

SUSAN ALBERT, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE : DECISION

SCOTCH PLAINS-FANWOOD :

REGIONAL SCHOOL DISTRICT, :

UNION COUNTY, :

RESPONDENT. :

SYNOPSIS

Petitioning art teacher alleged the Board's reduction in her compensation for the 1996-97 school year and its failure to offer her a full-time elementary classroom teaching position violated her tenure rights.

ALJ concluded petitioner's tenure rights were violated when the Board failed to appoint her to one of the vacant elementary teacher positions. ALJ determined that petitioner was entitled to the full-time elementary teaching position because she was eligible for the appropriate endorsement at the time of the RIF. Summary decision on behalf of petitioner was granted. Board was ordered to pay petitioner back pay and other emoluments.

Reconciling the within matter with *Francey*, the Commissioner adopted the findings and determination in initial decision as his own.

AUGUST 6, 1997

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The record of this matter and the initial decision of the Office of Administrative Law have been reviewed. The Board’s exceptions and the reply thereto were timely filed in accordance with *N.J.A.C.* 1:1-18.4.

In its exceptions, the Board challenges the decisions cited by the Administrative Law Judge (ALJ) which stand for the proposition that eligibility for a certificate is sufficient to qualify an individual for a position. (Board’s Exceptions at pp. 1, 2) The Board asserts that these decisions no longer have effect in that they are inconsistent with the holding in *Francey, supra*.¹ The Board affirms its position that the holding in *Francey* precludes petitioner from succeeding on her motion for summary decision, notwithstanding the ALJ’s statement “that ‘petitioner’s elementary endorsement may also be protected if she satisfied the requirements for the endorsement prior to the RIF but simply had not yet received the paperwork.’” (*Id.* at p. 2, citing

¹ The Board notes its objection to the use of the following decisions: *Reinish, supra, Kane, supra, Nangle, supra, Saad, supra, and Givens, supra.*

Initial Decision at pp. 7, 8) The Board maintains that *Francey* does not place significance on an individual's eligibility for an endorsement at the date of a RIF but, rather, places significance on an individual's legal status at the date of the RIF. (*Id.* at pp. 2, 3)

The Board further challenges the ALJ's apparent reliance on a portion of *Johnstone, supra*, which states that a board can be neither surprised nor prejudiced when it is notified of petitioners' interest and certification status prior to filling disputed vacancies. (*Id.* at p. 3, citing to Initial Decision at p. 8) However, the Board asserts that this statement was merely the Commissioner's recitation of petitioners' argument in *Johnstone*, and said position was ultimately rejected. (*Id.* at p. 3)

In reply, petitioner reiterates her contention that this matter is distinguishable from *Francey* for the following reasons: (1) With the undisputed knowledge of the District's administration, petitioner was fully eligible, and had applied, for the elementary endorsement more than one month prior to the RIF; (2) Petitioner's employment with the Board was reduced, but not terminated, as a result of the RIF; and (3) Although the Board had the opportunity to expedite issuance of petitioner's elementary endorsement, it failed to do so. Petitioner contends that this failure was a "deliberate attempt to thwart [her] tenure rights." (Petitioner's Reply at p. 2)

Petitioner additionally argues that she remained an employee of the Board after the RIF. She claims that her right to use her elementary endorsement attached when it was issued in May of 1996. However, at that point, petitioner notes, the Board had not yet voted on her 1996-97 assignment. Thus, petitioner reasons that when the Board acted on May 23, 1996 to assign her to half-time position, it did so *after* her receipt of the actual certification document. (*Id.* at pp. 3, 4)

Finally, petitioner points to *Francey's* discussion of the statutory language of N.J.S.A. 18A:28-12.

***That statute, as the court notes at 286 N.J. Super. 358, allows a claim [by a rified teacher] "...whenever a vacancy occurs in a position for which such person *shall be qualified*" (emphasis added by the Court, citing N.J.S.A. 18A:28-12).

