

EDU # 12388-95, 12390-95, 12391-95 and 12394-95 (consolidated)
C # 172-99
SB # 29-99

RUBEN GONZALEZ, PAUL J. O'DONOHUE, :
CLAUDE CRAIG AND STEVEN G. BLOCK, :
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, June 1, 1999

For the Petitioners-Appellants, Medvin & Elberg (Philip Elberg, Esq., of Counsel)

For the Respondent-Respondent, Sills, Cummis, Zuckerman, Radin,
Tischman, Epstein & Gross (Perry L. Lattiboudere, Esq., of Counsel)

This is a consolidated case involving the claims of four individuals who were employed by the Board of Education of the City of Newark at the time of the creation of a State-operated school district pursuant (hereinafter "District" or "State-operated District") to N.J.S.A. 18A:7A-34 et seq. The petitioners claimed that they were terminated without notice contrary to N.J.S.A. 18A:7A-44 and N.J.S.A. 18A:27-4.1. They sought relief in the form of reinstatement with back pay.

The District countered that these individuals were "at-will" employees both before and after the creation of the State-operated District and, as such, had not been entitled to notice.

The Administrative Law Judge (“ALJ”) agreed with the District, holding that N.J.S.A. 18A:27-4.1 was not applicable to State-operated school districts and that N.J.S.A. 18A:7A-44 did not entitle them to relief because their terminations had occurred as the result of discretionary acts by the State Superintendent. The ALJ based his second conclusion on an interlocutory ruling, which had not been disturbed by the Commissioner. That ruling held that the petitioners would not be entitled to relief under N.J.S.A. 18A:7A-44(c) if their positions had not been abolished pursuant to a reorganization of the District.

The Commissioner adopted the ALJ’s initial decision. Consequently, he dismissed the petitions.

After careful review of the record and the pertinent law, we affirm the conclusion that N.J.S.A. 18A:27-4.1 is not applicable to this matter. However, we reverse the Commissioner’s determination that the petitioners are not entitled to relief under N.J.S.A. 18A:7A-44. Nonetheless, for the reasons expressed herein, we conclude that such relief is limited to the salary that each would have earned from the time of termination until effectuation of the reorganization, plus 60 days’ pay.

All four petitioners were central administrative or supervisory employees. All were terminated on August 17, 1995, when the State District Superintendent, Beverly Hall, accepted resignation letters which each had been asked to provide. As set forth in the ALJ’s initial decision, petitioners were treated as a group and there were no individualized reasons for their terminations. However, they were terminated before the reorganization of the District mandated by statute was effectuated.

As set forth above, these employees were terminated because the new State Superintendent wanted to “go with her own team” after her appointment to the position

rather than retain these employees while the newly created State-operated District underwent the statutorily mandated reorganization process. In addition, the record shows that none of the positions held by the petitioners existed after they were terminated.

The crux of the question is whether the State District Superintendent had the discretion to terminate these individual employees under these particular circumstances. We hold that she did not.

N.J.S.A. 18A:7A-44 provides in pertinent part that:

- a. Notwithstanding any other provision of law or contract, the positions of the district's chief school administrator and those executive administrators responsible for curriculum, business and finance, and personnel shall be abolished upon creation of the State-operated school district. The affected individuals shall be given 60 days' notice of termination or 60 days' pay....
- b. Within one year of the establishment of the State-operated school district, the State district superintendent shall prepare a reorganization of the district's central administrative and supervisory staff and shall evaluate all individuals employed in central administrative and supervisory staff positions. The State district superintendent shall implement the reorganization on the July 1 next following its preparation, unless otherwise directed by the commissioner.
- c. Notwithstanding any other provision of law or contract, the positions of the central administrative and supervisory staff, instructional and noninstructional, other than those positions abolished pursuant to subsection a of this section, shall be abolished upon the reorganization of the State-operated school district's staff. The State district superintendent may hire an individual whose position is so abolished, based upon the evaluation of the individual and the staffing needs of the reorganized district staff.... Employees or officers not hired for the reorganized staff shall be given 60 days' notice of termination or 60 days' pay. The notice or payment shall be in lieu of any other claim or recourse against the employing board or the school district based on law or contract....No employee whose position is abolished by

operation of this subsection shall retain any right to tenure or seniority in the positions abolished herein.

As explicated by the Statement which accompanied both the Senate and Assembly versions of the bill, this statute establishes the procedures for the governance of State-operated school districts. As embodied in the law, the Legislature intended that:

If a State-operated school district is established, the local board of education and the chief executive officers of the district will be dismissed and a State district superintendent will be appointed with all the authority of a board of education.

The State district superintendent will evaluate all other central administration staff and reorganize the district's central administration. At that time, all remaining central administration staff positions will be abolished. Affected employees will be given 60 days notice or 60 days pay and will retain "bumping rights" for other positions in the district for which they may have seniority.

Statement accompanying Senate Bill No. 3766 of 1987 and Assembly bill No. 4643 of 1987.

Thus, it is clear that the Legislature envisioned a process of reorganization that would commence with the evaluation of all central administrative staff whose positions were not abolished by operation of law upon creation of a State-operated school district. If the Commissioner did not determine otherwise, the reorganization would be effectuated the following July. At that time, individuals who were not being retained would be terminated with 60 days' notice or 60 days' pay.

The reorganization process was not intended to authorize group terminations for reorganizational purposes except upon effectuation of the statutorily prescribed reorganization. In this respect, it is abundantly clear from the record that the petitioners

were not terminated for any individualized reason. Nor were the resignations submitted by the petitioners voluntary. Rather, we find that the petitioners were, in fact, terminated for purposes of reorganization, but that such terminations were effected outside of the statutorily mandated process.

The statutes at issue do not confer on the State Superintendent carte blanche authority to effectuate blanket dismissals without regard to the statutory reorganization process. Rather, the statutory framework applicable here precludes dismissals that would circumvent the reorganization process.¹

Therefore, for the reasons stated, we find that the petitioners were not properly terminated and are entitled to relief. Because their positions did not exist after they were terminated, and in view of our finding that such terminations were in fact part of the reorganization process, the petitioners are not entitled to reinstatement. Rather, they are entitled to their salaries from the effective date of their termination to the date of effectuation of the reorganization, plus 60 days' pay.

Attorney exceptions are noted.

May 3, 2000

Date of mailing _____

¹ In its exceptions to our Legal Committee's Report, the State-operated District argues that the terminations were permissible since the petitioners were "at-will" employees. As set forth above, we reject this contention because we find that the terminations were within the purview of N.J.S.A. 18A:7A-44. We note, however, that even if this had not been the case, the District's right to terminate petitioners might not have been without limitation. See generally, Woolley v. Hoffmann-LaRoche, 99 N.J. 284, modified, 101 N.J. 10 (1985).