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Blue, *et al* v. Board of Education  
Cite as 2 *N.J.A.R.* 206

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**MARY BLUE, et al,**  
Petitioner,  
v.  
**BOARD OF EDUCATION,  
CITY OF JERSEY CITY,**  
Respondent.

Decided January 28, 1980

**Initial Decision**

**SYNOPSIS**

Board of Education was ordered to reinstate as teaching staff members 31 properly certificated Title I teachers who were terminated in an attempt to prevent acquisition of tenure and who were re-assigned to various job titles to avoid pay parity. The Board violated *N.J.S.A.* 18A:29-6 and 8 when it did not grant minimum statutory increments to teacher-petitioners in their second and third years of service, and therefore was ordered to adjust teachers' salaries for the underpayments. But first year salary disparity claims were without merit, where petitioners had agreed to the salaries.

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**Barry A. Aisenstock, Esq.,** for the Petitioner  
**William A. Massa, Esq.,** for the Respondent

**YOUNG, ALJ:**

Petitioners, thirty-one in all, allege that the Board of Education of the City of Jersey City, hereinafter "Board," has not compensated them in accordance with the salary guide adopted for all regular teachers; that they have been denied reappointment for reasons that are not true; and that they have been denied an effective opportunity to obtain a true statement of reasons or appearances before the Board despite numerous attempts to achieve the same.

Respondent Board denies the allegations and contends that petitioners were employed as teacher assistants in the Title I program; that they were supervised by coordinators who were designated as Civil Service non-instructional personnel; and that they were not subject to the provisions of Title 18A of the New Jersey Statutes in connection with their job rights. It

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avers further that since the program is federally funded, there are no available Board funds to supplement existing salaries, and that the action of the Board was within their discretionary authority. It also takes the position that petitioners are guilty of laches.

A conference of counsel was held on March 14, 1978, by an Assistant Director in the Department of Education, Division of Controversies and Disputes, at which time agreements were made relative to discovery procedures. The matter was reassigned on December 24, 1978 due to the retirement of the initial assignee, and efforts were made to expedite the proceedings which were stalled due to respondent's failure to answer interrogatories. A second conference of counsel was held on February 22, 1979 to move the matter to a resolution.

A "Notice of Request for Sanctions for Failure to Answer Interrogatories" was filed by petitioners with the Commissioner of Education on January 9, 1979. The Commissioner signed an Order on February 28, 1979 directing respondent to answer interrogatories no later than March 23, 1979.

The matter was transferred to the Office of Administrative Law on July 2, 1979 as a contested case, pursuant to the provisions of *N.J.S.A. 52:14F-1 et seq.*

A hearing was held on August 1, 1979 after which the parties agreed to make efforts to settle the matter. An offer of settlement was presented to the Board by its counsel on September 17, 1979, but was rejected. A second day of hearing was held on October 26, 1979. The record was closed with the receipt of respondent's timely letter memorandum in lieu of brief on November 27, 1979.

All petitioners, save one, are and were teachers properly certified to fulfill the responsibilities of their assignments, and all were compensated with salaries less than the amounts that were indicated on the adopted salary guides for regular teachers. All petitioners were employed to teach under the Title I program.

Four of the petitioners testified as to the nature of their duties which was represented as typical of all petitioners. Their titles varied. Two were "reading tutors" from September 1974 through June 1976 and "reading teachers" for the 1976-77 school year. Two others were "teacher assistants" in mathematics from January 1975 through June 1976 and "teachers" from September 1976 through June 1977.

All petitioners performed their assigned duties on a daily basis from 8:30 a.m. to 3:15 p.m., the same time schedule of regular teachers. They were also assigned to involuntary extra duties of supervision, such as court yard duty, hall duty, stairwell supervision, etc. Special report cards were completed and sent home. Plan books were kept.

Petitioner Breen (nee Hennessy) testified that the teachers, as a group, requested reasons for the non-renewals. She testified that she “went to the Board, I asked to see my folders of my past three years and tried to find out why I had been terminated.” In response to a question as to what reasons were given, she responded that “I didn’t really get any reason at the Board. . . .”

Relative to salary, petitioner Breen indicated her initial salary was \$10,500, which was reduced to \$8,250 in the two succeeding years. She inquired as to the reductions and was advised she was in a special program and “it had something to do with funding from the State and that was the reason for the decrease.”

The petitioners were observed and evaluated by supervisory personnel.

