SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5203-14T2

MELISSA KOLLAR,

Petitioner-Appellant,

v.

BOARD OF EDUCATION OF THE TOWN OF HARRISON, HUDSON COUNTY,

Defendant-Respondent.

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Submitted January 18, 2017 – Decided July 17, 2017

Before Judges Fisher and Ostrer.

On appeal from the State Department of Education, Docket No. 94-5/13.

Melissa Kollar, appellant pro se.

The Murray Law Firm, LLC, attorneys for respondent Board of Education of the Town of Harrison, Hudson County (Karen A. Murray, of counsel and on the brief).

Christopher S. Porrino, Attorney General, attorney for respondent Commissioner of Education (Beth N. Shore, Deputy Attorney General, on the statement in lieu of brief).

PER CURIAM

Petitioner Melissa Kollar appeals from the Commissioner of Education's May 12, 2015 final decision dismissing her petition that challenged the Town of Harrison Board of Education's determination that she had not attained tenure as a school athletic trainer.

Petitioner worked as an athletic trainer for the Board since 2007, but did not obtain an athletic trainer's certificate until 2013, although it had been required as a condition of employment as a school athletic trainer since 1999. See L. 1999, c. 87, § 4, now codified as N.J.S.A. 18A:26-2.4; see also N.J.A.C. 6A:9B-14.17. Her contract was not renewed later that year and she declined to re-apply for the position. Instead, she contended she was entitled to tenure.

Although petitioner failed to timely obtain the certificate, she nonetheless satisfied the certificate requirement — she possessed an athletic trainer's license from the New Jersey Board of Medical Examiners (except for a brief period in 2009 when she let her license lapse) and was a graduate of a four-year college. See N.J.A.C. 6A:9B-14.17 (setting forth requirements for certificate). She noted that the Board failed to require proof of a certificate when it posted the job opening in 2007 or when it hired her. However, in 2010 and thereafter, she certified to the Board that she possessed an athletic trainer certificate, but

she had in mind a certificate she possessed from the National Athletic Trainers Association. Although she did not actually possess a State certificate, petitioner contended her years of service when she was qualified for it should count towards the prerequisite years of service for tenure.

The Commissioner rejected this argument. In a cogent review of the facts and law, the Commissioner determined that petitioner's failure to obtain the statutorily required certificate was fatal to her claim. That she was eligible for a certificate was of no moment. The Commissioner relied upon the plain language of N.J.S.A. 18A:28-4, which states that "[n]o teaching staff member shall acquire tenure in any position in the public schools . . . who is not the holder of an appropriate certificate for such position, issued by the State Board of Examiners, in full force and effect . . . ." Petitioner did not benefit from the grandfather provisions of the 1999 law, see N.J.S.A. 18A:28-4(b), as she was not employed as an athletic trainer in 1999. The Commissioner also found inapplicable decisions that permitted tenure applicants to "tack" time periods in which they held emergency certificates, since petitioner possessed no certificate until 2013.

Our standard of review of the Commissioner's decision is limited. In re Proposed Quest Acad. Charter Sch. of Montclair Founders Grp., 216 N.J. 370, 385 (2013). We "may reverse an agency

decision if it is arbitrary, capricious, or unreasonable," or it clearly violates its mandate. Ibid. We defer to an agency's "expertise and superior knowledge of a particular field." Greenwood v. State Police Training Ctr., 127 N.J. 500, 513 (1992). That is particularly true with respect to the Commissioner's interpretation and enforcement of statutes and regulations pertaining to the complex and specialized area of tenure. Nelson v. Bd. of Educ., 148 N.J. 358, 364-65 (1997). Nonetheless, we are "in no way bound by the agency's interpretation of a statute or its determination of a strictly legal issue." Mayflower Sec. Co. v. Bureau of Sec., 64 N.J. 85, 93 (1973).

Applying that deferential standard of review, we affirm substantially for the reasons set forth in the Commissioner's decision. We are mindful that this may be viewed as a harsh result, inasmuch as the Board apparently was no more aware than petitioner was of the certificate requirement when it hired her. Nonetheless, she failed to obtain a certificate during her years of employment as an athletic trainer. The Board eventually became aware of the certificate requirement and asked petitioner if she had one. Although her affirmation that she possessed a certificate may have been an innocent mistake, "the primary responsibility for applying for and possession [of] appropriate certification rests with the teacher . . . ." McAneny v. Bd. of Educ. of the Sch.

Dist. of the Chathams, 92 N.J.A.R.2d (Vol. 7) 208, 212 (Dep't of Educ. 1991). The Commissioner has rejected claims to tenure in other circumstances where the Board erred along with the employee:

> It is, of course, unfortunate that the petitioner was employed under such circumstances for so substantial a period of time, as the result of an apparent misunderstanding in which the Board and she appear equally culpable; however, the fact remains that she could not, as a matter of law, acquire tenure in a position for which she was not certified.
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> [Nelson v. Bd. of Educ. of the City of Plainfield, 2008 N.J. AGEN LEXIS 1013 at *7 (N.J. Adm. April 18, 2008).]

The Commissioner reached a similar decision here. We shall not disturb it.

Affirmed.