

#233-12 (OAL Decision: Not yet available online)

HEIDI BOWER, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE : DECISION

CITY OF SALEM, SALEM COUNTY, :

RESPONDENT. :

SYNOPSIS

Petitioner – a tenured teacher who holds certification as an athletic trainer, a teacher of health education, and a teacher of physical education – appealed the determination of the respondent Board to terminate her employment in violation of her tenure and seniority rights. The Board contended that when petitioner was initially hired in 2001, she was only certified as an athletic trainer and was not properly certified to teach the physical education and health classes she was assigned; the Board justified petitioner’s termination in June 2011 based on this finding. Petitioner asserted that although at the time she initially applied for a position with the Board she held only an athletic trainer certificate, she immediately commenced pursuit of her health and physical education certificates through the alternate route program and earned standard instructional certificates with endorsements in both areas – one in 2002 and the other in 2005. Petitioner contended that she is tenured in respondent’s district and was unlawfully terminated.

The ALJ found, *inter alia*, that: petitioner was employed by the respondent Board continuously from July 2001 through June 2011; petitioner was summarily terminated effective June 30, 2011 on the grounds that her initial hiring was fraudulent; the record shows that petitioner was hired by the district in 2001 with full knowledge that she was certified as an athletic trainer, but lacked certification as a health and physical education teacher; the then-Superintendent filed a Request for Expedited Review of Credentials with the Department of Education in July 2001, thereby evidencing his knowledge that petitioner was not yet fully certified; petitioner thereafter pursued certification through the alternate route program, receiving certificates authorizing her to teach health education (2002) and physical education (2005); petitioner went on to earn tenure as an athletic trainer in 2004, as a teacher of health education in 2005, and as a teacher of physical education in 2009; at no time did the Board engage in a reduction in force eliminating petitioner’s employment, and at no time did the Board file tenure charges against petitioner; the evidence demonstrates conclusively that the Board’s administrative staff – most particularly the Superintendent, who sat on the Board as a non-voting member – was fully aware of the petitioner’s certification status at the time of her hire, and enabled her to complete the alternate route program through the Salem district. The ALJ concluded that the Board’s action terminating petitioner’s employment was without basis in law and, accordingly, ordered that petitioner be reinstated as a teaching staff member together with retroactive salary, benefits, and emoluments.

Upon comprehensive review, the Deputy Commissioner – to whom this matter has been delegated pursuant to *N.J.S.A. 18A:4-33* – concurred with the ALJ’s findings and conclusions, and adopted the Initial Decision as the final decision in this matter. The Deputy Commissioner ordered respondent to immediately reinstate petitioner to her position as a teaching staff member in the City of Salem School District.

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.

June 11, 2012

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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 Board of Education (Board) and the petitioner’s reply thereto.¹

In its exceptions the Board maintains that the Administrative Law Judge (ALJ) erroneously found that the Board unlawfully terminated the petitioner. The Board specifically takes exception to the ALJ’s determination that the testimony of Board members Carol Adams and Joan Hoolahan was of little value because they had a minimal understanding of the facts surrounding the petitioner’s hiring and her subsequent actions. The Board maintains that the testimony demonstrated their knowledge of the main issues and critical facts; i.e. that the petitioner was hired without having any teaching certification and that each Board member would not have voted to hire such a person had they had knowledge of the certification deficiency at the time.

Additionally, the Board takes exception to the ALJ’s determination that “for the Board now to claim ignorance of what transpired in 2001 strains credibility,” and his conclusion that it was more likely that faced with budgetary constraints that the Board sought to rid itself of an unwanted highly paid employee in an expeditious fashion without reference to the requirements of law. The

¹ The record did not include the transcript from the hearing conducted at the OAL on February 21, 2012.

Board contends that the ALJ's speculation is a misinterpretation of the facts and the testimony of the Superintendent of Schools. The Board notes that the Superintendent testified that he recommended petitioner's termination to the Board because she did not have a proper teaching certificate at the time of her hiring in 2001, and that it was his belief that the Board's teaching contract required her to hold a teaching certificate at the time of her initial hiring. The Board further states that budgetary and financial constraints were never an issue in this case and there was never any testimony on those issues. Finally, the Board asserts that the ALJ should have added to his findings the fact that the petitioner accepted employment and began teaching services without being the holder of a valid teaching certification prior to providing such services.

In reply, the petitioner urges the adoption of the Initial Decision arguing that the Board's exceptions are narrow and do not support rejection or modification of the Initial Decision. With respect to the testimony of Board members Carol Adams and Joan Hoolahan, the petitioner contends that the Board members were misinformed with regard to the information that she provided to David Suiter, District Supervisor of Athletics, Student Activities, and Health and Physical Education, and the Superintendent concerning her certificate status in 2001. Petitioner maintains that she told the Superintendent and the Administrator about her certificate status and never made any misrepresentations. In her reply the petitioner stresses that the testimony of David Suiter confirmed that she did not misrepresent her certificate status. The petitioner further notes that her original contract in 2001 is irrelevant to her current tenure status because she has worked for more than three years and a day in positions for which she was duly certified. Additionally, the petitioner states that there was no evidence that she was ever teaching without having a certificate. Therefore, the petitioner contends that the Commissioner should adopt the Initial Decision and reinstate her to a teaching position.

Upon a comprehensive review of the record in this matter, the Deputy Commissioner – to whom this matter has been delegated pursuant to *N.J.S.A. 18A:4-33* – concurs with the ALJ that the petitioner attained tenure as an athletic trainer, a teacher of health education, and a teacher of physical education in the Salem City School District. The Deputy Commissioner is also in accord with the ALJ that the Board’s action terminating the petitioner’s employment was in violation of *N.J.S.A. 18A:6-10*. Moreover, the Deputy Commissioner finds respondent’s exceptions unpersuasive, largely reflecting arguments and objections previously raised before the ALJ and clearly taken into account by him in weighing the testimony and evidence. Accordingly, for the reasons expressed therein, the Initial Decision is adopted as the final decision in this matter. The petitioner is hereby reinstated to her position as a teaching staff member, together with retroactive salary, benefits and emoluments.

IT IS SO ORDERED.²

DEPUTY COMMISSIONER OF EDUCATION

Date of Decision: June 11, 2012

Date of Mailing: June 13, 2012

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.