The duties of petitioner Blue were comparable to those of Breen. Her initial compensation, however, was at the initial annual rate of \$8,500, remained at that rate for the second year, and was reduced to \$8,200 for the third year. She held parent conferences and “had a hands on workshop with parents to teach them to teach Math to their students.” She learned of her non-renewal in the newspaper, went to the Board, and received a letter from the assistant superintendent.

Petitioner Williams testified that her duties were similar to others, but added, “One thing. When I was told to sub, it was either do it or be written up on insubordination.”

Petitioner Wadleigh also testified that her duties were similar to that of other petitioners. Her salary rates were \$8,500 and \$8,250 for each of her three academic years. This petitioner also testified that she learned of her non-renewal in the newspaper, went to the Board, and requested reasons in a letter to the assistant superintendent, who advised her that the reason was “new hiring practices.” She further testified that “We sent a letter asking for the exact change in the hiring procedure but never received an answer. . . .”

Counsel for petitioners and the respondent Board stipulated that the duties and salaries of the remaining twenty-seven petitioners were comparable to those who testified, and additional testimony would be cumulative and redundant.

The assistant superintendent in charge of personnel then testified that, as of September of 1973, “my initial reaction to what was going on was almost outrage because I seem to have found different practices going on with regards to Title I personnel and regular Board employees. Specifically, Title I personnel, in many instances, were not fully certificated. Title I personnel were not being compensated at the same rate that the regular Board teachers was being compensated in.” [sic]

The assistant superintendent went on to state: “My outrage was such that I reached out for the then mayor of the town and also the director of the Title I as well as the director . . . he was the parent’s advisory chairman . . . [and] a member of the Board of Education as well as being vice-president for a period of time. I pleaded with all individuals to try to get some practices that were uniformly applied throughout the district. My pleas were obviously not listened to and so the same practices continued from 1973 . . . until approximately two months before my transfer, specifically in September 1977, and it was then that the Board decided to apply uniform hiring practices throughout.”

He further testified that the Title I director and administrative staff are all Civil Service personnel and that VS6 forms were sent to Civil Service indicating that the Board’s intention was that these positions be classified in the Civil Service rank and not instructionally. He also stated that the evaluators who were performing the evaluative functions did not have the proper or recognized supervisory certification and that there were a good number who held no certification, some who held a provisional certificate, some who held no certificates. He also testified that there has been an effort since 1973, to try to staff the Title I program with proper certificated personnel and as recently as a week ago, the county superintendent has advised me there are presently some people who still don’t hold the proper certificates.

When the assistant superintendent saw the difference between the salaries being paid Title I personnel and regular teaching staff, and asked the director to come down to his office and see if the problem could be resolved, and continued to tell him that because of fiscal strictures, there was no way the salaries of these personnel could be increased because to increase their salaries would minimize the numbers that he could hire, he was afraid the program would be depleted by virtue of trying to pay parity.

Relative to the appointments of Title I personnel, the assistant superintendent testified that “I received a list of names from the director of Title I advising me that these were the assignments and the people who were to be placed, and the board acted upon those names that were submitted by the director of Title I.”

Counsel for the respondent, in direct examination of the assistant superintendent, introduced the title of “teacher assistants” in reference to Title I personnel, a title also used thereafter by the witness. In response to a direct question of whether all Title I teachers have teacher aides assigned to them, the assistant superintendent asserted that “some do, some do not.”

The assistant superintendent then testified that petitioners were not

renewed in order to avoid the acquisition of tenure by them. He further stated that petitioners were tutors when initially appointed but “subsequently, because the director felt a possibility of parity coming, he changed the title Reading Tutor to Teacher Assistant.”

On cross-examination, counsel for the petitioners asked the assistant superintendent how many of the petitioners were offered contract or pool positions? He responded by saying “nine people offered contract positions and four or five offered pool subs.” Reference was made to interrogatories propounded by petitioners, and a stipulation was made by counsel for respondent that answers were provided by the assistant superintendent. Question two on page two of the interrogatories was the same as that asked on cross, and the response indicates that ten petitioners were offered positions as pool teachers and none were offered contracts as regular teachers.

In examination by the court, the assistant superintendent testified that during the period of service by petitioners, the Title I director served without supervisory or administrative certification, was appointed by the Board as director from the Civil Service list, and “he’s governed by Chapter 11, Civil Service rules. He doesn’t fall into Title 18A (*N.J.S.A.*) or Title 6 (*N.J.A.C.*).”

Due to the unsuccessful efforts of the parties to reach an agreement on settlement terms, the second day of hearing was held almost three months later.

