

EDU # 428-99
C # 417-99
SB # 7-00
App. Div. #A-5517-99T1

PATRICIA OSMAN, :
PETITIONER-APPELLANT, :
V. : STATE BOARD OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION ON REMAND
TOWNSHIP OF DELRAN, :
BURLINGTON COUNTY, :
RESPONDENT-RESPONDENT. :

Remanded by the Appellate Division, October 17, 2001

Decided by the State Board of Education, May 30, 2000

Decided by the Commissioner of Education, December 20, 1999

For the Petitioner-Appellant, Wills, O'Neill & Mellk (Arnold M. Mellk, Esq.,
of Counsel)

For the Respondent-Respondent, John T. Barbour, Esq.

This matter is before us pursuant to a remand by the Appellate Division. The underlying case arose when the Board of Education of the Township of Delran terminated petitioner's employment on January 13, 1997 following discovery of the fact that the English endorsement she possessed appeared to be fraudulent on its face. Petitioner's termination was contrary to the advice given to the County Superintendent by the State Board of Examiners that petitioner was permitted to continue teaching

under her other endorsements until such time as the Board of Examiners took action against them.

Subsequent to petitioner's termination, the Board of Examiners issued an order to show cause why her certification should not be revoked or suspended. Petitioner successfully contested the order to show cause and, on September 24, 1998, the State Board of Examiners dismissed the matter.

Petitioner did not challenge the district board's action at the time of her termination in 1997. However, petitioner did file a petition with the Commissioner of Education within ninety days of the Board of Examiner's determination to dismiss its action with respect to her certification. In her petition to the Commissioner, petitioner claimed tenure and sought reinstatement to a teaching position.

In the ensuing administrative appeals process, the Administrative Law Judge, the Commissioner and the State Board of Education all agreed that petitioner was tenured at the time of her termination. However, they all concurred that petitioner's claim was time-barred by the ninety day rule, under which any petition challenging her termination had to be filed within ninety days of that termination.

In dismissing the petition, the Commissioner indicated in a footnote that since petitioner had not argued the issue, he was not considering whether the circumstances of the matter warranted relaxation of the ninety-day time limit. In affirming the Commissioner's decision, the State Board made no comment concerning relaxation of the time limit.

The Appellate Division affirmed the State Board's determination that, although petitioner was tenured at the time of her termination, her petition was time-barred.

Nonetheless, given the informal nature of administrative proceedings and in the absence of a controlling rule, the Court found that no petitioner should be prejudiced by a failure to formally request relaxation of the ninety-day time limit. Because the Commissioner had not considered whether the circumstances warranted relaxation of the ninety-day time limitation in this case and because the State Board had not commented on the question, the Court determined that it was necessary to remand the matter to the State Board so that we could return it to the Commissioner for his findings and determination of whether the ninety-day rule should be relaxed. Therefore, pursuant to the Court's direction to us, we remand this matter to the Commissioner.

Like the Appellate Division, we do not retain jurisdiction.

December 5, 2001

Date of mailing _____