

**BLOOMINGDALE TEACHERS' ASSOCIATION,**  
Petitioner,  
v.  
**BOARD OF EDUCATION OF THE BOROUGH  
OF BLOOMINGDALE,**  
Respondent.

Decided January 16, 1981

**Initial Decision**

**SYNOPSIS**

The petitioners challenged the unwritten policy of a local board of education which required a teacher to be employed on February 1 and for the five-month period immediately preceding or succeeding that date in order to qualify for placement on the next incremental step of the salary guide.

The administrative law judge found that although the policy was unwritten and was not generally disseminated to the teaching staff until applied in individually appropriate cases, it had been uniformly and unfailingly applied by the board for the past 11 years. The judge determined that while the failure to memorialize the document or to disseminate it made the policy more easy to question, neither rendered the policy void.

The administrative law judge concluded that since the policy had been applied consistently and there was no showing that the policy was illegal, arbitrary or unreasonable, it should be allowed to stand.

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**Saul R. Alexander, Esq.,** for Petitioners

**Gordon D. Meyer, Esq.,** for Respondent (Jeffer, Hopkinson & Vogel, attorneys)

**SAMUELS, ALJ:**

Petitioners Susan Mariconda, Carol Keppel and Susan LaManna are employed as teachers for the respondent, Board of Education of the Borough of Bloomingdale. The Bloomingdale Teachers' Association is their designated representative. On June 3, 1980, petitioners filed an appeal with the Commissioner of Education, challenging the Board's policy of declining to give credit for a year's advancement on the salary guide for less than a half year's service. The respondent filed an answer defending its policy. On June 10, 1980, the matter was

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transmitted to the Office of Administrative Law as a contested case pursuant to *N.J.S.A.* 52:14F-1 *et seq.*

A prehearing conference was held on August 28, 1980, and a prehearing order was filed. The issues were defined as follows:

A. Assuming that there is in existence a long-standing unwritten Board policy and practice that requires a teacher to be employed on February 1 and for the five month period immediately preceding or succeeding that date, in order to qualify for placement on the next step of the guide, is such policy lawful and binding upon the petitioners?

B. Is such a policy as described above unlawful and not binding solely because it is unwritten?

At the hearing it was explained and accepted as fact that February 1 is used as the cut-off date because it is the five month halfway mark in the ten month school year, which begins for most teachers on or about September 1.

The petitioners' relevant employment dates for the periods of time in dispute were stipulated and can be summarized as follows:

*SUSAN MARICONDA*

February 6, 1979—Starting date—on 4th step of salary guide

June 30, 1979—Ended that school year

September 1979—Returned

She did not advance, but was retained on the 4th step for the 1979-80 school year.

*CAROL KEPPEL*

May 1978—Maternity leave began

February 5, 1979—Starting date—on 4th step of salary guide

June 30, 1979—Ended that school year

September 1979—Returned

She did not advance, but was retained on the 4th step for the 1979-80 school year.

*SUSAN La MANNA*

September 1, 1976—Starting date—on 9th step of salary guide

December 31, 1976—Ended work (for maternity leave)

September 1977—Returned

She was not advanced, but was retained on the 9th step for the 1977-78 school year.

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The above dates were confirmed by the testimony of petitioners. Each petitioner also stated that she was not aware of the Board's policy before it was actually applied to her, at the time she received her first paycheck for the new school year. The policy was not written or communicated generally to employees in advance of its being used in individual cases.

Another stipulated document marked into evidence was a list of 20 occasions since 1968-69 when the policy had been applied by the Board. In 15 of these situations, the affected teachers served 5 months or more out of a full school year, and they received full credit on the salary guide for an annual step. In five situations, which included the three petitioners, no credit was given for less than five months' teaching during the school year. The respondent represented that these 20 cases constituted all of the situations in which the policy was used, in one direction or the other, in the last 11 years.

The salary guide itself (in which the annual increment steps are established) is silent on the question of advancement for only part of a year's service.

Deborah Kirsch, Co-President of the Bloomington Teachers' Association, also testified in order to establish the fact that the policy was not generally disseminated by the Board in advance of its application. Although she is not one of the individual petitioners, her testimony also established that in 1979/80 she received a full annual step up in the guide because in the previous year she had returned from an 11 month maternity leave on January 3, 1979 (prior to February 1), and had taught for the balance of that school year. When she began that maternity leave on January 22, 1978, she was not eligible for credit on the guide for the time she taught from the beginning of that school year—September 1, 1977. Her replacement, hired before February 1, 1978, was given credit for the full step.

In the case of Ms. Kirsch, it balanced out. She was away for practically a full year and did not receive credit for it. When she returned, she received credit for the prior year in which she had worked. If the petitioner's theory (that the full increment should be awarded so long as any time is served, no matter how brief) had been carried to its logical conclusion in Ms. Kirsch's case, she would have been entitled to advance a double step on the guide for one total year's service when she returned for the 1979-80 year.

