

EDU #10156-94  
C # 348-96  
SB # 66-96

DARREN RESSLER, :  
 :  
 PETITIONER-APPELLANT, :  
 :  
 V. :  
 : STATE BOARD OF EDUCATION  
 BOARD OF EDUCATION OF THE TOWN- :  
 SHIP OF SADDLEBROOK, BERGEN : DECISION  
 COUNTY, :  
 :  
 RESPONDENT-CROSS/APPELLANT.:

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Decided by the Commissioner of Education, August 12, 1996

For the Petitioner-Appellant, Bucceri & Pincus (Louis P. Bucceri, Esq., of Counsel)

For the Respondent-Cross/Appellant, Anthony N. Gallina, Esq.

Darren Ressler (hereinafter "petitioner"), a tenured teaching staff member, alleged that the Board of Education of the Township of Saddle Brook (hereinafter "Board") had violated his tenure and seniority rights when it reduced his employment to part-time during the 1991-92 school year. Petitioner further alleged that the Board had violated his tenure and seniority rights when it thereafter abolished his position in April 1992, effective June 30, 1992, and failed to reemploy him within the scope of his certificate in 1992-93. ("Ressler I.")

Petitioner subsequently filed another petition in September 1994, alleging that his tenure rights had been violated when the Board failed to reemploy him within the scope

of his certificate in the 1993-94 school year. ("Ressler II.") It is this petition that forms the basis for the instant appeal.<sup>1</sup>

On June 27, 1994, the Commissioner of Education rendered his determination in Ressler I. The Commissioner rejected petitioner's contention that the Board had violated his tenure rights when it reduced him to part-time status during the 1991-92 school year. However, the Commissioner concluded that the Board had violated petitioner's seniority rights when it failed to reemploy him as an elementary physical education teacher in 1992-93 after his position was abolished at the end of the 1991-92 school year. The Commissioner rejected petitioner's claim to reinstatement as an elementary school teacher in 1992-93 on the basis of an elementary education endorsement he had received subsequent to the Board's action abolishing his position.

On August 12, 1996, the Commissioner granted the Board's motion to dismiss the petition filed in Ressler II.

Petitioner filed an appeal to the State Board from the decisions of the Commissioner in both Ressler I and Ressler II. We placed petitioner's appeal in Ressler II in abeyance pending our determination of his appeal in Ressler I.

On October 1, 1997, we rendered our decision in Ressler I, concluding that the Board had violated petitioner's tenure rights when it reduced him to part-time status during the 1991-92 school year. We further found that, by virtue of his superior seniority, petitioner had been entitled to an assignment teaching elementary physical education in 1992-93 following the abolishment of his position at the end of the 1991-92 school year. However, we rejected petitioner's contention that he had been entitled to

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<sup>1</sup> We note that the Board reemployed petitioner as a full-time physical education teacher in the 1994-95

reinstatement in 1992-93 as an elementary school teacher. We stressed that the scope of petitioner's tenured position was determined in April 1992 when the Board acted under N.J.S.A. 18A:28-9 to reduce its staff, thereby triggering petitioner's rights, and that his subsequent acquisition of an elementary education endorsement in June 1992 did not operate to enlarge the tenure rights he had achieved during and as a result of his employment in the district. Francey v. Board of Education of the City of Salem, decided by the State Board, August 3, 1994, aff'd, Docket #A-0625-94T2 (App. Div. 1996).

In the instant appeal, petitioner claims that as a result of the decision in Ressler I, he was entitled to reemployment within the scope of his elementary education endorsement in 1993-94 as against non-tenured teachers.

After a careful review of the record, we reverse the decision of the Commissioner dismissing the petition in Ressler II and remand this matter to him for further proceedings in accordance with our decision herein.

In Ressler I, we determined that petitioner had been entitled to reemployment as a physical education teacher in 1992-93. Had petitioner been so employed, the tenure rights ensuing from such employment would have encompassed the elementary education certification he had obtained in June 1992. Thus, while petitioner's receipt of an elementary education endorsement in June 1992 did not alter the tenure rights which were triggered when the Board abolished his position in April 1992—prior to his receipt of such certification—the scope of his tenure protection in any subsequent reduction in force would encompass elementary education.<sup>2</sup>

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school year. Petitioner's Certification, at 3. Thus, his claim in this case is limited to 1993-94.

<sup>2</sup> Indeed, we note that if petitioner had properly been reemployed as a physical education teacher in 1992-93, the Board could have reassigned him without his consent to any assignment within the scope of

In the matter now before us, in which petitioner claims entitlement to any assignments within the scope of his elementary education certification held by non-tenured individuals in 1993-94, petitioner represents without contradiction that all teachers assigned to teach elementary physical education in 1993-94 had more seniority than he in the applicable category. Petitioner's Certification, at 2. Thus, if petitioner had properly been reemployed as an elementary physical education teacher in 1992-93, he apparently would not have been retained in such capacity in 1993-94, and his tenure rights would once again have been implicated. Since petitioner's tenure rights in 1992-93 encompassed elementary education, his entitlement to reemployment in 1993-94 would have included any assignment within the scope of his elementary education certification held by a non-tenured teacher. See Bednar v. Westwood Bd. of Ed., 221 N.J. Super. 239 (App. Div. 1987), certif. denied, 110 N.J. 512 (1988).

Consequently, we reverse the decision of the Commissioner to dismiss the petition in this matter. However, since the parties were "unable to stipulate the full circumstances concerning the Board's employment of nontenured elementary-level teachers in 1993-94," initial decision, slip. op. at 3, n.1, we remand this matter to the Commissioner for further proceedings in order to determine whether the Board had employed any non-tenured individuals within the scope of petitioner's elementary education certification in the 1993-94 school year and for a resultant determination of petitioner's claim in accordance with the terms of our decision herein.

In so doing, we reject the Board's contention that petitioner failed to file the instant petition in a timely manner. N.J.A.C. 6:24-1.2(c). Until it was determined in Ressler I

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his elementary education certification. See Howley v. Bd. of Ed. of Ewing Township, decided by the

that petitioner had been entitled to reemployment in 1992-93, he had no claim to employment in 1993-94 on the basis of an endorsement he had received subsequent to the Board's action in April 1992 reducing its staff.

February 4, 1998

Date of mailing \_\_\_\_\_