The assistant superintendent continued his testimony, and in response to an inquiry related to Title I salaries, he testified that “upon my recommending to the then president of the board of education, and to the director of Title I, that there be some increase in salaries for Title I teacher assistants, it subsequently went from \$6,000 salary into \$8,000; then last year it went to \$10,600, which it presently is.”

Upon examination by the court, the assistant superintendent verified that many differences exist between the responsibilities of regular teaching staff members, but that all are compensated on a single guide.

A thorough and careful review of the entire record in these proceedings reveals the following as relevant findings of fact:

1. All petitioners, save one, were properly certified.
2. All petitioners were non-renewed as Title I teachers after three or less years of service.
3. All petitioners were full-time “teaching staff members” in accordance with *N.J.S.A.* 18A:1-1.
4. One or possibly more than one petitioner received an initial annual salary equal to the first salary guide step.

5. Most petitioners received initial salaries below the first salary guide step.

6. No petitioner received a salary increment or adjustment for the second year of service.

7. All petitioners received reduced annual salaries for their third year of service.

Laws of the State of New Jersey which are relevant to the instant matter are hereby reproduced in pertinent part:

*N.J.S.A.* 18A:1-1. Words and phrases defined:

As used in this title, unless the context requires another meaning, the following words and phrases shall have the following meaning:

“Teaching staff member” means a member of the professional staff of any district or regional board of education, or any board of education of a county vocational school, holding office, position or employment of such character that the qualifications, for such office, position or employment, require him to hold a valid and effective standard, provisional or emergency certificate, appropriate to his office, position or employment, issued by the state board of examiners and includes a school nurse.

*N.J.S.A.* 18A:29-6. Definitions:

As used in this subarticle the following words shall have the following meaning:

“Member” shall mean a full-time teaching staff member as defined in this title except one who is the holder of an emergency certificate;

“Salary schedule” shall mean a schedule of minimum salaries fixed according to years of employment; . . .

“Full-time” shall mean the number of days of employment in each week and the period of time in each day required by the state board of education, under rules and regulations prescribed for the purposes of this article to qualify any person as a full-time member; . . .

“Employment increment” shall mean an annual increase of \$250.00 granted to a member for one “year of employment”;

“Adjustment increment” shall mean in addition to an “employment increment,” an increase of \$150.00 granted annually as long as shall be necessary to bring a member, lawfully below his place on the salary schedule according to years of employment, to his place on the salary schedule according to years of employment; provided, that a fraction of an “adjustment increment” may be granted when such amount is sufficient to bring such member to his place on the schedule according to years of employment; . . .

*N.J.S.A.* 18A:29-8. Yearly increments:

Any member holding office, position or employment in any school district of this state, shall be entitled annually to an employment

increment until he shall have reached the maximum salary provided in the appropriate training level column in the preceding section.

*N.J.S.A.* 18A:29-9. Agreement as to initial salaries:

Whenever a person shall hereafter accept office, position or employment as a member in any school district of this state, his initial place on the salary schedule shall be at such point as may be agreed upon by the member and the employing board of education.

It is noted that the assistant superintendent in charge of personnel was the only witness to testify on behalf of the respondent Board, and I am constrained to focus on the highlights of his incredible testimony.

He was “outraged” when he observed that “Title I” teaching staff members were receiving less salary than “regular” teaching staff members, and sought to rectify the matter by seeking out the mayor, the Title I director, and the Board vice-president. Conspicuous through absence was any evidence relative to a recommendation to or a discussion with the superintendent.

Through his efforts, the salary of Title I teachers was increased from \$6,000 to \$8,000, considerably below the salary guide of regular teachers.

His further testimony made it abundantly clear that the petitioners were non-renewed to avoid the acquisition of a tenured status by them, and yet the reason he gave petitioners on request was “new hiring practice.”

The titles of petitioners were changed to teacher assistant in order to avoid facing the issue of pay parity.

The Title I director was not appropriately certified in supervision or administration, and in the view of the assistant superintendent, was governed by Chapter 11, Civil Service and not by *N.J.S.A.* Title 18A or *N.J.A.C.* Title 6.

I **FIND** that the respondent Board and its agents acted in bad faith, and the action was an abuse of discretionary authority with which they have been clothed by the New Jersey State Legislature.

The Public School Education Act of 1975, *N.J.S.A.* 18A:7A-1 *et seq.*, mandates, as does the New Jersey Constitution, that education programs shall be thorough and efficient. The Supreme Court of New Jersey in *Robinson v. Cahill*, 69 *N.J.* 133 (1975), 1975 *S.L.D.* 1122 expressed “approval of the ongoing efforts of the Department of Education to establish the components of a thorough and efficient system of education. . . .”

