

BETSY RIEDER, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF : DECISION
CALDWELL-WEST CALDWELL, :
ESSEX COUNTY, :
RESPONDENT. :
_____ :

SYNOPSIS

Petitioner, former Spanish teacher who was rified in 1976, alleged that the Board improperly appointed a nontenured person to fill a position to which she was entitled.

ALJ concluded that the Board's appointment of another individual to the position of teacher of Spanish on June 30, 1997 violated petitioner's reemployment rights under *N.J.S.A.* 18A:28-12. ALJ determined that even though petitioner remained silent after becoming aware in September 1995 that another individual had been appointed teacher of Spanish, this circumstance standing alone did not warrant the inference that petitioner intended to waive her right to remain on the preferred eligibility list for the position of teacher of Spanish. Moreover, the ALJ found that petitioner was qualified for the position, within the intendment of *N.J.S.A.* 18A:28-12 in that she holds the appropriate certification and endorsement for the position. ALJ ordered the Board to employ petitioner as a teacher of Spanish, awarding her back pay, benefits and post-judgment interest.

Commissioner concurred with the ALJ and directed reinstatement of petitioner with back pay and emoluments as of June 30, 1997.

March 10, 1999

OAL DKT. NO. EDU 7609-97
AGENCY DKT. NO. 258-7/97

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The record of this matter and the initial decision of the Office of Administrative Law have been reviewed. The Board's exceptions and petitioner's reply thereto are duly noted as submitted in accordance with *N.J.A.C.* 1:1-18.4.

The Board excepts to the Administrative Law Judge's (ALJ) conclusion that petitioner did not waive her right to reinstatement in September 1995, since the Board asserts that petitioner's inaction in 1995, despite actual notice that the Board had hired a new teacher for the Spanish position, was sufficient to establish that she had waived such right. (Board's Exceptions at p. 2) The Board reasons that "Petitioner's indifference to the exercise of her statutory right to reinstatement in 1995 constitutes a waiver; and, having relied to its detriment on Petitioner's indifference, [it] should not now be forced to accommodate her long-dormant interest in the district." (*Id.* at p. 3)

Additionally, the Board objects to the ALJ's conclusion, as found in his Interlocutory Order of August 4, 1998, that petitioner was "qualified" to teach the Spanish

classes in question, pursuant to *N.J.S.A.* 18A:28-12, notwithstanding her lengthy absence from the profession. In this regard, the Board renews its contention as argued before the ALJ that the authority relied upon by the ALJ should not control, as none of the legal cases therein cited involved a 20-year gap between RIF and reinstatement. The Board further contends that none of the cases relied upon by the ALJ were decided during a period of “significant educational reform,” as exists today, and maintains, therefore, that the instant matter is analogous to cases in which a rified teacher demands reinstatement to a position involving different qualifications. (*Id.* at p. 4) It concludes that the ALJ’s interpretation of the law will lead to absurd consequences that could not have been intended by the Legislature.

In reply, petitioner underscores that, despite the fact that she was on the Board’s recall list for the position in question in 1995, the Board never communicated with her in any way and never offered her the job. She asserts that the waiver of her tenure rights, in that they are statutory, “must involve something more than failing to file a claim over the Board’s abuse of power in 1995.” (Petitioner’s Reply at p. 2)

Additionally, petitioner contends that *N.J.S.A.* 18A:28-12 compels her reinstatement, as she is a tenured Spanish teacher who was rified and placed on the preferred eligible list and had “an absolute right” to the vacancy. (*Id.* at pp. 3, 4) Petitioner maintains that her certificate and endorsement in Spanish provide the relevant scope of her tenure rights in this matter, and the Board could not lawfully deny her reemployment while hiring a nontenured teacher. (*Id.* at p. 5) As to the Board’s “novel argument” that she, despite her tenure and placement on the preferred eligible list, is “not qualified,” petitioner asserts,

Happily, there is no legal support for the Board’s argument. Indeed, the Board’s argument amounts to a desire for local district nullification of the State Board of Examiners, which has the authority to issue certificates and endorsements to teaching staff

members (*N.J.S.A.* 18A:6-38), the Department of Education which, by virtue of the adoption of *N.J.A.C.* 6:11-6.2(a)(9)(ii) authorizes the petitioner to teach Spanish in “*all* public schools” (emphasis added) *** and the Legislature, which adopted *N.J.S.A.* 18A:28-12. (*Id.* at p. 6)

Upon careful and independent review of the record in this matter, the Commissioner concurs with the findings and conclusions of the ALJ in both his Interlocutory Order, as rendered August 4, 1998, and his recommended decision. Like the ALJ, the Commissioner declines to find that petitioner’s failure to assert her right to the Spanish position in 1995 constitutes “a clear, unequivocal, and decisive act ***” (*West Jersey Title, supra* at 152) from which one may reasonably and fairly infer that she intended to relinquish her right to remain on the preferred eligible list for the position of Spanish teacher.

Further, like the ALJ, the Commissioner finds that petitioner is qualified for the position of Spanish teacher, within the intendment of *N.J.S.A.* 18A:28-12 in that she holds the appropriate certification and endorsement for the position. Here, the Commissioner recognizes that

The relevant inquiry regarding certification is not what a person can teach, but what a person may teach. The answer must be found in the regulations and the case law, not in a review of the endorsement holder’s college transcript. Accordingly, in the context of tenure and seniority rights following a RIF, any discussion concerning who is more suited to teach a particular course or who is more qualified is unnecessary and inappropriate. If the rified teacher has an endorsement which authorizes, *i.e.*, permits, her to teach a course, she may exercise her tenure and seniority rights to claim it. *Ulrich v. Board of Education of the Monmouth County Vocational School District*, 96 *N.J.A.R. 2d* (EDU) 290, 293.

(*See also, Dombloski v. Board of Educ. of the Town of Belvidere, Warren County*, 94 *N.J.A.R. 2d* (EDU) 348, 349, *aff’d*, 95 *N.J.A.R. 2d* (EDU) 347, citing *Lichtman v. Ridgewood Bd. of Ed.*, 93 *N.J.* 362, 364 (1983), establishing that a tenured teacher with proper certification can claim, as

against a nontenured teacher, seniority rights to a position that is within the tenured teacher's certificate.)

Accordingly, the initial decision of the ALJ is adopted for the reasons expressed therein, and amplified above. The Board is directed to reinstate petitioner as a teacher of Spanish, and to award her back pay and related emoluments for improperly failing to employ her as a Spanish teacher as of June 30, 1997.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

March 10, 1999