NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-3084-19

CATHERINE PARSELLS,

Petitioner-Respondent,

v.

BOARD OF EDUCATION OF THE BOROUGH OF SOMERVILLE, SOMERSET COUNTY,

Respondent-Appellant.

APPROVED FOR PUBLICATION

June 6, 2022

APPELLATE DIVISION

Argued October 5, 2021 – Decided June 6, 2022

Before Judges Fisher, DeAlmeida and Smith.

On appeal from the New Jersey Commissioner of Education, Docket No. 119-5/18.

Marc H. Zitomer argued the cause for appellant (Schenck, Price, Smith and King, LLP, attorneys; Marc H. Zitomer, of counsel and on the briefs; Christopher J. Sedefian, on the briefs).

Hop T. Wechsler argued the cause for respondent Catherine Parsells (Selikoff & Cohen, PA, attorneys; Hop T. Wechsler, on the brief).

Andrew J. Bruck, Acting Attorney General, attorney for respondent New Jersey Commissioner of Education

(David L. Kalisky, Deputy Attorney General, on the statement in lieu of brief).

The opinion of the court was delivered by

SMITH, J.A.D.

In a final decision, the Commissioner of Education (Commissioner) found that the Somerville Board of Education (Board) violated the rights of Catherine Parsells when it refused to permit her to return to her position as a tenured full-time teacher. An administrative law judge (ALJ) found for the Board, concluding Parsells had voluntarily stepped down from her full-time teaching position and as such had no right to return to it. The Commissioner reversed the ALJ's initial decision, ordering the Board to reinstate Parsells to the position of full-time teacher, retroactive to the 2018-2019 school year, with full back pay, benefits, and related emoluments of employment, less any mitigation costs.

The Board appeals, arguing among other things that the Commissioner's decision was arbitrary, capricious, and unreasonable. We defer to the Commissioner's findings and affirm. In doing so, we hold that school boards have a duty to notify, in advance, full-time teachers who consider voluntarily transferring to part-time teaching positions that they may not have a right to return to their full-time position consistent with the principles espoused in Bridgewater-Raritan Educ. Ass'n v. Bd. of Educ. of Bridgewater-Raritan Sch. Dist., 221 N.J. 349 (2015).

I.

The parties stipulated to the facts, which were adopted by the ALJ.[1] Parsells, a tenured teacher, was employed full-time by the Board from September 2010 to June 2016. On May 2, 2016, Parsells wrote to Superintendent Dr. Timothy Purnell seeking a transfer from full-time teaching to an available in-district part-time teaching position with benefits. In her letter, Parsells explained that she "would be interested in this position for as long as it is available, or until my family decides that full-time work would be in our best interest again" and stated that she was "very appreciative of being given the opportunity to be considered for a position that would allow me to continue working as a teacher pursuing my career goals while also being able to spend time with my son during his precious [early] years."

On May 17, the Board approved Parsells' requested transfer from full-time to part-time teacher for the 2016-17 school year. Later that summer, the Board also appointed Parsells as a Preschool Team Leader for the 2016-17 school year.

[1] The ALJ found not only facts stipulated by the parties, but also made credibility findings and additional factual findings based on the testimony of Parsells, current Superintendent Dr. Timothy Teehan, and former Superintendent Dr. Timothy Purnell.

The Board did not advise her in advance she would not have a right to return to any full-time position if she voluntarily took the part-time position.[2]

On or about November 18, 2016, Parsells requested and was subsequently granted maternity leave and a childcare leave of absence, effective February 2 to June 30, 2017. Parsells wrote the Board on February 1, 2017 to express her interest in continuing work as a part-time teacher during the upcoming 2017-18 school year, provided the position continued to include benefits.

