

EDU #8582-98
C # 419-99
SB # 4-00

WILLIAM MARSH, :
PETITIONER-APPELLANT, :
V. : STATE BOARD OF EDUCATION
BOARD OF EDUCATION OF THE : DECISION
CITY OF ATLANTIC CITY,
ATLANTIC COUNTY, :
RESPONDENT-RESPONDENT. :

Decided by the Commissioner of Education, December 21, 1999

For the Petitioner-Appellant, New Jersey Principals and Supervisors
Association (Wayne J. Oppito, Esq., of Counsel)

For the Respondent-Respondent, Michael C. Epps, Esq.

William Marsh (hereinafter "petitioner") was employed by the Board of Education of the City of Atlantic City (hereinafter "Board") in July 1979. From 1979 until 1997, he was employed as the Neighborhood Facilities Coordinator. For the 1997-98 school year, the petitioner served as the District Coordinator of Adult Education and Community Use of Schools. Although the Board took no formal action, petitioner's employment was terminated as of June 30, 1998.

The petitioner filed a petition of appeal with the Commissioner of Education, seeking an order that his employment be continued. The Board countered that petitioner was not entitled to continued employment because the Atlantic City Council

had not restored the funding to support the position after the voters had rejected a supplemental spending question submitted to them pursuant to N.J.S.A. 18A:7F-5(d)(9).

Observing that the powers and duties of the Board are set forth in N.J.S.A. 18A:11-1, the Administrative Law Judge (“ALJ”) stressed that under N.J.S.A. 18A:27-1, the Board must appoint teaching staff members by a recorded vote of the majority of its full membership. Reading N.J.S.A. 18A:27-1 together with N.J.S.A. 18A:28-9, which authorizes district boards to reduce the number of teaching staff members employed in the district, the ALJ found that a board must vote to abolish a position before it could subject an employee to a reduction in force. Concluding that there was no statutory provision to effect abolishment of positions duly established by a district board on the basis of a voter defeat of the board’s annual school budget, the ALJ further concluded that a board must take affirmative action to abolish any position it creates. Because the Atlantic City Board had taken no action to abolish petitioner’s position, the ALJ found that the position had remained in existence and that the Board’s actions in terminating petitioner’s salary and benefits was ultra vires. The ALJ therefore recommended that the Commissioner direct petitioner’s reinstatement with all salary and benefits retroactive to June 1998.

The Commissioner set aside the ALJ’s determination. Citing N.J.S.A. 18A:7F-5d, along with N.J.A.C. 6:19-2.4(e) and N.J.A.C. 6:19-2.4(f), the Commissioner initially observed that a rejection of proposed expenditures by the voters is final where the local governing body does not restore such expenditures and that the district board cannot modify its base budget to effectuate them. The Commissioner, however, rejected the Atlantic City Board’s argument that it was excused on this basis from any obligation to

adopt a resolution abolishing the petitioner's position. In this respect, the Commissioner relied on the ALJ's analysis of a district board's statutory obligation to appoint and abolish the positions of teaching staff members.

Finding that the petitioner had been on notice that his position was to be abolished, the Commissioner concluded that petitioner had not been prejudiced by the Board's failure to take formal action in this case, and he declined to award relief to the petitioner. The Commissioner also concluded that he could not permit relief that would compel a board to fill a position which it did not have the authority to fund. Nonetheless, because the circumstances suggested that the Board had been aware of its responsibilities when it failed to act, the Commissioner directed the Atlantic County Superintendent to inquire into the circumstances surrounding the matter and to report to the Commissioner with his findings and recommendations.

Based on our review of the record in this matter and the relevant law, we modify the ALJ's findings, which were relied upon by the Commissioner to conclude that the Board had a statutory obligation to act affirmatively in this case. Initially, our examination of the record indicates that the petitioner was not a certificated employee of the Board. Hence, the petitioner was not a teaching staff member. N.J.S.A. 18A:1-1 ("teaching staff member" is defined as a member of the professional staff of any district whose employment is of such character that the qualifications require him to hold a certificate issued by the State Board of Examiners). By their express terms, N.J.S.A. 18A:27-1 and N.J.S.A. 18A:28-9, upon which the ALJ relied, apply only to teaching staff members. Consequently, the Board's failure to take formal action to abolish the petitioner's position was not in violation of those statutes.

However, further review of the education statutes indicates that N.J.S.A. 18A:27-4.1, which imposes procedural obligations on district boards with respect to the appointment and removal of employees, applies to both certificated and noncertificated employees. Under this statute, the Board had an obligation to act upon the Superintendent's recommendation by recorded roll call vote of a majority of the full Board in order to properly remove petitioner from his position. Moreover, N.J.S.A. 18A:16-1, which provides the authority for district boards to employ and dismiss officers and employees regardless of certification, also required that the Board take formal action to effectuate petitioner's dismissal. Based on the requirements of these statutes, we concur with the Commissioner's conclusion that the Board in this case had a statutory obligation to take formal action irrespective of whether it had the authority to fund the position at issue.

However, for the reasons that follow, we also agree with the Commissioner's determination that the petitioner is not entitled to reinstatement as the result of the Board's failure to take formal action to dismiss him. We do so solely on the grounds that the petitioner has shown no entitlement to such relief under the education laws. In this respect, we again stress that since the petitioner was not a teaching staff member, the Board was not required by N.J.S.A. 18A:28-9 to abolish the position in which he had been serving before it could dismiss him. Accordingly, the petitioner cannot claim relief under that statute. Nor do the procedural requirements of N.J.S.A. 18A:27-4.1 provide a basis for reinstatement in this case. Moreover, as found by the Commissioner, the petitioner had actual notice that he was to be dismissed and, therefore, cannot claim any relief on the grounds that he was prejudiced by the Board's failure to take formal

action to dismiss him. Accordingly, while we join the Commissioner in cautioning the Board that it must fulfill its obligations to take appropriate action in all personnel matters regardless of the status of the funding that underlies the positions affected, we, like the Commissioner, find that the petitioner in this case is not entitled to relief.

Attorney exceptions are noted.

October 4, 2000

Date of mailing _____