

MARY KOPKO, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE : DECISION ON REMAND
BOROUGH OF CARTERET,
MIDDLESEX COUNTY, :

RESPONDENT. :

SYNOPSIS

Petitioner sought reinstatement to a full-time tenured position following Board’s actions eliminating her tenured position of Teacher-Coordinator of Cooperative Vocational-Technical Education (COE): Business Education and abolishing the position of Coordinator of Cooperative Marketing Education in order to establish a new, consolidated position of COE/Marketing Education Coordinator.

In prior decision, ALJ found summary judgment was appropriate. ALJ concluded administrators’ recommendations to the Board that a reduction in force and a consolidation of academic courses take place were appropriate and that petitioner was not dismissed from her position by reason of her gender (male teacher was appointed to new position). ALJ concluded that petitioner was not entitled to the new position because she did not hold the two endorsements required and she never taught a Cooperative Marketing Education class. Board’s motion to dismiss was granted. Commissioner concurred with ALJ that the Board’s “RIF” of petitioner and abolishment of two positions in order to establish new consolidated position were within its authority and discretion. However, citing *Dennery*, the Commissioner remanded matter solely to determine, by stipulation or testimony, the job duties of the position of COE/Marketing Education Coordinator so as to assess the certification(s) required for the position, as well as petitioner’s claim to the position.

On remand, the ALJ concluded that the job duties of the COE/Marketing Education Coordinator properly demanded that the instructor hold the two endorsements the Board required. As petitioner did not possess the two endorsements, there was no justiciable issue here and the petition was dismissed.

Commissioner adopted findings and determination in initial decision as his own.

OAL DKT. NOS. EDU 6804-96 and EDU 10298-94 (ON REMAND)
AGENCY DKT. NO. 384-9/94

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The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. Respondent's exceptions are duly noted as submitted in accordance with *N.J.A.C.* 1:1-18.4, and were considered by the Commissioner in rendering the within decision.

Upon careful and independent review of the record in this matter, the Commissioner concurs with the ALJ's conclusion that the Board has demonstrated that the job duties of the COE/Marketing Education Coordinator are such that it has appropriately required dual certification in order to hold that position, notwithstanding that the Board, apparently, has not yet developed a single job or course description to accommodate the consolidated Cooperative Business Education and Marketing II courses.¹ The certifications and testimony of both Joseph A. Torre and S. Louis Panigrosso fairly establish that the COE/Marketing Education

Coordinator is responsible for teaching two distinct occupational areas, *i.e.*, the broader study of business education, and the more narrow field of marketing education.

Accordingly, the initial decision of the ALJ is adopted for the reasons expressed therein.² The Petition of Appeal is hereby dismissed.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

DATE: October 30, 1997

¹ Although, as the ALJ notes, Intervenor Scally resigned from employment with the Board prior to the issuance of the initial decision on remand, the Commissioner's conclusion as to the propriety of the Board's action is unaffected by her resignation.

² In response to the ALJ's observation on page 7 of the initial decision, the Commissioner herein notes there is nothing in the pertinent regulations which would compel a local board to obtain an opinion, written or otherwise, from the county superintendent upon assigning a recognized title to a new position. *N.J.A.C.* 6:11-3.3.