In July, Dr. Purnell and Dr. Teehan responded to Parsells. They informed her that her part-time role would no longer be afforded benefits, so if she wanted benefits for the 2017-18 school year, she would need to teach full-time. When a full-time position became available, Parsells declined the offer, citing family reasons. On July 13, 2017, Parsells wrote to Dr. Teehan seeking permission to extend her maternity leave for the entire 2017-18 school year. The Board granted her request.

In April 2018, Dr. Teehan spoke to Parsells regarding her work status for the 2018-19 school year. He informed Parsells she had no automatic entitlement to a full-time teaching position and that she relinquished her rights to the same when she applied for and accepted the part-time role. Moreover, he explained

[2] This fact was not stipulated to by the parties. It was one of the ALJ's additional findings which she arrived at after the conclusion of the hearing.

to her that if a full-time position were to become available, she would be required to apply for it. Parsells applied for the full-time work and participated in interviews. However, she was not selected by the Board for the available full-time positions. The successful candidates were non-tenured applicants who had not previously been employed by the school district.

Parsells appealed to the Commissioner, arguing that she did not waive her tenure rights by accepting a part-time position and that the Board further violated her rights by hiring out of district teachers with no tenure for the available full-time positions instead of her. After a two-day hearing, the ALJ rendered an initial decision in favor of the Board, finding that Parsells voluntarily went from full-time to part-time status, excluding her from reduction-in-force protection and making her ineligible to return to her full-time teaching position.

The ALJ made other findings. She found "none of [Parsells'] supervisors or other Board personnel advised [Parsells] how her voluntary transfer to a part-time position would impact her ability to return to a full-time position."[3] The

[3] At the hearing, Dr. Purcell testified that he, as former superintendent, was "unaware of any case in which a move to a part-time position was considered to be temporary." Dr. Teehan testified that during his term as superintendent, eight teachers "moved between full-time and part-time positions." Dr. Teehan "did not advise any of the teachers [who moved] that this type of change would cause them to waive tenure rights."

ALJ found Parsells testified credibly that she believed she "would be able to return to her former full-time position when she no longer wanted to have a part-time schedule," and that had she known otherwise, she would not have chosen part-time teaching status.

The Commissioner, accepting the facts as found by the ALJ, reversed the initial decision, finding that Parsells did not knowingly and voluntarily waive her right to a full-time position, including the salary and benefits associated with it. The Commissioner's final decision returned Parsells to a full-time position in the school district, finding that Bridgewater-Raritan supported the finding that Parsells did not waive any rights to her full-time position, and that the Board had a separate duty to inform Parsells of the consequences of going part-time before she voluntarily changed jobs, including informing her of the loss of her right to return to full-time job status. 221 N.J. 349.

The Board appeals the final decision, arguing that the Commissioner's decision was arbitrary, capricious, and unreasonable. The Board further argues that the Commissioner erred in finding the Board was required to give notice of the impact of Parsells' switch to part-time, and that her declining a full-time job for the 2017-18 year waived any right she had to return to full-time tenured status.

II.

"[We] have 'a limited role' in the review of [agency] decisions." In re Stallworth, 208 N.J. 182, 194 (2011) (quoting Henry v. Rahway State Prison, 81 N.J. 571, 579 (1980)). "[A] 'strong presumption of reasonableness attaches to [an agency decision].'" In re Carroll, 339 N.J. Super. 429, 437 (App. Div. 2001) (quoting In re Vey, 272 N.J. Super. 199, 205 (App. Div. 1993)). "In order to reverse an agency's judgment, [we] must find the agency's decision to be 'arbitrary, capricious, or unreasonable, or [ ] not supported by substantial credible evidence in the record as a whole.'" Stallworth, 208 N.J. at 194 (second alteration in original) (quoting Henry, 81 N.J. at 579-80). The burden of proving that an agency action is arbitrary, capricious, or unreasonable is on the challenger. Bueno v. Bd. of Trs., 422 N.J. Super. 227, 234 (App. Div. 2011) (citing McGowan v. N.J. State Parole Bd., 347 N.J. Super. 544, 563 (App. Div. 2002)).

