

LINDA AIELLO, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
WESTWOOD REGIONAL SCHOOL :
DISTRICT, BERGEN COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner was employed by respondent's district as a school social worker, under her educational services certificate, until she was terminated in a reduction in force (RIF). She also possesses an instructional certificate, with endorsement for grades K through 8. Petitioner served in the position of school social worker for the entire period of her employment with respondent, from 1995 to 2007. She claims, *inter alia*, that respondent violated her tenure rights when, subsequent to eliminating her position as social worker, it hired or maintained non-tenured teachers in positions for which petitioner possessed certification. Both parties filed motions for summary decision.

The ALJ found, *inter alia*, that: the matter is ripe for summary decision, as there is no genuine issue of material fact in this case; the petitioner has neither tenure nor seniority with respect to her instructional certificate nor any endorsement on that certificate; petitioner can only claim tenure rights to endorsements she possessed on her educational services certificate at the time of the RIF; and the respondent's action in eliminating petitioner's position was within the discretion of the Board to make determinations with respect to staffing and effectiveness, and comported with statutory requirements. The ALJ determined that the petitioner's appeal should be dismissed.

Upon a thorough and independent review of the record, the Commissioner concurred with the ALJ and adopted the Initial Decision as the final decision in this matter, providing supplementary discussion regarding the inapplicability of case law cited by petitioner in her exception arguments.

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| <p>This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.</p> |
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March 20, 2008

OAL DKT. NO. EDU 7986-07
AGENCY DKT. NO. 193-7/07

LINDA AIELLO, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
WESTWOOD REGIONAL SCHOOL :
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The record of this matter, the Initial Decision, and the parties' exceptions and reply exceptions have been reviewed. After careful and independent consideration of same, the Commissioner adopts the Initial Decision, as supplemented *infra*, as the final decision.

Petitioner served in respondent's district as a school social worker, under her educational services certificate, until she was terminated as a result of a reduction in force. At no time during her tenure in the district did she work under her instructional certificate. Nonetheless, petitioner contends that she should be placed in an instructional position that has been filled by a non-tenured teacher who has served under an instructional certificate. The parties presented their respective cases by way of summary decision motions.

At the outset, the Commissioner agrees with the Administrative Law Judge (ALJ) that there is no issue of material fact that would preclude summary decision. Nor do the parties appear to disagree.

Second, the ALJ is correct in finding that since petitioner's employment with respondent was under her educational services certificate, petitioner's tenure status in

respondent's district is limited to positions within the certification category of educational services. *See, e.g., Nelson v. Bd. of Educ.*, 148 N.J. 358, 366 (1997); *Ellicott v. Board of Educ.*, 251 N.J. Super. 342, 350 (App. Div. 1991). Thus, she enjoys no tenure with regard to positions requiring instructional certificates.

Petitioner's reliance on several cases cited in her exceptions is not helpful to her. As stated, *supra*, *Ellicott* instructs that, having performed all her service in respondent's district exclusively under her educational services certificate, petitioner has no tenure rights in the district under her instructional certificate. By way of contrast, in *Bednar v. Westwood Bd. of Educ.*, 221 N.J. Super. 239 (App. Div. 1987), *certif. den.* 110 N.J. 512 (1988), the petitioner had tenure under the same certificate (and, in fact, even had service under the same endorsement) as the non-tenured teacher whose job petitioner sought. Under those circumstances, *Bednar* was found to have the superior claim to the position.

Similarly, in *Capodilupo v. Bd. of Educ.*, 218 N.J. Super. 510 (App. Div. 1987) the petitioner also had tenure under the certificate (and, in fact, even had service under the specific endorsement required for the position he sought. Accordingly, he was entitled to the position *vis-à-vis* non-tenured individuals. And in *Albert v. Board of Education of Scotch Plains-Fanwood*, Commissioner Decision No. 403-97, August 6, 1997, the petitioning tenured art teacher was successful in her bid to secure a position within her instructional certificate, *i.e.*, elementary education teacher, an endorsement for which she was deemed eligible.

In summary, the cases invoked by petitioner are distinguishable from the present matter. In each case, the individual was a tenured teacher seeking another teaching position. Petitioner is not a tenured teacher, but rather is tenured exclusively as a school social worker under an educational services certificate. Any tenure rights that she possesses are restricted to

other positions in that certification. Thus, petitioner has failed to carry her burden to prove that she has tenure rights entitling her to the elementary education teaching position that she seeks.¹

Finally, the Commissioner agrees with the ALJ that there is no support in the record to conclude that respondent's decision to eliminate petitioner's social work position was arbitrary or capricious, or in any way violative of the laws and regulations concerning reductions in force.

The petition is accordingly dismissed.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: March 20, 2008

Date of Mailing: March 20, 2008

¹ The remaining cases cited by petitioner are similarly unpersuasive.

² This decision may be appealed to the State Board of Education pursuant to *N.J.S.A. 18A:6-27 et seq.* and *N.J.A.C. 6A:4-1.1 et seq.*