

#318-12 (OAL Decision: Not yet available online)

KIM J. SLIVKA, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF MONMOUTH : DECISION
COUNTY VOCATIONAL SCHOOL DISTRICT,
MONMOUTH COUNTY, :
RESPONDENT :
AND :
PETER BORSCHARDT, LAURA GESIN, :
ANDREW JUDKIS AND :
MARYANNE RODRIGUEZ, :
INTERVENORS :

SYNOPSIS

Petitioner – a tenured teacher holding an instructional certificate with endorsements in General Business Studies and Elementary Education – asserted that the respondent Board’s action in terminating her employment in a Reduction in Force (RIF) violated her tenure and seniority rights. Petitioner was employed by the Board from April 2000 until June 2010, when her position was eliminated. Petitioner was rehired by the Board in January 2011 as a retirement replacement, and taught through June 30, 2011; subsequently, petitioner retired in July 2011. The Board contended that petitioner was not appropriately certified for the positions held by less senior employees (the Intervenors) who were retained after the RIF; all of these individuals possessed the Teacher of Computer Science Technology (CST) endorsement which was required for teaching the rigorous curriculum offered in the Board’s five specialized and selective Career Academies. Petitioner had never worked in these academies, but rather had taught a population of general education vocational students and classified students in the district’s traditional vocational education schools.

The ALJ found, *inter alia*, that: the Board’s decision regarding certification requirements for teachers in its highly technical career academies was not arbitrary and is justified by the regulations; the Board’s determination that petitioner’s comprehensive business endorsement is not adequate for the technically oriented curriculum offered in the career academies is within its discretionary powers, and case law provides that such a decision by a local board of education should be honored. The ALJ concluded that petitioner failed to establish that she has the appropriate certification to claim seniority entitlement over any of the intervenors, all of whom hold the CST endorsement, and that the Board’s determination was not arbitrary or capricious. Accordingly, the ALJ dismissed the petition.

Upon independent review, the Deputy Commissioner – to whom this matter was delegated pursuant to *N.J.S.A.* 18A:4-33 – concurred with the ALJ’s findings and conclusions, and adopted the Initial Decision of the OAL as the final decision in this matter. The petition was dismissed.

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.

August 8, 2012

OAL DKT. NO. EDU 7317-10
AGENCY DKT. NO. 120-6/10

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner and respondents requested, and were granted, extensions of time within which to file exceptions and replies, respectively. Such exceptions – filed in accordance with the adjusted timelines – were fully considered by the Commissioner¹ in reaching his determination herein.²

Petitioner’s exceptions replicate the arguments advanced in her post-hearing and reply briefs below. In that these arguments were fully considered and addressed in the Administrative Law Judge’s (ALJ) decision, they will not be revisited here.

¹ This matter has been delegated to the Deputy Commissioner pursuant to *N.J.S.A.* 18A:4-33.

² The grant of such extensions, however, necessitated that the Commissioner seek an extension of time within which to issue his final decision in this matter.

Upon a comprehensive review and reasoned consideration of the record – which included transcripts of the hearing conducted at the OAL on October 25 and 26, 2011 – the Commissioner determines to adopt the recommended decision of the ALJ. In so determining, the Commissioner finds that the record in this matter reveals the following:

Petitioner, a tenured teaching staff member who was subject to a Reduction In Force (RIF), effective June 30, 2010, charges that the Board retained non-tenured or less senior staff in subject areas where she was certified, thereby violating her tenure and seniority rights.³ Specifically, petitioner claims entitlement to have taught the following courses during the first semester of the 2010-11 school year over individuals who were retained to teach them: 1) Communications Technology, 2) Computer Literacy Related Instruction, 3) Computer Applications, 4) Computer Information Technology, 5) Introduction to E-Commerce, 6) Animation, 7) Introduction to Animation, 8) Software Applications, and 9) Web Design.

Petitioner possesses an instructional certificate with a General Business Studies endorsement.⁴ Petitioner began employment with the District April 1, 2000:

- During the period April 1, 2000 through June 30, 2006 she taught Computer Information Technology courses in the Share Time Program⁵ at the Hazlet and then the Keyport school buildings and provided in-class support at 5 different Share Time buildings.