We "'may not substitute [our] own judgment for the agency's, even though [we] might have reached a different result.'" Stallworth, 208 N.J. at 194 (quoting In re Carter, 191 N.J. 474, 483 (2007)). "This is particularly true when the issue under review is directed to the agency's special 'expertise and superior knowledge of a particular field.'" Id. at 195 (quoting In re Herrmann, 192 N.J. 19, 28 (2007)). Furthermore, "[a]n administrative agency's interpretation of

statutes and regulations within its implementing and enforcing responsibility is ordinarily entitled to our deference." In re Appeal by Progressive Cas. Ins. Co., 307 N.J. Super. 93, 102 (App. Div. 1997).

III.

The Board argues that the Commissioner erred by misinterpreting the Supreme Court's decision in Bridgewater-Raritan to require advance notice from the Board without an express statutory provision. The record shows no dispute concerning the events that led to Parsells' claim, therefore this appeal turns on competing interpretations of the Supreme Court's decision in Bridgewater-Raritan. The question is whether Bridgewater-Raritan compels school boards to notify in advance a full-time tenured teacher who voluntarily takes a part-time teaching position that she is at risk of not getting her full-time job back. A review of the holding in Bridgewater-Raritan is in order.

In Bridgewater-Raritan, the Court reversed in part the Commissioner's summary dismissal of a petition filed by three temporarily assigned replacement teachers who were advised by school administrators that their service time would count toward tenure. The advice was flawed, and the teacher's employment contracts were then non-renewed by the school board. The Court affirmed the Commissioner's dismissal of two of the three petitions because two teachers were expressly told by school administrators that they were

replacement teachers, but the Court reversed as to the third teacher because a factual dispute existed concerning whether the board informed the teacher of her replacement status.

The Bridgewater-Raritan Court, using basic principles of statutory construction, found that even though the replacement teacher statute, N.J.S.A. 18A:16-1.1, had no express notice requirement, its use of the word "designate" created:

> . . . an obligation that the employer give notice to the employee receiving the specialized designation that takes the employee off the normal service road toward tenure. We construe N.J.S.A. 18A:16-1.1 to require a board of education to make an employee aware that he or she is being employed as a "replacement." That construction reasonably and fairly ensures that a person being offered specific employment as a replacement will not have the normal expectation that his or her time in service will count toward the acquisition of tenure, as commonly is the case under N.J.S.A. 18A:28-5.
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> [Bridgewater-Raritan, 221 N.J. at 361.]

The Board contends that the Commissioner's decision to apply the Court's holding in Bridgewater-Raritan to the undisputed facts in this case was arbitrary and capricious. It posits that Bridgewater-Raritan should be limited to circumstances where the duty of a school board to give notice to a teacher arises from an express statutory provision. We are not persuaded.

The Bridgewater-Raritan Court held that a school's duty to provide notice to replacement teachers concerning the limitations on service time towards tenure arose from N.J.S.A. 18A:16-1.1. However, the Court did not stop there in its analysis. The Court rejected the board's argument that the Legislature would have included notice language in N.J.S.A. 18A:16-1.1 if it wanted to impose such a duty on employers. Moreover, the Court found that a "lack of transparency" about a teacher's temporary replacement status "could allow school districts to manipulate those designations to avoid tenure."

The record shows Parsells faced a similar situation. The Board failed to inform her in advance that voluntary acceptance of a part-time teaching job could jeopardize or completely impair her ability to return to a full-time teaching job. The lapse happened despite Dr. Purnell, who facilitated the 2016 part-time arrangement with Parsells, being unaware of any circumstance in which a "move to a part-time position was considered temporary." Parsells, a tenured full-time teacher, did not know of this risk to her full-time employment, and she testified that had she known, she would not have accepted the part-time teaching position. "[K]eeping teachers in the dark as to their employment status effectively negates what the Legislature has endeavored to address by the tenure statute[4], namely,

[4] The Tenure Act, N.J.S.A. 18A:28-1 to -18, specifically defines the conditions under which teachers are entitled to the security of tenure. The statute makes

'prevent[ing] school boards from abusing their superior bargaining power over teachers in contract negotiations.'" Bridgewater-Raritan, 221 N.J. at 361 (citing Spiewak, 90 N.J. at 73).