On the other hand, the petitioners claim that instances could arise where the Board would avoid having to move a teacher up on the guide if that teacher left school before February 1, did not return next year, and her replacement was hired after February 1.

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William F. Spreen, Superintendent of Schools in Bloomington, testified that the policy in question has been in existence since prior to 1969 when he began in the district. He looked back at the personnel records for those 11 years and did not find any instances where the policy was not followed. Mr. Spreen stated that the rationale of the policy was to award the full step for service of a half-year or more and to deny it for less than a half year's teaching. He feels it is most fair. Mr. Spreen acknowledged that the Board's policy was unwritten and was not generally disseminated unless and until the need arose to apply it in individual cases.

Having heard and observed the witnesses, and having considered the argument of counsel and the briefs filed by them, the court **FINDS** the following facts:

1. The foregoing discussion and the facts included therein are incorporated herein by reference.

2. A long-standing Board policy and practice does exist in the respondent school district that requires a teacher to be employed on February 1 and for the five month period immediately preceding or succeeding that date in order to qualify for placement on the next incremental step of the salary guide.

3. The above policy was unwritten and was not generally disseminated to the teaching staff until applied in individually appropriate cases.

4. The Board constantly, unfailingly and uniformly applied the above policy and its standard in every applicable case for the past 11 years.

The petitioners argue that the policy is unlawful and not binding solely because it is unwritten, regardless of its fairness or reasonableness. This argument is not accepted.

The responsibility of boards of education to establish salary policy is delineated in *N.J.S.A.* 18A:29-4.1:

A board of education of any district may adopt a salary policy, including salary schedules, for all full-time teaching staff members which shall not be less than those required by law . . . .

There is no requirement, expressed or implied, that every aspect of such policy must be written, or that it must, in the alternative, be declared void or voidable (as in a "statute of frauds"). The petitioners have the burden of proving such a contention, and they have not done so. The lack of memorialization may more easily subject a policy to attack, but it does not necessarily render it void.

Lack of general publication or dissemination of the policy similarly subjects it more easily to question, and prior decisions of the Com-

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missioner of Education have explored the question of whether a particular unwritten standard or policy is unfair, arbitrary or unreasonable. If and when found to be unfair, arbitrary or unreasonable, they have been set aside. *Mary Ann Basile, et al. v. Board of Education of the Borough of Elmwood Park*, OAL Dkt. EDU 191-5 78 (May 21, 1980), *aff'd.* Comm. of Ed. (July 21, 1980); *Eileen Shahbazian, et al. v. Board of Education of the Township of Weehawken*, 1977 *S.L.D.* 952.

It logically follows from the above that if no element of facial illegality, unfairness, unreasonableness or arbitrariness is found, then there is no necessary impediment to the validity of an existing and uniformly applied unwritten policy.

There is also no finding here, as alleged by the petitioners, that the instant policy is in violation of, or attempts to amend or supersede, a controlling statute.

Based upon all the foregoing, it is **CONCLUDED** that the policy in question is fair and reasonable under all of the circumstances, and the petitioners have not shown that it is unlawful or that there is any justifiable reason for the policy to be set aside or to be declared non-binding.

It is further **CONCLUDED** that, because the long-standing proven policy and standard is fair, reasonable and consistently applied, lack of actual communication of it to all staff members does not, in and of itself, render it void because no prejudice results therefrom. If the policy had been generally disseminated and disclosed, there could have been no complaint about it when used, and all of the factors in favor of upholding the validity of the stated policy outweigh any imagined disadvantages that resulted from its restricted disclosure.

It is therefore, **ORDERED** that the appeal be **DISMISSED** as to all petitioners.

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After reviewing this Initial Decision the  
Commissioner of Education on March 3, 1981  
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 petitioners pursuant to the provisions of *N.J.A.C.* 1:1-16.4a, b and c.

Petitioners except to the conclusion that the Board properly relied on and applied its unwritten policy concerning salary guide placement

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keyed to teacher employment on February 1 and the five-month period immediately preceding and succeeding that date.

Petitioners' reliance on *Mabel Marriot v. Board of Education of the Township of Hamilton*, 1949-50 *S.L.D.* 57, aff'd 1950-51 *S.L.D.* is misplaced. The reasoning therein espoused that every steadily employed staff member be allowed at least 10 days of sick leave in any school year, regardless of whenever employment began in that year, has been set aside by the decision of the State Board in *Raymond E. Schwartz, William A. Bulmer and Dover Education Association v. Board of Education of the Town of Dover, Morris County*, August 6, 1980. Therein the State Board ruled that sick leave is earned by a minimum of one day's accumulative sick leave per month worked, rather than a minimum of 10 days in any one year regardless of the length of time worked. The Commissioner finds no merit in petitioners' exceptions.

The Commissioner affirms the findings and determination as rendered in the initial decision in this matter and adopts them as his own. Accordingly, the Petition of Appeal is hereby dismissed.