

CORA HELM, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

NEW JERSEY STATE DEPARTMENT OF : DECISION  
HUMAN SERVICES, :

RESPONDENT, :

AND :

FELICE G. SACHS AND JAMES :  
ROGERS, :

RESPONDENT-INTERVENORS. :

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SYNOPSIS

Petitioning Teacher I alleged the Department’s elimination of her position at New Lisbon Developmental Center and assignment of her duties to individuals with less seniority violated her tenure and seniority rights. Respondent subsequently filed a motion to dismiss the matter as moot because of the March 1998 retirement of petitioner.

ALJ issued an order in April 1998 finding that this matter was to be properly determined, rather than dismissed as moot due to petitioner’s retirement in that the proper application of seniority regulations in the institutional context is likely to recur. ALJ found that petitioner was subject to a RIF and concluded that, in applying *N.J.A.C. 6:3-5.1* to the institutional setting, seniority must accrue in the categories of Teacher I and Teacher II separately since separate endorsements are required. Therefore, petitioner began accruing seniority under her endorsement in the Teacher I category on June 29, 1991. ALJ concluded that petitioner’s seniority rights entitled her to maintain her position as Teacher I at New Lisbon. Petitioner’s cross-motion for summary decision was granted; respondent’s motion for summary decision was denied. Moreover, if petitioner would have been entitled to additional benefits under the negotiated agreement had she remained at New Lisbon, *e.g.*, a clothing allowance, respondent was ordered to reimburse her in the appropriate amount. ALJ concluded that when the Department eliminated four Teacher I positions at the New Lisbon Developmental Center in October 1996, the positions that should have been affected were those held by four individuals with *less* seniority in the category Teacher I than petitioner.

Citing *Sheffield* and *Carpenito*, the Commissioner concurred with the findings and determination in the initial decision and adopted the decision as his own. Commissioner directed compensation for additional benefits by virtue of petitioner’s prior entitlement to maintain her Teacher I position.

JULY 22, 1998

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The record of this matter and the initial decision of the Office of Administrative Law have been reviewed. Respondent's exceptions are duly noted as submitted in accordance with *N.J.A.C. 1:1-18.4*.

Respondent initially takes exception to the ALJ's denial of its motion to dismiss this matter as moot, citing as support for such denial, *Bartshatky v. Board of Education of the Freehold Regional High School District*, 95 *N.J.A.R.* 2d (EDU) 71. However, respondent avers that, unlike *Barshatky*, the underlying concern in the instant matter is not one of petitioner's competence as a teacher, (respondent's exceptions at p. 4), and there is no need for a determination on the correct application of the seniority regulations in the institutional context since this case arose under unusual circumstances and the situation is not likely to recur. (*Id.*) Moreover, with respect to the ALJ's position that petitioner could be entitled to a clothing allowance, respondent maintains that petitioner had no such entitlement.

\*\*\*A teacher in a facility such as New Lisbon, which is under the auspices of the Division of Developmental Disabilities (DDD), is entitled to a clothing allowance while she is serving at the facility. See, Article VI, Section B of the CWA Professional Agreement. Ms. Helm had not been working at a DDD facility since October 1996 and therefore does not meet the conditions for receipt of a clothing allowance.\*\*\* (*Id.* at p. 5)

Neither, respondent continues did petitioner work in a position for which there was a need to purchase and maintain clothes. Finally, respondent reasons that any grievance petitioner had with respect to her CWA contract should have been brought in a separate proceeding in that the Commissioner's jurisdiction is limited to determining violations of the Teacher Tenure Act. (*Id.*)

Next, respondent takes exception to the ALJ's finding that petitioner's transfer from New Lisbon to Brisbane implicated tenure rights and protections, where "[s]he suffered no break in service, no diminution in job status, and no reduction in compensation." (*Id.* at p. 7)

Moreover, respondent excepts to the ALJ's conclusion that petitioner had more seniority than four other teachers in the Teacher I position at New Lisbon, thereby entitling her to remain at New Lisbon. Specifically, respondent objects to the ALJ's finding that seniority should have been calculated on the length of time petitioner was a Teacher I, in that one obtains seniority in the endorsements in which one has been employed, and the positions of Teacher I and Teacher II require separate endorsements. However, respondent argues that

The endorsements required for Teacher I and Teacher II are not necessarily different. The position of Teacher II requires a "valid N.J. Standard Teacher's Certificate authorizing instruction in subjects or areas consistent with the teaching assignment." Teacher I requires a "valid N.J. Standard Teacher's Certificate for Classroom Teacher of the Handicapped, Blind or Partially Sighted, Deaf or Hard of Hearing, or approval as a Learning Disability Specialist." The two are not mutually exclusive. The Teacher I requirement merely spells out the endorsements that a Teacher II may already possess. \*\*\*Indeed, there may be Teacher II's with the same endorsements as Teacher I's. Judge Duncan did not consider this in her analysis and the failure to do so is fatal to her reasoning. (*Id.* at p. 8, footnote omitted)

