

MARIA PARISE, :
 :
 PETITIONER, :
 :
 V. :
 :
 BOARD OF EDUCATION OF THE BOROUGH :
 OF BUTLER, MORRIS COUNTY, :
 :
 RESPONDENT, :
 : COMMISSIONER OF EDUCATION
 AND :
 : DECISION
 IRIS C. STOCK, :
 :
 PETITIONER, :
 :
 V. :
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 BOARD OF EDUCATION OF THE BOROUGH :
 OF BUTLER, MORRIS COUNTY, :
 :
 RESPONDENT. :

SYNOPSIS

Petitioners, tenured school social workers, allege respondent Board reduced their full-time employment while retaining non-tenured and less senior employees in violation of their tenure and seniority rights.

The ALJ found: 1) that the Board's Reduction In Force (RIF) was invalid; 2) that the respondent Board did not act in bad faith regarding the RIF; and 3) that the reduction of the social worker position and contracting out of related services violated the tenure rights of the petitioners. The ALJ ordered: that petitioners be reinstated to their positions as social workers with back pay, appropriate salary adjustments and emoluments; that petitioners submit affidavits setting forth any income earned or unemployment compensation from other sources received subsequent to the RIF; and that petitioners are entitled to retroactive seniority credit from the date of termination or reduction to the date of reinstatement.

Upon a thorough and independent review of the record in this matter, including the parties' exception arguments, the Commissioner concurs with the ALJ that the Board's RIF was invalid as a matter of law; therefore it is unnecessary to reach to the issue of bad faith. The Commissioner concludes that petitioner Stock is to be reinstated to her position as social worker with back pay and emoluments as set forth in the Initial Decision; however, he is unable to determine relief in respect to petitioner Parise given the pending tenure charges against her and her apparent retirement on a disability pension. This matter is therefore remanded to OAL for supplementation of the record and a revised Order with respect to appropriate relief regarding petitioner Parise.

This synopsis is not part of the Commissioner's decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

June 9, 2005

OAL DKT. NOS. EDU 5953-03 AND EDU 7633-03 (CONSOLIDATED)
AGENCY DKT. NOS. 181-6/03 AND 238-7/03

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The Board’s exceptions, as well as the replies of each petitioner, were timely filed in accordance with *N.J.A.C.* 1:1-18.4, and were considered by the Commissioner in reaching his decision.¹ To the extent these submissions essentially reiterate arguments raised before the ALJ, they are not recounted herein.

¹ In addition to her exceptions and her reply to the Board’s exceptions, petitioner Parise submitted: 1) a copy of her letter to the Board’s attorney, dated May 13, 2005; 2) a copy of her letter to the Board’s attorney, dated May 16, 2005; 3) a copy of her letter to the school superintendent, dated May 25, 2005; and 4) a copy of “research done by Mr. Edward Dragan, Ed.D.,” which she requests to be attached to his Case Review and Consultant Report already contained in the record. Counsel for the Board also provided a copy of its letter to petitioner, dated May 16, 2005. These additional documents submitted by petitioner Parise and the Board were not before the ALJ and not previously made a part of the record. In accordance with *N.J.A.C.* 1:1-18.4(c), these additional submissions were, therefore, not considered by the Commissioner in rendering his decision. Further, *N.J.A.C.* 1:1-18.4 does not provide for submissions other than exceptions and replies thereto. Accordingly, the Board’s reply to petitioner Stock’s reply, filed on May 18, 2005 was not considered.

In its exceptions, the Board claims, *inter alia*, that its situation is distinguishable from *Vicenzino, supra*, in that in *Vicenzino*, the Board eliminated the only social work position, although it did maintain the other Child Study Team (CST) positions in-house. (Board's Exceptions Regarding Parise at 2-3)² In this case, the Board points out, there was at least a .1 social work job in-house at all times and what the Board did was to use the Educational Services Commission on an emergent basis to deal with students whose first language was not English, and to finish up work left undone when tenure charges were filed against Ms. Parise. (*Id.* at 3) The Board argues that the intent of *Vicenzino* was to forbid school districts from dividing their CST obligation between district employees and outside arrangements on any routine basis. (*Id.* at 4) Even before the RIF, the Board contends, some social histories had been farmed out in emergency situations when the in-house staff could not keep up with required deadlines, asserting that such action merely supplemented, but did not replace, district employees. (*Ibid.*)

The Board also takes exception to the Order restoring Ms. Parise to her position, noting that Ms. Parise was offered and rejected a .1 position and argues that the Board cannot be ordered to recreate a full-time position it does not need. (*Ibid.*) Moreover, the Board notes that Ms. Parise was suspended, pursuant to *N.J.S.A. 18A:6-10 et seq.*, while tenure charges are pending against her. (*Id.* at 5) In this regard, the Board sets forth its argument that Ms. Parise cannot be restored to active employment with the Board while tenure charges are pending against her. (*Ibid.*) Additionally, the Board claims that Ms. Parise has received a disability retirement.³ (*Ibid.*)

In its exceptions with respect to petitioner Stock, the Board claims that none of the services that were previously performed by Ms. Stock were assigned to outside agencies and

² The Commissioner notes that the Board is represented by two separate attorneys in these consolidated matters.

