

CITY ASSOCIATION OF SUPERVISORS :
AND ADMINISTRATORS, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 STATE-OPERATED SCHOOL DISTRICT : DECISION
 OF THE CITY OF NEWARK, :
 ESSEX COUNTY, :
 :
 RESPONDENT. :
 _____ :

SYNOPSIS

Petitioner, the City Association of Supervisors and Administrators (Association), asserted that the respondent District violated the rights of seven Association members by transferring them to positions at the District’s central office. The Association sought the reinstatement of its members to positions as building principals, together with reimbursement for lost benefits and emoluments of employment. The respondent contended that the positions to which these principals were transferred are within the scope of their certifications and that, accordingly, their tenure rights were not violated.

The ALJ found, *inter alia*, that: the Association’s claims spring from their members’ tenure status under *N.J.S.A. 18A:28-5*, which protects them from dismissal or reduction in compensation without just cause; the Association members whose transfer is at issue herein held their positions as principal under tenure; although it is well-established that a school board has the right to deploy staff as it sees fit, the right to make involuntary transfers is not entirely without limitations; under the principles set forth in *Philip Howley and Dewey Bookholdt v. Ewing Township Board of Educ.*, 1982 *S.L.D.* 1328, 1340, *aff’d*. 1983 *S.L.D.* 1554, a person tenured in a specific position may not be transferred from that position without his or her consent, but may be involuntarily transferred to another assignment within the same position where there is no loss of salary or other reduction in employment; although the Association members were transferred by the District as part of a larger effort to revitalize Newark schools, it is uncontroverted that they were transferred to entirely new positions and are no longer performing the work of building principals; there was, however, no loss of compensation nor emoluments as a result of the transfers. Accordingly, the ALJ concluded that the involuntary transfer of these Association members was in violation of their tenure rights under *N.J.S.A. 18A:28-5*, and ordered the District to restore them to positions as building principals in accordance with their tenure entitlements.

Upon full consideration of the record, the respondent District’s exceptions and the Association’s reply thereto, the Commissioner remanded the matter to the OAL for further development of the record and recommendations regarding to the District’s position with respect to the authority granted to the Commissioner pursuant to *N.J.S.A. 18A:7F-6(b)(2)* and *N.J.A.C. 6A:33-1.1(b)2*.

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.

January 12, 2015

OAL DKT. NO. EDU 849-13
AGENCY DKT. NO. 318-11/12

CITY ASSOCIATION OF SUPERVISORS AND ADMINISTRATORS,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
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STATE-OPERATED SCHOOL DISTRICT OF THE CITY OF NEWARK, ESSEX COUNTY,	:	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 State-Operated School District of Newark (District) and the reply thereto from petitioner, the City Association of Supervisors and Administrators (Association). In this matter, the Association claims that the District’s decision to transfer seven of its building principals to positions at the central office violated the members’ tenure rights because they were given responsibilities not in line with their tenured positions or certifications. The Administrative Law Judge (ALJ) determined that the aggrieved members were reassigned to positions that had little or no relation to the role of building principal, and therefore the involuntary transfer of these building principals to positions in the central office violated their tenure rights under *N.J.S.A. 18A:28-5*. As a result, the ALJ recommended that the District reassign the members to building principal positions in accordance with their tenure entitlement.

The District’s exceptions substantially reiterate the substance of its post hearing submission at the OAL, recasting the arguments therein to support the contention that the ALJ erroneously determined that the transfer of the building principals to positions in the central

office violated their tenure rights. The District maintains that the ALJ took an overly narrow view of the definition of “principal” and erroneously ruled for the purposes of determining tenure rights that being a principal necessarily entails an assignment to a school-based position. The District also contends that the claims of one Association member, Donna Marable, were barred by the 90-day rule.

In its exceptions, the District points out that the ALJ correctly acknowledged that a school board has a right to deploy staff as it sees fit including the right to make involuntary transfers. However, in concluding that the District violated the members’ tenure rights, the ALJ failed to follow the relevant case law, i.e. *Bigart v. Board of Educ. of the Borough of Paramus, Bergen County*, 1979 S.L.D. 123 and *Jeannette Williams v. Board of Educ. of the City of Plainfield, Union County*, 1980 S.L.D. 1552, *aff’d*, 176 N.J. Super. 154 (App Div. 1980). In *Bigart, supra*, the Commissioner stressed that “[t]eaching duties are not restricted to classroom instruction”, and that statement is equally applicable to principals because their duties are not restricted to administering a school. Therefore, the ALJ’s overly narrow reading of the definition of “principal” based on the failure to see the parallels between *Bigart, supra*, and the instant case was incorrect and should be rejected by the Commissioner.

The District also argues that the ALJ failed to apply the balancing test established by the State Board of Education in *Williams, supra*, for determining whether a reassignment to a position of comparable rank is in violation of the tenure laws. Under the *Williams, supra*, balancing test, the interests of the District clearly outweigh the members’ interest in job and financial security, which have not been threatened because the salaries have not been reduced. Additionally, the District contends that the ALJ failed to recognize that the school improvement measures were mandated by federal law. The District argues that the reassignment of the

principals was a necessary consequence of an educational policy determination as to how to address schools that are chronically “in need of improvement”, which is a feature of the No Child Left Behind Act, 20 U.S.C. §§6301 et seq.

Finally, the District takes exception to the ALJ’s reliance on *N.J.A.C. 6A:9B-11.3* as additional support for her determination because the regulation has no applicability to the issue in this case, and it was not relied upon by the Association during the proceedings. *N.J.A.C. 6A:9B-11.3* is in the certification section of the Administrative Code and it simply lists the positions for which the principal endorsement is required. The regulation does not define the position of principal or limit the scope or describe the duties of a principal. Thus, the District urges the Commissioner to reject the Initial Decision in its entirety.

In reply, the Association argues that the ALJ rendered a correct decision on all of the issues in this matter and that the District’s exceptions are without merit. With respect to Ms. Marable’s claims, the Association asserts that the ALJ properly found that her claims were exempt from the 90-day rule because there was a continuing statutory violation. The Association also maintains that the Initial Decision was consistent with the relevant case law, and that the ALJ effectively distinguished *Bigart, supra*, from this matter. Additionally, the Association argued that the balancing test established by the State Board of Education in *Williams, supra*, was not applicable to the facts of this case and does not support the District’s contention that the transfers to positions in the central office were valid exercises of the District’s discretion. Finally, the Association stresses that the No Child Left Behind Act, 20 U.S.C. §§6301 et seq., does not abrogate tenure protections because in order to do so, there must be express statutory authority.

Although the majority of the arguments advanced by the District in its exceptions were fully considered by the ALJ and thoroughly discussed in the Initial Decision, the Commissioner is not persuaded that the district's position with respect to the authority granted to him pursuant to *N.J.S.A. 18A:7F-6(b)(2)* and *N.J.A.C. 6A:33-1.1(b)2* was fully explored and considered. Accordingly, he hereby remands this matter to the OAL for further development of the record and recommendations with respect to the arguments raised by the District in section C of its October 3, 2014 exceptions.

IT IS SO ORDERED.¹

COMMISSIONER OF EDUCATION

Date of Decision: January 12, 2015

Date of Mailing: January 13, 2015

¹ 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*).