

#410-15 (OAL Decision: Not yet available online)

BLOOMFIELD EDUCATION ASSOCIATION :
ON BEHALF OF THE CHILD STUDY TEAM, :
 :
PETITIONER, :
 :
V. : COMMISSIONER OF EDUCATION
 :
BOARD OF EDUCATION OF THE : DECISION
TOWNSHIP OF BLOOMFIELD, :
ESSEX COUNTY, :
 :
RESPONDENT. :
_____ :

SYNOPSIS

Petitioner Bloomfield Education Association (Association) challenged the action of the respondent Board in contracting with Delta-T Group North Jersey, Inc. (Delta-T) – a private entity – to supply child study team (CST) services to students in the Bloomfield school district, in violation of the tenure rights of Association members. In April 2013, the Board had approved a reduction in force (RIF) for reasons of economy, which included District-employed school social workers, school psychologists and learning-disability teacher consultants; the Board did not employ any District staff in these positions during the 2013-2014 school year. Subsequently, the Board entered into an agreement with Delta-T for “Supplemental Child Study Team Services” for the 2013-2014 school year; the contract provided for 21 Delta-T employees to provide CST services to the District, including school social workers, school psychologists, and learning-disability teacher consultants. The Association sought rescission of the contract with Delta-T, and re-employment of those members whose prior duties were assumed by Delta-T personnel, with back pay retroactive to the date of the reduction in force (RIF). The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue, and the matter is ripe for summary decision; the April 2013 RIF was effectuated for reasons of economy and efficiency, and all tenured employees subject to the RIF – except those who retired – remained on a preferred eligibility list for rehire; Delta-T is approved by the New Jersey Department of Education to deliver services to public school students, but is expressly limited to providing “second opinions” on CST evaluations and providing CST diagnostics to supplement existing District CST services; since all members of the District’s CST had been RIF’d, Delta-T was neither supplementing existing services, nor providing only “second opinion” services, notwithstanding the fact that its contract with the Board stated that Delta-T was retained to provide “supplemental child study team services”; during the 2013-2014 school year, Delta-T supplanted the CST members in Bloomfield, and performed the services previously performed by the District’s RIF’d CST members; all of the terminated members of the CST were tenured employees; and their eliminated positions were required under *N.J.S.A. 18A:46-5*. The ALJ concluded that by outsourcing all CST services to Delta-T, the Board violated *N.J.S.A. 18A:46-5.1*; accordingly, the ALJ determined that CST members affected by the RIF during the 2013-2014 school year are entitled to lost salary and benefits and emoluments, less mitigation.

Upon review of the record and the Initial Decision, the Commissioner concurred with the ALJ’s findings and conclusions. Accordingly, the Initial Decision was adopted as the final decision in this matter.

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.

December 18, 2015

OAL DKT. NO. EDU 18705-13
AGENCY DKT. NO. 290-11/13

BLOOMFIELD EDUCATION ASSOCIATION :
ON BEHALF OF THE CHILD STUDY TEAM, :
PETITIONER, :
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BOARD OF EDUCATION OF THE : DECISION
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by the Bloomfield Board of Education (Board) and the Bloomfield Education Association’s (Association) reply thereto. In this matter, the Association is appealing the Board’s decision to eliminate the tenured members of the child study team (CTS) through a reduction in force (RIF) and enter into a contract with Delta-T – a private entity – to provide CTS services to the students in the District for the 2013-2014 school year.

The Board’s exceptions substantially reiterate the substance of its submissions at the OAL, recasting the arguments therein to support the contention that the Administrative Law Judge (ALJ) erroneously found that the contract entered into with Delta-T violated the provisions of *N.J.S.A. 18A:46-5.1* and as a result was *ultra vires*. At the outset, the Board maintains that the ALJ erred by entering an Order on May 1, 2014 denying its motion to dismiss the petition of appeal filed by the Association. The Board asserts ALJ wrongfully found that the petition was

not time barred under *N.J.A.C.* 6A:3-1.3(i), and that the Association had standing to bring the cause of action on behalf of its members.

The Board also takes exception to the ALJ's decision granting summary decision in favor of the Association. The Board maintains that Delta-T was only retained by the Board to provide CST diagnostic services to supplement existing services. Additionally, the Board restated its reliance on *Impey v. Board of Education of the Borough of Shrewsbury*, 142 *N.J.* 388 (1992) to argue that boards of education have considerable latitude in providing essential education services. Further, *N.J.S.A.* 18A:28-9 allows boards of education to reduce force to effectuate economies and for other good cause. Finally, the Board suggests that even if it is determined that it improperly implemented the RIF and outsourced the CST services, it does not owe any back pay to the Association members who were the subject of the RIF. The Board contends that the Association's only avenue of relief is the cancellation of the contract, which is now a moot point because the Board's contract with Delta-T was not renewed after 2013-2014.

Upon a comprehensive review of the record in this matter, the Commissioner concurs with the ALJ - for the reasons thoroughly set forth in the Initial Decision - that the Board's decision to RIF the CST members and outsource their work to Delta-T was *ultra vires* and a violation of the staff members tenure rights.¹ The objections raised in the exceptions filed by the Board generally reiterate the arguments previously made before the ALJ, which were clearly taken into account by her in determining that the Association was entitled to summary decision. Although the Board maintains that Delta-T was only retained to supplement existing CST services, it is clear from the record that the Board outsourced all CST functions to Delta-T

¹ With respect to the Board's contentions that the ALJ erred by denying its motion to dismiss for lack of standing and timeliness, the Commissioner is in accord with the ALJ - for the reasons outlined in her May 1, 2014 Order - that the petition of appeal was neither barred for standing or untimely under the 90-day rule.

in violation of *N.J.S.A. 18A:46-5.1*.² Despite the Board's assertion that the Association members are not entitled to compensation, it is undisputed that the affected members³ were tenured at the time of the 2013 RIF, and as such the Board's *ultra virus* contract with Delta-T was a violation of their tenure rights.

Accordingly, the Initial Decision is adopted as the final decision in this matter. The Board is ordered to make the affected staff members whole for any lost salary and benefits or emoluments of employment during the 2013-2104 as directed in the Initial Decision.

IT IS SO ORDERED.⁴

COMMISSIONER OF EDUCATION

Date of Decision: _____

Date of Mailing: _____

² It should be noted that the relevant statutory and regulatory provisions do permit school districts to enter into joint agreements for CST services with other school districts, educational services commissions or county special services school districts. See, *N.J.S.A. 18A:46-5.1*.; *N.J.A.C. 6A:14-5.1(a)(1)*. However, there is no provision that enables a school district to outsource all of its CST services to a private entity.

³ In the Initial Decision the ALJ discusses the specific Association members who are entitled to be made whole for any salary and benefits or emoluments of employment lost during the 2013-2014 school year.

⁴ Pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*, Commissioner decisions are appealable to the Superior Court, Appellate Division.