

WILLIAM DAVIS, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF : DECISION
THE CITY OF ENGLEWOOD,
BERGEN COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner – a former teacher in respondent’s district – alleged that the Board improperly terminated him on contractual notice when he had already obtained tenure in his position, claiming that he had been employed with the district since 2001. Respondent asserted that petitioner never acquired tenure because he did not hold the requisite teaching certificate until October 2003, having been employed prior to that time under a county substitute certificate.

The ALJ found, *inter alia*, that: the facts in this matter are essentially undisputed and summary decision is appropriate; petitioner did not obtain a provisional certificate until October 2003; petitioner’s substitute teaching assignments prior to that date may not accrue toward tenure; petitioner’s certificate of eligibility to seek provisional employment is not an appropriate certificate for the purpose of tenure accrual; and therefore petitioner has not acquired tenure pursuant to *N.J.S.A. 18A:28-5*. The ALJ denied petitioner’s appeal for re-employment with back salary and benefits.

Upon a thorough and independent review of the record, the Commissioner concurred with the ALJ that respondent Board properly exercised its contractual right to terminate petitioner’s employment and adopted the Initial Decision as the final decision in this matter.

<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>

December 8, 2006

OAL DKT. NO. EDU 9689-06
AGENCY DKT. NO. 222-6/06

WILLIAM DAVIS, :
PETITIONER, :
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BOARD OF EDUCATION OF : DECISION
THE CITY OF ENGLEWOOD,
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RESPONDENT. :

The record of this matter and the Initial Decision have been reviewed. No exceptions were filed.

Petitioner taught in respondent's district in various capacities from September of 2001 to the end of the 2005-2006 school year. On May 15, 2006, he was advised via notice from respondent that he would not receive a contract to return for the 2006-2007 school year. He maintains that at the time of that notice he had already attained tenure, and that the non-renewal was improper.

Because the material facts were and are not in dispute, the matter proceeded in the Office of Administrative Law (OAL) as a summary disposition. The Commissioner adopts the Administrative Law Judge's (ALJ) determination that summary decision in favor of respondent is appropriate.

The undisputed facts reveal that petitioner was first employed by respondent in September 2001 and served as a substitute teacher. From September 2001 until December 2002 he worked solely under a county substitute credential. He received a certificate of eligibility to seek employment as a teacher in December 2002. However, he continued to work as a substitute through the end of the 2002-2003 school year.

In October 2003 the respondent district offered petitioner a teaching position and sent to the Board of Examiners of the New Jersey Department of Education the required paperwork to obtain a provisional elementary school teaching certificate for petitioner, which certificate was issued in October 2003. Petitioner continued to teach in respondent's district and received a standard certificate with an endorsement in elementary education in November 2004.

As set forth in the Initial Decision, *N.J.S.A.* 18A:28-5 identifies the requirements for the achievement of tenure. It states in pertinent part that:

The services of all teaching staff members employed in the position of teacher . . . and such other employees as are in positions which require them to hold appropriate certificates issued by the board of examiners, serving in any school district or under any board of education, excepting those who are not the holders of proper certificates in full force and effect . . ., shall be under tenure during good behavior and efficiency and they shall not be dismissed or reduced in compensation except for inefficiency, incapacity or conduct unbecoming such a teaching staff member or other just cause . . . after employment in such district or by such board for:

- (a) Three consecutive calendar years . . . ;
- (b) Three consecutive academic years, together with employment at the beginning of the next succeeding academic year; or
- (c) The equivalent of more than three academic years within a period of any four consecutive academic years.

(Emphasis added.)

At the outset, the Commissioner notes that until October 2003, petitioner was not a “teaching staff member,” as required by *N.J.S.A.* 18A:28-5. The term “teaching staff member” is defined in *N.J.S.A.* 18A:1-1 as:

....a member of the professional staff of any district or regional board of education, or any board of education of a county vocational school, holding office, position or employment of such character that the qualifications, for such office, position or employment, require him to hold a valid and effective standard, provisional or emergency certificate appropriate to his office, position or employment, issued by the state board of examiners

(Emphasis added.)

As the ALJ explained, the certificate of eligibility (CE) to seek employment in the provisional teaching program, which petitioner received in December 2002, was not the equivalent of any of the certificates identified in *N.J.S.A.* 18A:1-1.

Moreover, as a substitute teacher, petitioner was not “in [a position] which required him to hold appropriate certificates issued by the board of examiners.” *N.J.S.A.* 18A:28-5.¹ Petitioner’s employment was allowed by *N.J.S.A.* 18A:16-1.1, which permits districts to hire persons to act in the place of absent employees. Under the terms of that statute, such surrogate employees may not accrue tenure while acting in the absent employee’s stead. Thus, under *N.J.S.A.* 18A:28-5 and *N.J.S.A.* 18A:16-1.1, petitioner could not have attained tenure until October 2006, three years after he commenced the regular teaching position that did require an appropriate certificate from the board of examiners.

Accordingly, the Commissioner adopts the determinations of the ALJ that summary disposition is appropriate, and that petitioner had not achieved tenure at the end of the 2005-2006 school year when he received notice that he would not be offered a contract for the next school year. The petition is therefore dismissed.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: December 8, 2006

Date of Mailing: December 11, 2006

¹ See also, *Spiewak v. Board of Educ. of Rutherford*, 90 *N.J.* 63, 74 (1982) (By the express terms of these statutes, an employee of a board of education is entitled to tenure if (1) she works in a position for which a teaching certificate is required; (2) she holds the appropriate certificate; and (3) she has served the requisite period of time. (Emphasis added.))

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.*