

mentally Disabled and involved the provision of educational instruction for mentally retarded students, including responsibility for the content of the educational program, the presentation, selection, and utilization of techniques to elicit desired behavior or responses in the students, identification of and response to students' special needs and physical, emotional and special learning problems, referral of specific students for special attention to other staff members with other skills, design of curriculum based on the individual needs of students, including program preparation and the adaptation of methods, motivating techniques and materials to reflect the differing abilities of students, routing required program information to her supervisor, keeping her informed as to appellant's lesson plans, reports, attendance, and other matters, evaluation of students and maintenance of records of their accomplishments and weaknesses, service on committees at the institution, and supervision and training of students and aides. These activities were carried on with the knowledge and consent of management. Her Personnel Board appeal was filed December 15, 1975.

CONCLUSIONS OF LAW

The legal issue in this case is essentially rather narrow. The personnel specialist from the bureau of personnel who testified at the hearing gave an opinion that the appellant's classification would properly be a Teacher 2 if based solely on an evaluation of her "teaching" experience as set forth in the above findings, but that the denial of the reclassification request by DHSS was justified because of the "intention" of the salary schedule (Respondent's Exhibit 1) that the experience must have been obtained after certification to be qualifying:

"A My opinion is, based on the information I received today and heard today, that she should be classified as a Teacher 2.

* * *

However, again, the information that's important here is contained in the schedule, which describes that teaching experience after certification, as it is implied. It does not indicate that specifically is the intent of the schedule, that the certification information on a teacher is a prerequisite to teaching experience under the criteria for teacher level 2. So, what I'm saying is while I feel that the information lends itself to a Teacher 2 level, the Department and the State Bureau of Personnel, in drafting this document and in connection with the union's involvement, was to clarify this document and to indicate that certification was a prerequisite to teaching itself." T., pp. 57-58.

* * *

Q So, what happened in this situation is when they -- in Ms. Ehly's case -- is that they had her function as a teacher, even though she was not certified. Is that correct? In violation of that?¹

A It appears that she's doing the same things now as a teacher as she was doing previous to her being classified as a teacher.

Q Okay. So that -- But the policy of that would be that she should not have been doing this work. Is that correct?

A Well, this doesn't control the work assignments. This classifies the work assignment that she's performing. The work assignment she was performing appears to be the same as the work assignment she's performing now. Therefore, the work assignments she was doing as a Therapy Assistant were actually what the Department says were teaching duties.

Q Right.

A But, the individual was not certified to perform those duties. That's why she wasn't a teacher. T., p. 60.

The question comes down to whether the teachers' salary schedule (Respondent's Exhibit 1) should be interpreted to require that the 10 months teaching experience required for Teacher 2 have been performed

1. DPI Certification Standards, Appellant's Exhibit 15.

following certification. The language of the salary schedule is as follows:

Teacher Level 2 - Bachelor's degree and certification plus 10 months of teaching experience, which is defined as:

A Bachelor's degree from an accredited college or university and certification as a Teacher by the Department of Public Instruction or the State Board of Vocational, Technical and Adult Education plus 10 months of teaching experience, with no additional work experience or relevant credits necessary.

Note: Prior teaching experience is not required for allocation at at any level other than Teacher Level 2. Such Teaching experience must have been gained within the last 10 years.

This language does not contain an express requirement that the teaching experience have been obtained while certified. Nor may such a requirement fairly be implied. The qualifying language in the box under the main section "Such teaching experience must have been gained within the last 10 years," supports an opposite reading, since this would have been a logical place to have added an additional qualifier if this had been intended.

The personnel analyst expressed an opinion that the intent of the schedule was to require that the 10 months experience follow certification, but there is nothing to indicate the specific source of the opinion, and as such it has very little probative value and does not compel a different conclusion.

Finally, both sides cite the definitions contained in S. 42.20, stats.:

"(20) 'Teacher' means any person legally officially employed or engaged in teaching as a principal occupation.

(21)(a) 'Teaching' includes the exercise of any educational function for compensation, in any of the public schools, the state universities, or the university, or in any school, college, department or institution, within or without this state, in instructing or controlling pupils or students, or in administering, directing, organizing or supervising any educational activity."

We conclude that the appellant was employed as a "teacher" and was engaged in "teaching" within the ambit of this language. The appellant certainly was engaged in teaching activities during the period February, 1973 through August, 1974. The fact that she was not certified during this period does not make her employment "unofficial" or "illegal."

For these reasons we conclude that the respondents erred in denying appellant's reclassification request and that she is entitled to classification as a Teacher 2. Pursuant to Van Laanen v. State Personnel Board, No. 153-348 (Dane County Circuit Court, 5/31/77), appellant is entitled to retroactive salary and benefits to a date 45 days after the date she filed this appeal.

ORDER

The action of the respondents is rejected and this matter is remanded for action in accordance with this decision.

Dated August 1, 1977.

STATE PERSONNEL BOARD



Laurene DeWitt, Chairperson