The Legislature in *N.J.S.A.* 18A:7A-5 mandated that:

A thorough and efficient system of free public school shall include the following major elements, which shall serve as guidelines for the achievement of the legislative goal and the implementation of this act:

. . . .

e. *Programs and supportive services for all pupils especially those who are educationally disadvantaged or who have special educational needs;* . . .

g. *Qualified instructional and other personnel;* . . . (emphasis supplied)

*N.J.S.A.* 18A:46A-1 states:

The Legislature hereby finds and determines that the welfare of the State requires that present and future generations of school age children be assured opportunity to develop to the fullest their intellectual capacities. *It is the intent of this Legislature to insure that the State shall furnish on an equal basis auxiliary services to all pupils in the State in both public and nonpublic schools.* (emphasis supplied)

*N.J.S.A.* 18A:7A-6 directs that:

The State board, after consultation with the commissioner and review by the Joint Committee on the Public Schools shall

(a) establish goals and standards which shall be applicable to all public schools in the State, *including uniform Statewide standards of pupil proficiency in basic communications and computational skills at appropriate points in the educational careers of the pupils of the State, which standards of proficiency shall be reasonably related to those levels of proficiency ultimately necessary as part of the preparations of individuals to function politically, economically and socially in a democratic society.* . . . (emphasis supplied)

Pursuant to *N.J.S.A.* 18A:7A-6, the State Board of Education has promulgated rules setting forth uniform Stateside goals and standards of proficiency among which are the following:

*N.J.A.C.* 6:8-2.1

(A) The State educational goals shall be the following outcome and process goals and shall be applicable to all public school districts and schools in the State. . . .

(c) The public schools in New Jersey shall provide:

1. Instruction which bears a meaningful relationship to the present and future needs and/or interests of pupils;

2. Significant opportunities, consistent with the age of the pupil, for helping to determine the nature of the educational experience of the pupil;

3. *Specialized and individuals kinds of educational experiences to meet the needs of each pupil;*

. . . .

8. *Teaching staff members of high quality.* . . . (emphasis supplied)

*N.J.A.C.* 6:28-3.2(b)

*Supplemental instruction shall be instruction provided educationally. Handicapped pupils which is given in addition to the regular instructional program of such pupils. It shall meet the following criteria:*

1. Supplemental instruction for the educational handicapped pupils shall be provided in a school or other facility operated and controlled by the local school district.

2. *Supplemental instruction shall be considered part of the planned curriculum for the educationally handicapped pupil for whom it has been prescribed by a basic child study team, or a speech correctionist and described in pupil's individualized education program;*

3. Supplemental instruction for the educationally handicapped pupil may be given individually or in small groups, not to exceed three pupils;

4. Supplemental instruction shall be provided in physical facilities conducive to learning;

5. *The teachers providing supplemental instruction shall be appropriately certified for the subject or level in which instruction is given.*  
 (emphasis supplied)

A reading of these statutes, rules of the State Board of Education, and the words of the Supreme Court in *Robinson* leads to the inevitable conclusion that such programs are mandated and not subject to implementation only when federally funded. To bifurcate the instructional program conducted by petitioners from the aforesaid mandates would be ludicrous.

*N.J.S.A.* 29-9 clearly establishes the authority of the Board to negotiate an initial salary. As free agents, petitioner agreed to the initial salary offered. Their claim for the differential between their initial salaries and the first step of the salary guide has no merit. **ISO HOLD.**

It is undisputed that petitioners were maintained at the first year salary or reduced for their second year of service, and were all reduced in salary for their third year of service.

I **FIND** the Board in violation of *N.J.S.A.* 18A:29-6 and 18A:29-8 when it did not grant the minimum statutory employment increment or adjustment increment to petitioners for their second and third years of service.

The Supreme Court of New Jersey stated in *Board of Education of the City of Englewood v. Englewood Teachers Association*, 64 N.J. 1, at 7: "Where the Legislature sets forth minimum schedules of compensation . . . and minimum increments . . . the Board may not go below but may go above. . ."

