

EDU # 11980-95
C # 4-99
SB # 3-99
APP. DIV. #A-4596-98T5

CONCETTA B. CAPONEGRO, VIRGINIA :
DEVANE, HOWARD JOHNSON, NORMAN :
JEFFRIES AND BESSIE WHITE, :

PETITIONERS-APPELLANTS, :

STATE BOARD OF EDUCATION

V. :

DECISION

STATE-OPERATED SCHOOL DISTRICT :
OF THE CITY OF NEWARK, ESSEX :
COUNTY, :

RESPONDENT-RESPONDENT. :

Decided by the Commissioner of Education, January 4, 1999

Decided by the State Board of Education, April 7, 1999

Remanded by the Appellate Division, April 14, 2000

For the Petitioners-Appellants, Balk, Oxfeld, Mandell & Cohen (Sanford R.
Oxfeld, Esq., of Counsel)

For the Respondent-Respondent, Sills, Cummis, Radin, Tischman, Epstein &
Gross (Cherie L. Maxwell, Esq., of Counsel)

This matter is before us pursuant to a remand by the Appellate Division.

The petitioners, senior staff members whose employment was terminated following the creation of a State-operated school district in Newark prior to the start of the 1995-96 school year, sought compensation for 1995-96 in addition to payment for their accumulated vacation, sick and personal days.

On April 7, 1999, the State Board of Education affirmed the decision of the Commissioner of Education, agreeing that the petitioners were not entitled to their full

salaries for 1995-96 or to payment for accumulated sick, vacation and personal leave. The State Board rejected the petitioners' contention that the Commissioner had misinterpreted the pertinent statutes. Like the Commissioner, the State Board found that it was clear from the language of those statutes that the Legislature had not intended to allow claims for accumulated sick, vacation and personal leave by individuals whose employment was terminated pursuant to either N.J.S.A. 18A:7A-44a or N.J.S.A. 18A:7A-42a(3) following the creation of a State-operated district. In addition, the State Board found that the petitioners had failed to establish that these statutes had impaired their "contractual right" to receive accumulated pay in violation of the New Jersey and federal constitutions. The State Board also agreed with the Commissioner that the petitioners were entitled to compensation for 60 calendar days, rather than 60 work days, upon their termination.

On April 14, 2000, the Appellate Division reversed the decision of the State Board to the extent that it denied the petitioners compensation for accumulated vacation and sick days. The Court concluded that the vested-rights portion of the statutory benefit package, i.e., accumulated vacation and sick leave, could not constitutionally be withheld. The Court found that the petitioners were entitled to that deferred compensation to the extent that their pre-takeover contracts of employment required such payment upon termination of employment in the same manner as if their employment had been voluntarily terminated. Consequently, the Court remanded this matter "for reconsideration and calculation of these benefits in accordance with the policy and procedure manual of the Board and, to the extent appropriate, the Board's past practices." It also remanded "for a determination of whether [petitioner] Johnson's accumulated vacation limit is forty or sixty days." In all other respects, the Court affirmed the decision of the State Board.

In view of the Court's decision, we remand this matter to the Commissioner for such proceedings as may be required to fulfill the specific terms of that decision. We do not retain jurisdiction.

June 7, 2000

Date of mailing _____