

ANTONIO N. LEWIS, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE CITY OF : DECISION
 ASBURY PARK, MONMOUTH COUNTY, :
 :
 RESPONDENT. :
 _____ :

SYNOPSIS

Petitioner – a tenured principal, who had most recently been employed by the Board as superintendent – filed a petition and an application for emergent relief, contending that respondent violated his tenure and seniority rights under *N.J.S.A. 18A:6-10* and *N.J.S.A. 18A:6-11* when it failed to assign him to a position as principal after the Board declined to renew his contract as superintendent. Emergent relief was denied following oral argument in July 2009, and the parties filed cross-motions for summary decision on the issues.

The ALJ found, *inter alia*, that: respondent Board admitted in its opposition to petitioner’s motion for emergent relief that it may be responsible to find a position for petitioner, but in its subsequent filing contends that it owes no duty to Dr. Lewis, and considers him no longer employed by the District; it was stipulated by the parties that petitioner never resigned from his position as principal during his tenure as superintendent and did not otherwise abandon his tenure rights to that position with the District; *N.J.S.A. 18A:17-20.4* protects a superintendent’s tenure rights; and the only way the Board can keep petitioner from a position within its district is to successfully file tenure charges against him. The ALJ concluded that petitioner has tenure rights to a principal’s position in the Asbury Park School District and granted his motion for summary decision, ordering the Board to return petitioner to a position for which he is qualified under his principal certificate and to compensate him for back salary and benefits.

Upon comprehensive review, the Commissioner was compelled to concur with the ALJ’s conclusion that summary decision is appropriately granted to petitioner, finding that the current applicable law – *N.J.S.A. 18A:17-20.4* – makes this determination mandatory and not discretionary in nature. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter. The Commissioner ordered the Board to forthwith reinstate petitioner to a principal position consistent with his tenure and seniority rights and to compensate him for back pay and emoluments from the date of his termination as superintendent of schools to the date of his reinstatement as a principal.

<p>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.</p>

August 4, 2010

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Exceptions of the Board and petitioner’s reply thereto – submitted in accordance with the prescriptions of *N.J.A.C. 1:1-18.4* – were fully considered by the Commissioner in reaching his determination herein.

The Board’s exceptions – in relevant part – recast and reiterate its arguments advanced before the Administrative Law Judge (ALJ) below. As it is determined that these were fully considered and addressed by the ALJ in his Initial Decision, they will not be revisited here.

Upon his comprehensive review, the Commissioner is compelled to concur with the ALJ’s conclusion that summary decision is appropriately granted to petitioner. In so determining, the Commissioner is cognizant that current applicable law provides him no recourse in this regard. Specifically, *N.J.S.A. 18A:17-20.4* – in pertinent part – states:

...A superintendent of schools promoted from within a district shall retain all tenure rights accrued in any position which was previously held by the superintendent in the district.

As this provision clearly and unequivocally expressly preserves all tenure rights previously accrued by a contract superintendent promoted from within a district, the result in this matter is mandatory, not discretionary in nature.

Accordingly, the recommended decision of the OAL is adopted as the final decision in this matter for the reasons articulated therein. The District is hereby ordered to forthwith reinstate petitioner to a principal position consistent with his tenure/seniority rights and to compensate him for back salary and emoluments from the date of his termination as superintendent of schools on July 1, 2009, to the date of his reinstatement to a principal's position.

IT IS SO ORDERED.*

ACTING COMMISSIONER OF EDUCATION

Date of Decision: August 4, 2010

Date of Mailing: August 4, 2010

* This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36* (*N.J.S.A. 18A:6-9.1*).