The Court rejected *Francey's* claim that "shall be qualified" was meant to apply to certificates acquired in the future. *** However, the Court does note that

"Qualified," in its ordinary sense, means: "[to have] complied with the specific requirements or precedent conditions...." *Webster's Third New International Dictionary Unabridged* 1858 (3d ed. 1981). *Francey, supra* at 358.

(Petitioner's Reply at p. 4)

Thus, petitioner reasons that she was qualified because she complied with the specific requirements for obtaining her elementary endorsement prior to the RIF. Petitioner argues that she should not be barred from asserting her tenure rights "****because the printing of a document takes time." (*Id.* at p. 4)

Upon careful and independent review of the record in this matter, the Commissioner concurs with the ALJ's conclusion that the Board violated petitioner's tenure rights when it failed to appoint her to one of the vacant elementary teacher positions following a RIF in April 1996. (Initial Decision at p. 11) Where petitioner, prior to the RIF, undisputedly fulfilled the single requirement for obtaining her elementary endorsement, *i.e.* obtaining a passing score on the general knowledge examination, and duly applied for this endorsement; where the Board was notified prior to voting on the RIF that petitioner was eligible and had applied for, but not yet received, her elementary endorsement, and where the Board does not assert that delay in receipt of the certification document was for any reason other than administrative burden, the

Commissioner finds that petitioner's tenure protections and attendant rights as triggered by the RIF may properly encompass the elementary endorsement.

The Appellate Division in *Francey* analyzed the statutory construction of N.J.S.A. 18A:28-12, examining the purpose of, and policy considerations inherent in, the statute.

***N.J.S.A. 18A:28-12 is a reemployment statute. It looks to the reestablishment of a prior employment relationship. That relationship does not logically exist for additional endorsements or teaching certifications acquired after the employment relationship ends.

When enacting the tenure laws for teachers, the Legislature was responding to concerns regarding those teachers who had devoted their efforts to an employment relationship with a local school district, and sought to protect such teachers from an arbitrary termination of that relationship.

These concerns govern a tenured teacher's rights while in the employment of a school board and afford protection thereafter for rights attained during that relationship. Whether the same considerations arise so as to extend tenure protection to an expansion of the scope of a teacher's teaching certificate, after the employment relationship has ended, is plainly a matter of policy. *** Thus, on the one hand, when a teacher is RIF'd, but, during employment with the school board, has earned tenure rights within the scope of a teaching certificate and all endorsements thereon, the teacher is entitled to preferred reemployment only to positions within that certificate and endorsements. On the other hand, like a distinct, separate teaching certificate, subsequently acquired endorsements do not fall into the scope of needed protection. *Francey, supra* at 359, 360, citations omitted.

Unlike the petitioner in *Francey*, petitioner herein took all necessary steps to expand the scope of her teaching certificate *while in the course of her relationship with the Board*, and the Board was duly apprised of those steps well in advance of the RIF underlying this dispute. No claim has been made by the Board that the actual issuance of petitioner's elementary endorsement was anything other than a ministerial function of the Department of Education;

petitioner's certificate having been duly processed in accordance with standard agency practice, the timing of her application simply resulted in the actual certificate document being issued shortly after the RIF. Under these circumstances, the Commissioner determines that a finding that petitioner was "qualified" to hold the full-time elementary position within the intendment of *N.J.S.A. 18A:28-12* is not inconsistent with the Court's analysis in *Francey*.

Accordingly, the Commissioner determines to adopt the initial decision for the reasons expressed therein.² Petitioner's motion for summary decision is granted, and the Board is ordered to compensate petitioner, as outlined in the initial decision.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

AUGUST 6, 1997

² To the extent the Board argues that the case law employed in the Initial Decision of the ALJ is without legal significance in the wake of *Francey*, the Commissioner notes that his determination is not based on those cases.