

365-17 (OAL Decision: Not available online)

THOMAS FERRARI, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
TOWNSHIP OF BRICK, OCEAN COUNTY, :
RESPONDENT. :
_____ :

SYNOPSIS

This matter is an ancillary claim for a stipend payment in a companion case in which petitioner challenged his termination from employment as a Certificated Teacher of Military Science in respondent's school district without the benefit of a tenure hearing. Herein, the petitioner claimed entitlement to a stipend that had been included in the collective bargaining agreement between the respondent Board and the Brick Township Education Association (Association). The parties submitted cross motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue, and the matter is ripe for summary decision; the petitioner's position in the JROTC program was created pursuant to an "Agreement for the Establishment of an Air Force Junior Reserve Officer Training Corps Unit"; the Agreement included a statement that petitioner's position as the instructor of senior rank in the school's JROTC program was equivalent to a department head position; the Board had entered into a collectively negotiated agreement (CNA) with the Association which governed the terms and conditions of employment for all certified personnel; petitioner was a member of the Association; the CNAs between the Board and the Association provided for "Department Heads" to receive a stipend annually; petitioner was never paid a stipend by the Board as a "Department Head"; however, it is well settled that the Commissioner lacks jurisdiction to decide contractual claims unless those claims implicate the agency's expertise. The ALJ concluded that the Commissioner does not have jurisdiction over this contractual dispute as it does not arise under the school laws. Accordingly, the ALJ ordered that the petition be dismissed for lack of jurisdiction.

Upon review, the Commissioner 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 with prejudice for lack of jurisdiction.

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.
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December 21, 2017

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner’s exceptions and respondent’s reply thereto – submitted in accordance with *N.J.A.C. 1:1-18.4* – were also considered by the Commissioner. The Administrative Law Judge (ALJ) found that petitioner was not entitled to tenure protections when the Board terminated petitioner from his employment as a military science teacher in the District. The ALJ reasoned that as a result of petitioner’s decertification from the Air Force, he no longer possessed the necessary credentials to maintain a New Jersey military science certification endorsement and serve as an instructor in the District, and as such, petitioner was ineligible for tenure protections and his termination was proper. Upon comprehensive review, the Commissioner is in accord with the ALJ’s determinations for the reasons thoroughly expressed therein.

Petitioner’s exceptions substantially reiterate the substance of his submissions at the OAL, recasting the arguments therein to support his contention that the ALJ erroneously concluded that petitioner’s due process rights were not violated when he was terminated from his tenured teaching position in the District. Specifically, petitioner argues that he had acquired tenure in his

¹ The Commissioner notes that the companion case – *Ferrari v. Bd. of Educ. of Twp. of Brick, Ocean County*, OAL Dkt. No. 03464-17, Agency Dkt. No. 47-3/17 – will be determined as a separate matter, as the two cases were not consolidated.

position and his certificate had not been suspended or revoked by the State Board of Examiners; therefore, his “protectable interest in his employment [] could not be extinguished without procedural due process” pursuant to *N.J.S.A.* 18A:6-10.

In reply, respondent also restates its position advanced in the Board’s submissions at the OAL. Respondent contends that petitioner’s right to due process was met through the Air Force procedures prior to his decertification. Respondent argues that the ALJ properly concluded that in order to be employed in the District, petitioner needed to maintain a valid certification and, once petitioner was decertified, the Board was required to remove petitioner from his position.

It is well-settled that in order for teaching staff members to be employed in a public school district, they must hold a valid teaching certificate and any other such certificate as required by law. *See N.J.S.A.* 18A:26-2; *see also N.J.A.C.* 6A:9B-5.1(b) (“the certificate holder shall obtain any license, certificate, or authorization required by State or Federal law, a licensing board, or *N.J.A.C.* 6A:9B-4.1 and 4.2 for the individual to serve in a position”). A military science instructor is required to “[h]old valid certification authorizing employment as a military science instructor from the branch of service in which the candidate served.” *N.J.A.C.* 6A:9B-11.8(a)(2). Furthermore, in order to retain a military science endorsement, the instructor must maintain the military employment authorization. *Id.* at (b). Therefore, in order for petitioner to continue employment in the District, he must possess a valid certification from the Air Force authorizing his employment as a military science teacher.

When a teaching staff member fails to maintain “the mandated license, certificate, or authorization,” the employing board shall remove the instructor from the position. *See N.J.A.C.* 6A:9B-5.1(c). It is undisputed that the Air Force revoked petitioner’s authorization for employment as a military science teacher when it notified petitioner of his imminent decertification and subsequently decertified him following an internal appeal process. Once petitioner’s authorization was revoked and he was decertified, petitioner was no longer eligible for employment

in the District. Moreover, petitioner was not protected by the tenure statute once he was decertified by the Air Force, as retention of his endorsement and entitlement to employment were contingent upon authorization for employment as a military science teacher by the Air Force, and tenure protection does not extend to individuals whose certificates are not in full force and effect. *See N.J.S.A. 18A:28-5; see also Hunsicker v. Bd. of Educ. of the High Point Reg'l High Sch. Dist.*, 2016 *N.J. Super. Unpub.* LEXIS 1147 (App. Div. 2016) (affirming the Commissioner's decision that a teaching staff member must be removed for failure to maintain a required license, notwithstanding tenure status or personal circumstances; and holding that "appellant's lack of an athletic trainer license effectively rendered his educational services certificate and endorsement invalid, thus making him ineligible for employment as a school athletic trainer, ineligible for tenure protections, and subject to mandatory removal").

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter and the petition of appeal is hereby dismissed with prejudice.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: December 21, 2017

Date of Mailing: December 21, 2017

² 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.