³ The Commissioner observes that this is the first mention of petitioner's retirement. There is nothing in the record before the Administrative Law Judge (ALJ) regarding this issue.

it takes exception with the ALJ's conclusion that she be restored to her former position. (Board's Exceptions Regarding Stock at 2-3) The Board submits that it cannot be ordered to recreate a full-time position it does not need and asserts that there has been no determination that the amount of work for which the ESC was utilized amounted to a .6 position. (*Id.* at 3) The Board also points out that, when it determined that it needed a .4 position rather than a .1 position, the .4 position was provided to Ms. Stock. (*Ibid.*)

In reply to the two sets of Board exceptions, petitioner Parise points out that the consultant report from Management Consulting, LLC, concluded that a social worker could not fulfill her responsibilities in a four-hour-a-week job. (Parise's Exceptions, dated May 12, 2005 at 1-2) Additionally, petitioner emphasizes that she did not resign her position, but, in fact -- in a letter dated May 27, 2003 -- noted her intentions of resuming her position once a [full-time] position was recreated. (*Id.* at 2) Petitioner claims that "not offering her the part time position was in fact a violation of her rights." (*Ibid.*) Additionally, petitioner asserts that the Board is incorrect in that she "may resume active employment as per the Disability Pension regulations." (*Ibid.*) Moreover, petitioner claims that she is entitled to pay after the suspension, dated August 27, 2003, until January 2005 "when Disability Pension was mailed." (*Ibid.*)

Replying to the second set of exceptions filed by the Board, petitioner Parise argues, *inter alia*, that with respect to the social histories that the Board claims were left undone by her, that the social histories, were, in fact, completed and were being put on audio tape when the Board suspended the full time position on April 10, 2003 and then again from April 28, 2003 until August 27, 2003. (Parise's Exceptions, dated May 13, 2005 at 1-2) Petitioner also claims that the business administrator "misspoke" when she stated that social histories were sometimes done by outside contractors when district employees could not meet deadlines. (*Id.* at 2) Petitioner claims that it was the learning disabilities teacher consultants (LDTCs) and school

psychologists, not the social workers, who were allowed to use contracted help for the last 17 years. (*Ibid.*)

In her reply to the Board's exceptions, petitioner Stock points out that *N.J.S.A.* 18A:46-5.1 establishes the mechanism by which the Board may provide basic CST services, noting that the Board may either have its own CST or it may join with another board or agency to provide such services. (Petitioner Stock Reply at 2) What it cannot do, petitioner asserts, is to determine to use its own staff for CST services, while reducing part of the staff and using outside contractors to provide basic CST services. (*Id.* at 2) Petitioner Stock contends that her time commitment of only four hours on one day per week as a .1 staff member was not a sufficient time period for the provision of social worker services in light of the use of two full-time school psychologists and two full-time LDTCs. (*Id.* at 3) Moreover, petitioner points out that *N.J.A.C.* 6A:14-3.1(b) provides that CST members "shall be available during the hours when students are in attendance," with no exception for social workers. (*Ibid.*) Yet, in this case, the social worker member of the district's two CSTs was rarely available when students were in attendance, even when petitioner's schedule was modified to a .4 staff member. (*Id.* 3-4)

Moreover, petitioner asserts that there is nothing in the record to indicate that the need for social worker services was reduced during the 2003-2004 school year. (*Id.* at 4) Petitioner claims that the evidence, in fact, leads to a contrary conclusion in that the number of students requiring CST services only changed by one from the 2002-2003 school years and that, when focused on the number of children needing the services of a school social worker, the number significantly increased from 19 to 28. (*Ibid.*) The Board's action was, thus, not a RIF in the true sense of the term -- and contrary to the holdings in *Viemeister, supra*, and *Cochran, supra*, petitioner contends -- because additional work was either transferred to other individuals in the District or assigned to outside contractors as a means of circumventing tenure rights. (*Id.* at 5-6)

Upon a thorough and independent review of the record and the arguments of the parties in this matter, the Commissioner rejects the Board's argument that the within matter is distinguishable from the *Vicenzino* case and concurs, for the reasons expressed in the Initial Decision, that the Board's Reduction in Force (RIF) was invalid because it eliminated a district employee's CST position of social worker and contracted out for those services, while continuing to maintain its own CST. In that the RIF has been determined to be invalid as a matter of law, it is not necessary to reach to whether the Board acted in bad faith.

The Commissioner, therefore, concludes that petitioner Stock is to be reinstated to her position as social worker with all back pay and emoluments as set forth in the Initial Decision. With respect to petitioner Parise, the Commissioner is unable to determine the relief to which she is entitled on this record given the pending tenure charges against her and her apparent retirement on a disability pension. Accordingly, this matter is hereby remanded to the OAL for supplementation of the record and a revised Order with respect to the appropriate relief to be accorded to petitioner Parise.

IT IS SO ORDERED.⁴

COMMISSIONER OF EDUCATION

Date of Decision: June 9, 2005

Date of Mailing: June 10, 2005

⁴ This decision may be appealed to the State Board of Education pursuant to *N.J.S.A. 18A:6-27 et seq.* and *N.J.A.C. 6A:4-1.1 et seq.*