

EDU #540-94
C #299-96
SB # 52-96

FRANK JAMES WHITE, :

PETITIONER-APPELLANT, :

V. :

BOARD OF EDUCATION OF THE :
TOWNSHIP OF BLOOMFIELD, ESSEX :
COUNTY, :

RESPONDENT-RESPONDENT, : STATE BOARD OF EDUCATION

AND : DECISION

GINA ROSAMILIA, SALVATORE :
GONCLAVES, WILLIAM ICKLAN AND :
DARLENE MATTIA, :

INTERVENORS-RESPONDENTS. :

Decided by the Commissioner of Education, July 12, 1996

Decision on motion by the State Board of Education, February 5, 1997

For the Petitioner-Appellant, Robert M. Schwartz, Esq.

For the Respondent-Respondent, Schwartz, Simon, Edelstein, Celso &
Kessler (Nathanya G. Simon, Esq., of Counsel)

For the Intervenor-Respondent, Rottkamp & Flacks (Robert J.
Rottkamp, Esq., of Counsel)

For the amicus curiae New Jersey School Boards Association, Michael F.
Kaelber, Esq.

Frank James White (hereinafter "petitioner"), a tenured teaching staff member,
alleged that the Board of Education of the Township of Bloomfield (hereinafter "Board")

had violated his tenure rights when it abolished his position as Supervisor of Physical Education and Health during a reduction in force and failed to reappoint him as either a principal or as the Supervisor of Elementary Education, positions held by nontenured individuals. Petitioner challenged the Board's requirement for possession of an instructional certification in elementary education, in addition to certification as a supervisor, in order to serve as the Supervisor of Elementary Education.

On April 9, 1996, an Administrative Law Judge ("ALJ") recommended dismissing the petition, finding that petitioner had failed to demonstrate his entitlement to the claimed positions. The ALJ found that possession of an elementary endorsement, in addition to certification as a supervisor, was required by "reasonably clear implication" in the Board's job postings for the Supervisor of Elementary Education position, and that it was not arbitrary, capricious or unreasonable for the Board to include such a requirement. The ALJ observed that some of the duties of the position were instructional in nature, including the oversight, review and analysis of classroom activities, in-service training and the evaluation of teachers. The ALJ found that possession of an elementary endorsement "clearly is important for this new position." Initial Decision, slip op. at 18. Consequently, the ALJ concluded that petitioner had failed to demonstrate his entitlement to the Supervisor of Elementary Education position.

The ALJ also recommended rejecting petitioner's claim to a principal's position, stressing that "principal" was a separately tenurable position under N.J.S.A. 18A:28-5 and that petitioner had not achieved tenure in that position.

On July 12, 1996, the Commissioner of Education adopted the findings and conclusions of the ALJ, and dismissed the petition. The Commissioner agreed that petitioner's claim to the Supervisor of Elementary Education position failed "in that the Board's requirement for an elementary education endorsement was an appropriate and lawful prerequisite to the position." Commissioner's Decision, slip op. at 29. The Commissioner also concurred with the ALJ's conclusion that petitioner had no entitlement to a principal's position. The Commissioner noted that although the Appellate Division had recently abandoned the long-standing practice of recognizing the positions specifically enumerated in N.J.S.A. 18A:28-5 as separately tenurable, Nelson v. Board of Educ. of Old Bridge, Docket #A-6441-94T5 (App. Div. 1996), rev'd, ___ N.J. ___ (1997), recent amendments to that statute had clarified that the positions enumerated in the statute, including principal, were indeed separately tenurable.

Petitioner filed the instant appeal to the State Board.

After a careful review of the record, we affirm in part and remand in part the determination of the Commissioner.

Initially, we agree with the Commissioner's determination that petitioner had no entitlement by virtue of tenure to a principal's position. We add only that, subsequent to the Commissioner's decision in this matter, the state Supreme Court reversed the decision of the Appellate Division in Nelson, supra. The Court held that our interpretation of N.J.S.A. 18A:28-5, requiring service in the separately-listed positions in order to achieve tenure in them, represented a proper interpretation of the statute and sound educational policy. The Court also found that there was no "manifest injustice" in applying the amendment to N.J.S.A. 18A:28-5 retroactively. Consequently,

petitioner herein, who had not achieved tenure as a principal, had no entitlement to reinstatement as a principal.

However, we set aside the Commissioner's determination rejecting petitioner's claim to the Supervisor of Elementary Education position, and remand for further proceedings in accordance with our decision herein. It is now well established that while the school laws permit a district board to establish qualifications beyond the threshold qualifications established by statute and regulation for employment in a particular assignment, the desire to employ or retain individuals with such additional qualifications cannot defeat the tenure and seniority rights conferred by statute on teaching staff members. South River Education Association v. Board of Education of the Borough of South River, decided by the State Board, November 4, 1987; Herbert v. Board of Education of the Township of Middletown, decided by the State Board, August 1, 1990.

In this case, the fact that possession of an instructional certification in elementary education may be "important" for service as the Supervisor of Elementary Education, or that the Board required such certification by "reasonably clear implication," or that the inclusion of such a requirement was not "arbitrary and capricious" is not determinative of petitioner's challenge to that requirement. Rather, the standard is whether the duties attending the Supervisor of Elementary Education position at issue were of such character as to require possession of an elementary education endorsement, in addition to certification as a supervisor, in order to be authorized by statute and regulation to perform such functions. Timko v. Bridgewater Raritan Regional School District, decided by the State Board, 94 N.J.A.R.2d (EDU)

481, 83. Inasmuch as the Commissioner did not determine whether the specific duties of the position were of such nature as to require possession of an endorsement in elementary education, we find it necessary to remand this matter to him for a determination of petitioner's claim to the Supervisor of Elementary Education position under the proper legal standard.¹

We therefore affirm the Commissioner's determination to dismiss petitioner's claim to a principal's position, and remand this matter to the Commissioner for further proceedings consistent with our decision herein regarding petitioner's claim to the Supervisor of Elementary Education position.

We do not retain jurisdiction.

May 7, 1997

Date of mailing _____

¹ We note that there is no indication in the record that the job description for this position was forwarded to the County Superintendent for approval of the dual certification requirement. N.J.A.C. 6:11-3.3(b).