Relative to the Board's contention that petitioners are guilty of laches, it is hereby determined that petitioners are not barred by the equitable defense of laches from advancing the instant claims. As was stated in *Howard J. Whidden, Jr. v. Board of Education of the City of Paterson*, 1976 S.L.D. 356, at 319:

The determination . . . is grounded in the nature of the claim and in a judgment that the Board has not been prejudiced. This is not a case

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wherein a decision in favor of petitioner will result in the payment of two salaries for one position by the Board as the result of petitioner's delay. (See *William Gleason v. Board of Education of the City of Bayonne*, 1938 *S.L.D.* 138.)

Counsel for respondent argues that petitioner are not part of the regular teaching staff in that they did not possess certification issued by the Jersey City Board of Examiners and accordingly are not eligible for tenure.

The failure of the Board to administer petitioners either an oral or written examination, or both, at any time during their employment may not now bar their claims for reinstatement, salary benefits or other emoluments afforded other teaching staff members. **ISO HOLD.**

Counsel for respondent also calls for attention to the matter of *Point Pleasant Beach Teachers Association et al. v. James Callam and Board of Education of the Borough of Point Pleasant Beach*, 1977 *S.L.D.* 1204. He avers that the State Board of Education ruled that said Title I teachers did not have a tenure status.

The instant matter is distinguished from *Point Pleasant* in that the State Board's ruling was grounded upon the holding in *Biancardi v. Waldwick Board of Education*, 139 *N.J. Super.* 175 (App. Div. 1976), *aff'd* 73 *N.J.* 37; *Schulz v. State Board of Education*, 132 *N.J.L.* 345 (*E. & A.* 1945). In both cases the central issue was whether time served as a substitute teacher may be counted toward the acquisition of tenure. In *Point Pleasant*, the State Board ruling was based on their conclusion that petitioner's were employed as substitute teachers. The State Board did, however, acknowledge that a person employed as a teaching staff member assigned to a Title I program may acquire tenure when such employment was not of a temporary nature.

In the instant matter, all petitioners were full time teaching staff members. The Board's argument has no merit. **ISO HOLD.**

**A SUMMARY OF FINDINGS** in this controverted matter follows:

1. Petitioners were improperly compensated during their second and third years of service.

2. The instructional program in the schools of Jersey City within the jurisdiction of the local Board of Education, the petitioners, and the Board and all its agents are governed by the New Jersey Statutes, the rules and regulations of the State Board of Education, and fall within the jurisdiction of the Commissioner of Education.

3. Petitioners were assigned titles as a subterfuge to avoid pay parity.

4. Petitioners were terminated under false rationale and as a subterfuge to avoid the acquisition of tenure.

I **CONCLUDE**, therefore, that:

1. The petition of the one uncertified petitioner is **DISMISSED**.

2. The claim of all petitioners for back pay of the difference between the initial salary received for their first year of employment and the initial step of the salary guide is **DISMISSED**.

3. The Board is **ORDERED** to pay petitioners, forthwith, for their second year of service, the salary differential between what was received and the initial salary plus \$400 in accordance with *N.J.S.A.* 18A:29-6 and *N.J.S.A.* 18A:29-8 (employment increment of \$250 and adjustment increment of \$150), but not to exceed the salary of step two of the salary guide.

4. The Board is additionally **ORDERED** to pay petitioners, forthwith, for their third year of service, the salary differential between what was received and \$400 in additional to the sum total for the second year after the adjustment in 3 above, but not to exceed the salary of step three of the salary guide. (Example: the petitioner who received \$8,500, \$8,500, and \$8,200 was entitled to \$8,500, \$8,900, and \$9,300, or a back pay of \$1,500.)

5. The Board is hereby **ORDERED** to reinstate all thirty certified petitioners, forthwith, as teaching staff members, with back pay to September 1, 1977 based on the aforesaid adjustments and mitigated by all other earnings since that time, but applicable to only those petitioners who accept reinstatement.

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After reviewing this Initial Decision, the Commissioner of Education, on January 28, 1980, issued the following Final Decision:

The Commissioner has reviewed the entire record of the matter controverted herein including the initial decision rendered by the Office of Administrative Law.

The Commissioner observes that exceptions were filed by the parties pursuant to the provisions of *N.J.A.C.* 6:24-1.17(b).

Petitioners' sole point of exception deals with the inadvertent omission by counsel of the proof of certification for Victoria E. Williams. The Commissioner has carefully examined the resultant submission and determines that Petitioner Williams held appropriate certification and is accordingly included in the initial decision affecting all other petitioners. Conclusion number one is herewith set aside and conclusion number five is modified to read thirty-one petitions.

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Accordingly, the Board is herewith directed to proceed with the personnel and salary adjustments as herein indicated.