

FRANCO COZZOLINO, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
TOWNSHIP OF WEST ORANGE,
ESSEX COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner's position as a tenured teacher of health and physical education was eliminated in a reduction in force (RIF) in May 2010, and petitioner was consequently not employed for the 2010-2011 school year. Petitioner holds an instructional certificate with an endorsement for Teacher of Health and Physical Education, was continuously employed by the respondent Board from September 2004 through the end of the 2009-2010 school year, and his entire tenured service was at the elementary school level. Petitioner contended that less senior teachers were retained by the Board in violation of his tenure and seniority rights. The Board argued that the staff members retained by the district were in separate seniority categories and therefore petitioner suffered no violation of his tenure and seniority rights.

The ALJ found, *inter alia*, that: a tenured teacher who was subjected to a RIF has seniority rights over a non-tenured applicant only for positions that fall under the same certificate to which the teacher has earned tenure; seniority accrues in the subject areas in which a person actually works, and in the category – elementary or secondary – in which the person is employed; at issue in this case is whether petitioner could claim tenure and seniority rights over a retained teacher who taught in a departmentalized grade 6 school; there is no provision in the seniority regulations for departmentalized grade 6, and therefore previous case law must provide guidance in this area; based on previous cases, a departmentalized grade 6 school falls into the secondary category; petitioner in the instant matter had six years of seniority in elementary health and physical education; petitioner was the least senior health and physical education teacher in the elementary category, and was not entitled to a position outside the scope of his tenure and seniority rights. Accordingly, the ALJ determined that petitioner's tenure rights were not violated, and denied petitioner's appeal.

Upon a thorough and independent review of the record, the Commissioner adopted the Initial Decision of the OAL as the final decision in this matter.

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.

May 31, 2011

OAL DKT. NO. EDU 9311-10
AGENCY DKT. NO. 172-7/10

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by the petitioner.

The petitioner's exceptions substantially reiterate the substance of his post-hearing submission at the OAL, recasting the arguments therein to support the contention that the Administrative Law Judge (ALJ) erroneously found that the Board did not violate the petitioner's seniority rights. In his exceptions, the petitioner maintains that his seniority in the elementary category entitled him to a physical education teaching position at the Edison school once his position at the elementary school was eliminated as a result of a reduction in force. The petitioner argues that the Edison school, which is a stand-alone Grade 6 school with departmentalized instruction, should be within the elementary category for seniority purposes because the regulations make no reference to Grade 6 in the secondary category. The petitioner also contends that the cases that expand the definition of secondary to cover a departmentalized Grade 6 involved combined Grade 6 and 7 settings or 6, 7 and 8 organizations.

Upon a comprehensive review of the record in this matter, the Commissioner concurs with the Administrative Law Judge that the teaching positions at the Edison school were within the secondary category for seniority purposes. The Commissioner is also in accord with the ALJ's determination that the petitioner was not entitled to the physical education teaching position at the Edison school because it was outside the scope of his tenure and seniority rights. Accordingly, for the reasons expressed therein, the Initial Decision is adopted as the final decision in this matter.

IT IS SO ORDERED.*

ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 31, 2011

Date of Mailing: June 2, 2011

* Pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*, Commissioner decisions are appealable to the Superior Court, Appellate Division.