We find that imposing a duty on school boards to provide advance notice to their tenured full-time teachers that they may not get their full-time teaching job back if they voluntarily take a part-time teaching job is a proper and logical extension of the Court's holding in Bridgewater-Raritan. No specific statutory provision is needed to trigger this duty, and we reject the Board's argument on this point. Bridgewater-Raritan, 221 N.J. at 362. We note that the mere existence of the Tenure Act supplies the rationale for the imposition of such a duty. The Board is best positioned to have accurate information about the consequences of a decision by, in this case, a tenured full-time teacher who elects to transition to part-time employment. Such a teacher should be notified of the risks to her full-time job before making that fateful decision. Where Bridgewater-Raritan holds that non-tenured teachers are entitled to advance notice about the consequences of their designation as replacement teachers, we find tenured full-time teachers, a class of employee with substantial protections

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tenure a mandatory term and condition of employment. It therefore supersedes contractual terms. Spiewak v. Bd. of Educ. of Rutherford, 90 N.J. 63, 72 (1982).

under the Tenure Act, are entitled to advance notice about the consequences of voluntarily transferring from full-time teaching to part-time.

The Board next argues that if this duty is imposed on school boards, "similarly-situated teachers who voluntarily request reassignments would effectively retain a permanent entitlement to return to their former positions at their whims." We do not establish a teacher's "entitlement to return" to a full-time position on a "whim." This argument misses the mark, and it suggests that an employer's lack of transparency with its own employees is somehow good operational policy.

Imposing such a duty on school boards simply facilitates disclosure of important information to teachers who must live with the consequences. It also ensures teachers are armed with the knowledge they need to make an informed career choice. School boards who are transparent with teachers that consider moving to part-time employment will not be forced to "stop accommodating teacher requests." They will simply ensure that teachers who choose to go part-time know exactly what their job status is.

Finally, the Board argues that Parsells abandoned any rights she had, tenured or otherwise, to return to full-time employment when she elected to stay on maternity leave. The Board cites O'Toole v. Forestal, 211 N.J. Super 394 (App. Div. 1986), in support.

In O'Toole, a physical education teacher was laid off for economic reasons. The district subsequently offered her a full-time teaching position, but she declined the job, advising the district that she was moving out of state and could not take the position. The Commissioner found the teacher had "abandon[ed] . . . her rights to tenure and reemployment." Id. at 402. We affirmed, stating that "[t]enure and reemployment rights may be voluntarily relinquished." Ibid. (citations omitted).

O'Toole doesn't apply to the record before us. It addresses cases where tenured teachers have lost their full-time position due to a reduction-in-force. Once a lay-off has occurred, N.J.S.A. 18A:28-9 to N.J.S.A. 18A:28-14 establishes rights for teachers and duties for school boards. However, Parsells was not laid off. She merely chose to switch from full to part-time status. The Board's duty to inform her of the impact that switch would have on her tenured status was triggered when it offered her the part-time position. Once she made the change, the harm was irreversible. Her subsequent decision to decline a full-time role for the 2017-18 school year and remain on maternity leave has no bearing on the Board's initial duty to notify her of the consequences of her proposed switch.

On this record, we discern no basis to disturb the final decision of the Commissioner, and we find that Bridgewater-Raritan's holding imposing a duty

on school boards to inform non-tenured teachers of adverse job consequences before they are reassigned to replacement teaching assignments should extend to these facts and impose a duty on school boards to inform full-time teachers of adverse job consequences before they are appointed to part-time teaching positions.

Affirmed.