

EDU # 12388-95, 12390-95, 12391-95 and 12394-95 (consolidated)

C # 172-99

SB # 29-99

App. Div. # A-5434-99T5

App. Div. # M-1209-00

RUBEN GONZALEZ, PAUL J. O'DONOHUE, :
CLAUDE CRAIG AND STEVEN G. BLOCK, :
PETITIONERS-APPELLANTS, : STATE BOARD OF EDUCATION
: DECISION ON REMAND
V. :
STATE-OPERATED SCHOOL DISTRICT :
OF THE CITY OF NEWARK, ESSEX :
COUNTY, :
RESPONDENT-RESPONDENT. :
_____ :

Decided by the Commissioner of Education, June 1, 1999

Decided by the State Board of Education, May 3, 2000

Remanded by the Appellate Division, December 8, 2000

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

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

This matter involved 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 (hereinafter "District" or "State-operated District") pursuant 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, and they sought relief from the

Commissioner in the form of reinstatement with back pay. The Commissioner denied the claims and dismissed the petitions.

On May 3, 2000, the State Board reversed the Commissioner's determination that petitioners were not entitled to relief under N.J.S.A. 18A:7A-44. The State Board, however, concluded that such relief was limited to the salary that each would have earned from the time of termination until effectuation of the reorganization, plus 60 days' pay. Implicit in our decision was that, as is ordinarily the case, the computation of such damages would include mitigation.

On June 12, 2000, the State-operated District appealed our decision to the Appellate Division. On November 1, 2000, the District filed a motion with the Appellate Division seeking a stay of our decision.

On December 8, 2000, the Appellate Division stayed the payment of damages pending determination of the appeal or further order of the Court. While not delaying the processing of the appeal by the Appellate Division, the Court also remanded the matter for a computation of damages or submission of an agreed calculation thereof.¹

On December 18, 2000, the Director of the State Board Appeals Office initiated a conference call with the parties to effectuate the Appellate Division's order. Although it was the hope of the State Board that the parties would be able to arrive at an agreed calculation of damages, a schedule was established for the submission of a proposal by counsel for petitioners and for a response by the District. Apparently, as reflected by their submissions, the parties were not able to reach any agreement.

¹ The Appellate Division also ordered that the remand be completed within thirty days. By letter of January 8, 2001, Deputy Attorney General Michelle Lyn Miller advised the Court on behalf of the State Board of the status of the matter and the fact that we anticipated taking action on it today. Thereafter, on

As set forth in their proposal, petitioners contend that, as a matter of law, the damages in this case should be decided solely on the basis of the record that was developed before the Office of Administrative Law. According to petitioners, on that basis, they would be entitled to be paid at least the difference between what they actually earned prior to September 17, 1996, which was sixty days after the reorganization became “official,” and what they would have earned had they not been terminated. Such amounts should also include the amount of fringe benefits calculated at 25% of salary loss. Petitioners are also seeking pre-judgment interest.

It is the District’s position that the issue of damages was not settled during the proceedings before the Administrative Law Judge (“ALJ”). Although the District does not take issue with the annual salaries earned by petitioners at the time of their termination as set forth in the record that has been developed thus far, it does dispute whether there has been mitigation. It is the District’s position that calculation of damages must include consideration of all alternative income received, as evidenced by tax returns and supporting documentation, and that because the record does not include the necessary information, it must be expanded in order to justify an award of any relief beyond payment in lieu of sixty days’ notice. The District also opposes any award of pre-judgment interest.

Initially, we deny petitioners’ request for pre-judgment interest. As set forth in N.J.S.A. 18A:6-25, the Commissioner’s decision denying relief in this case was binding on the parties until May 3, 2000, when the State Board rendered its decision reversing the Commissioner’s determination. Hence, petitioners had no entitlement to any relief

January 12, 2001, a formal motion for extension of time to calculate damages was filed by the Deputy on behalf of the State Board. The Court has not yet ruled on that motion.

before we rendered our decision, and we can find no justification for awarding them pre-judgment interest.

Further, review of the record that was developed during the proceedings before the ALJ shows that it does not provide a sufficient basis upon which to calculate the damages that are due petitioners. Tr. 5/9/97 at 86-24 through 89-15; Tr. 7/7/98 at 99-21 through 102-19. Although the record indicates that petitioners did receive other income during the relevant period before they secured permanent employment, tr. 5/9/97 at 86-12, 88-16, 89-6; tr. 7/7/98 at 101-6, it does not include the information necessary to establish the total amount of income each received following his termination. In this respect, we stress that although the certification submitted by each petitioner after the close of hearing sets forth the amount of his salary prior to termination and the date and the salary of any permanent employment, none of the certifications include any information pertaining to other income, such as amounts received in the form of unemployment benefits.² Consequently, although we did not specifically order petitioners to produce their tax returns when they submitted their proposal, we anticipated that counsel for petitioners would include this information along with some form of supporting documentation to evidence the accuracy of the information. Counsel, however, did not do so, and included instead only the certifications that were put into the record in September 1998 and his letter of November 20, 1998 to the ALJ setting forth his calculation of damages based on those certifications.

² We note that counsel for petitioners did question Steven Block at hearing concerning other employment, tr. 5/9/97 at 86-9, and that his response indicates that he did collect unemployment benefits. Id. at 86-12. However, the amount of such benefits and other income was not established by testimony or otherwise. See id. at 88-13 through 88-23. Nor, as indicated above, does the record include information about any such income received by the other petitioners. See id. at 89-5 through 89-8.

In short, the submissions of the parties reflect that there is a dispute between them concerning whether petitioners received income during the pertinent period in addition to the salary amounts set forth in their certifications that must be considered in calculating any damages. We find that the record establishes that petitioners did receive such income and conclude that the amounts that they received must be considered in calculating the damages to which they are entitled. Goodman v. London Metals Exchange, Inc., 86 N.J. 19 (1981). We further find that because the record before us does not establish the amount of additional income that each petitioner received, we are unable to calculate the damages without further development of the record. Given the factual nature of this inquiry, we remand the matter to the Commissioner with the direction that he determine the amount of mitigation for each petitioner and calculate the damages due each of them. In view of the Court's directive to us, we direct the Commissioner to resolve the matter as expeditiously as possible.

February 7, 2001

Date of mailing _____