Respondent maintains, therefore, that, in an institutional context, seniority is more appropriately acquired in the position of a teacher than in a particular endorsement, (*id.* at p. 8) and that the specific categories outlined in *N.J.A.C.* 6:3-5.1 have no application. (*Id.* at p. 10)

Upon careful and independent review of the record in this matter, the Commissioner initially concurs with the ALJ that this is properly determined, rather than dismissed as moot, due to petitioner's retirement as of March 1, 1998, in that the proper application of seniority regulations in the institutional context is likely to recur.

Additionally, the Commissioner, like the ALJ, finds that petitioner was subject to a reduction in force (RIF), in accordance with the decisions rendered in *Sheffield v. New Jersey State Department of Human Services, Ancora Psychiatric Hospital*, decided by the State Board of Education November 2, 1994 and *Carpenito v. Rumson Borough Board of Education, Monmouth County*, decided by the State Board of Education February 4, 1998. In *Sheffield*, petitioner's position as the Supervisor of Educational Programs II at the Ancora Psychiatric Hospital was abolished and he was reassigned to a Supervisor of Educational Programs II position at the Marlboro Psychiatric Hospital. He suffered no diminution of position or pay. Nevertheless, the State Board affirmed that this circumstance constituted a RIF.

In this case, there is no question that the Commissioner of Human Services acted under authority of *N.J.S.A.* 18A:60-3 when he determined to reduce the number of "persons employed in a teaching capacity" at Ancora by eliminating one assignment as Supervisor II for economic reasons. \*\*\* This gave rise to a cause of action under the education laws subject to the primary jurisdiction of the Commissioner of Education. \*\*\*The fact that petitioner's employment was ultimately continued in another assignment might affect the relief to which he is entitled. \*\*\* That fact, however, can not excuse the Department of Human Services from the obligations imposed on it by the education laws or insulate its actions from administrative review. \*\*\*

When the Department of Human Services acted to reduce its numbers and notified petitioner that he was the one who would be affected, it was required to notify petitioner of his seniority. \*\*\* To hold otherwise would effectively insulate actions such as those involved here from challenge and render meaningless the protections afforded

by *N.J.S.A.* 18A:60-3. \*\*\* (Sheffield Slip. Op. at pp. 4-6, citations and footnote omitted)

Having been subjected to a RIF, the Commissioner further finds, contrary to respondent's contention, that

pursuant to *N.J.A.C.* 10:11-1.9, any reduction in the number of instructional staff in any state institution is subject to the seniority standards established by the Commissioner of Education under *N.J.S.A.* 18A:28-13, which were previously codified at *N.J.A.C.* 6:3-1.10 and are now codified at *N.J.A.C.* 6:3-5.1 (*Sheffield, supra*, at Slip. Op. at p. 7, footnote 2)

Finally, the Commissioner concurs that the application of these standards to the present context requires the positions of Teacher I and Teacher II to be treated separately, as they have distinct certification and experience requirements, notwithstanding that a Teacher II may happen to hold, as a consequence of subject assignment, one of the endorsements specifically required for the Teacher I position.

Accordingly, the initial decision of the ALJ is adopted for the reasons expressed therein. To the extent petitioner is entitled to compensation for additional benefits, such as clothing allowance, by virtue of her prior entitlement to maintain her position as Teacher I at New Lisbon Developmental Center, the Commissioner directs respondent to so reimburse petitioner.<sup>1</sup>

IT IS SO ORDERED.<sup>2</sup>

ACTING COMMISSIONER OF EDUCATION

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<sup>1</sup> In so doing, the Commissioner recognizes that although such benefit is governed by the terms of petitioner's bargaining agreement, because such emolument is closely tied to her tenure and seniority claims and the overriding issue in the instant matter is one of "statutory interpretation and educational policy," the Commissioner's intervention in this area is not improper under the circumstances. See *River Dell Regional Board of Education v. Brenda Canal et al.*, 93 *N.J.A.R.* 2d (EDU) 784, *aff'd* State Board 94 *N.J.A.R.* 2d (EDU) 327; *DiPillo v. Board of Education of the Township of Randolph*, 97 *N.J.A.R.* 2d (EDU) 238, 243.

<sup>2</sup> This decision, as the Commissioner's final determination in the instant matter, 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.* 6:2-1.1 *et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.