine the library/media and instructional duties is not a decision in which he will interfere, absent a showing that the Board has violated state law, administrative code or has acted arbitrarily. The Commissioner concurs with the ALJ that such is not the case.

Commissioner's Decision, slip op. at 9.

The petitioner filed the instant appeal to the State Board.

After a careful review of the record, we affirm the decision of the Commissioner as modified herein.

On the basis of the record before us, including the job description and the actual duties identified by the parties, we find that the newly-created position constituted an unrecognized position title requiring both an instructional and an educational services certificate. While the county superintendent is charged with responsibility in the first instance for determining the appropriate certification for service in an unrecognized position title based upon the specific duties required to be performed, N.J.A.C. 6:11-3.3(b), the State Board of Education has the ultimate administrative authority for determining certification requirements.¹ South 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).

¹ We note that there is no indication in the record that the job description for the newly created position was submitted to the County Superintendent for approval and determination of the appropriate certification as required for unrecognized positions.

In this instance, we agree that the duties of the newly-created position as reflected in the record before us are of such character as to require possession of a teaching certificate in elementary education in addition to an appropriate educational services endorsement in order to be qualified to perform such functions.²

We find, in addition, as pointed out by the Board, that the newly created position is substantially different from the petitioner's abolished position in that it requires instruction in general elementary education. The petitioner's instructional certification in English, which permits her to "teach English in all public schools," N.J.A.C. 6:11-6.2(a)7, does not authorize her to teach "general elementary education...in cross curricular and interdisciplinary formats," as provided in the job description, including mathematics, the subject area assigned to the position in 1996-97. Exhibits C and D, in evidence.

Consequently, as modified herein, we affirm the decision of the Commissioner to dismiss the petition.

Attorney exceptions are noted.

Arnold G. Hyndman abstained.

July 5, 2000

Date of mailing _____

² We reject the petitioner's argument, reiterated in her exceptions to the report of our Legal Committee, that an elementary endorsement is not required for the position since the job description adopted by the Board indicated only a "preference" for such certification. As previously stated, it is the county superintendent who is charged in the first instance with the responsible for determining the appropriate certification for service in an unrecognized position. It is that determination, made on the basis of the specific duties required to be performed in the position, which is determinative. We remind the Board in that regard that an unrecognized position title is required to be submitted annually to the county superintendent for review. N.J.A.C. 6:11-3.3(b).