³ It is noted that although petitioner was rified effective June 30, 2010, she subsequently was reemployed by the Board – in January 2011 – when she returned to work following the retirement of another teacher. Petitioner subsequently retired from employment with the Board effective July 2011. As such, petitioner seeks salary and emoluments she would have received for the first semester of the 2010-11 school year (September-December 2010) had she not been – as she maintains – improperly rified.

⁴ She additionally has a teacher of elementary education endorsement which has no bearing in this matter.

⁵ The Share Time program allowed students to attend their home school for half a day and receive vocational training during the other half of the day.

- During the period September 1, 2006 through June 2010 she taught office occupation courses and computer literacy courses in the Career Center⁶ campus.

In addition to its schools for the classified and general education vocational population at which petitioner taught, the District additionally operates five Career Academies – offering Career and Technical Education (CTE) programs which students are competitively selected to attend after submitting applications and taking exams.⁷ All of the courses to which petitioner claims seniority entitlement were solely offered at one of three of the District’s Career Academies, *i.e.*, High Technology High School, The Academy of Allied Health and Science or Communications High School. Petitioner has never taught any course at the advanced educational Career Academies of the District.

Because the District views the career and technical programs at the Career Academies as sequential, rigorous, integrated and challenging, it has uniformly taken the position that computer technology teachers in these schools must have extensive knowledge and experience in technology and computer science which it believes is evidenced by the possession of a Teacher of Computer Science Technology endorsement, which the district sees as a robust and sophisticated endorsement demanding a solid background in computer science to acquire it and, therefore, the only “appropriate” endorsement to teach these courses. Each of the

⁶ The Career Center is a special needs school attended exclusively by classified students.

⁷ The Academy of Allied Health & Science – designed for students whose interest is in the health science and medical areas; Biotechnology High School – focuses students on a college preparatory program related to biological research technologies and is suited for students interested in careers in pharmaceutical and biological research; Communications High School – designed for students interested in various communication technologies including computer applications, graphic design and publishing and network technologies; High Technology High School – a pre-engineering college preparatory program with an emphasis on technology, mathematics and science; and the Marine Academy of Science & Technology – which provides an educational program for students interested in marine and environmental science. See Exhibit R-7

intervenors who taught courses at issue in this matter has tenure and possesses the “appropriate” endorsement; petitioner does not have this endorsement.

For the reasons comprehensively presented on pages 18-24 of his Initial Decision, the Commissioner concurs with the ALJ’s conclusion that:

[I]n the exercise of its judgment, no doubt in consultation with its expert employees, both past and present, who have testified in this case and whose expertise is deemed to be substantial, the Board of Education has determined that one teaching courses in the career academies, where the career paths are not oriented toward “business” as that relates to the more traditional office-type positions, must have an endorsement that is more technically oriented, with a broader focus on the technology and its use in these career paths than is suggested by the types of courses that are authorized to be taught by one holding a comprehensive business endorsement. That judgment seems justified by the regulations, by the focus which *N.J.A.C. 6A:9-9.2(a)9i(1)* provides for the endorsement that Ms. Slivka holds. Again, this is not to say that she is not capable of actually teaching at least some of the courses at the Academy taught by the intervenors. But as the case law provides, the Commissioner, as well as the courts, are loath to interfere in such educational judgments. There appears nothing here that smacks of arbitrariness. The determination of the school district that Slivka’s CTE is not the “appropriate” CTE for these courses should be honored. (Initial Decision at 24)

As petitioner does not have the “appropriate” endorsement to teach the courses at issue here at the Academies, her seniority claim of entitlement must fail.

Accordingly, the recommended decision of the OAL is adopted as the final decision in this matter and the instant petition of appeal is hereby dismissed.

IT IS SO ORDERED.⁸

DEPUTY COMMISSIONER OF EDUCATION

Date of Decision: August 8, 2012

Date of Mailing: August 8, 2012

⁸ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36* (*N.J.S.A. 18A:6-9.1*).