

EDU #1157-99
C# 327-00
SB# 62-00

NANCY J. DI COMO,	:	
	:	STATE BOARD OF EDUCATION
PETITIONER-APPELLANT,	:	
	:	DECISION
V.	:	
STATE-OPERATED SCHOOL DISTRICT OF	:	
THE CITY OF NEWARK, ESSEX COUNTY,	:	
	:	
RESPONDENT-RESPONDENT.	:	
_____	:	

Decided by the Commissioner of Education, October 2, 2000

For the Petitioner-Appellant, Oxfeld Cohen, LLC (Sanford R. Oxfeld, Esq., of Counsel)

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

For the reasons expressed herein, as well as those expressed by the Commissioner of Education, the State Board of Education affirms the decision of the Commissioner. In doing so, we fully agree with the Commissioner that N.J.S.A. 18A:7A-44(c) grants immediate tenure to an individual who had achieved tenure status in an administrative/supervisory position in the central office prior to the creation of a State-operated school district only if the State district superintendent rehires such individual to serve in an administrative/supervisory position in the central office upon its reorganization pursuant to N.J.S.A. 18A:7A-44(b).

Thus, we reject appellant's argument that the words of the statute confer immediate tenure on such individuals who, following the creation of a State-operated school district, are rehired in positions that are not part of the central office staff. The provision at issue reads in full:

Notwithstanding any other provision of law or contract, the positions of the central administrative and supervisory staff, instructional and non-instructional, 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 district and the staffing needs of the reorganized district staff. These individuals shall be hired with tenure if they had tenure in their prior position. If they did not have tenure in their prior position, they may obtain tenure pursuant to the provisions of N.J.S. 18A:28-6. Individuals hired as State assistant superintendents shall not be hired with tenure and shall not acquire tenure. 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. Notwithstanding this limitation, nothing herein shall preclude an individual from asserting upon separation from service any legal contractual right to health care coverage, annuities, accrued vacation days, accrued sick leave, insurance and approved tuition costs. Any employee whose position is abolished by operation of this subsection shall be entitled to assert a claim to any position or to placement upon a preferred eligibility list for any position to which the employee may be entitled by virtue of tenure or seniority within the district. No employee whose position is abolished by operation of this subsection shall retain any right to tenure or seniority in the position abolished herein.

N.J.S.A. 18A:7A-44(c) (emphasis supplied by appellant).

The language to which appellant points and upon which the ALJ relied is set forth in one sentence which appellant urges us to read out of context. To do so leads to a

result that not only is contrary to the thrust of N.J.S.A. 18A:7A-44, but which is also inconsistent with the overall statutory framework of which N.J.S.A. 18A:7A-44 is a part. E.g., Chasin v. Montclair State University, 159 N.J. 418 (1999).

Initially, as the Commissioner points out, all three provisions of N.J.S.A. 18A:7A-44 address what is to occur following the creation of a State-operated school district only with respect to those administrative and supervisory positions that are part of the central office staff. Commissioner's Decision, slip op. at 20. N.J.S.A. 18A:7A-44(a) provides for the abolishment of the positions of chief school administrator and the positions of those administrators responsible for curriculum, business and finance, and personnel. It also provides that the affected individuals may assert a claim to any positions to which they may be entitled by virtue of tenure or seniority in the district. N.J.S.A. 18A:7A-44(b) requires that the State district superintendent implement a reorganization of the district's "central administrative and supervisory staff" after evaluating the individuals serving in those positions, but within one year of the creation of the State-operated school district. N.J.S.A. 18A:7A-44(c) specifies what is to occur with respect to the positions of the central administrative and supervisory staff that were not abolished by operation of N.J.S.A. 18A:7A-44(a) upon implementation of the reorganization mandated by N.J.S.A. 18A:7A-44(b).

The words of N.J.S.A. 18A:7A-44(c) authorize the State district superintendent to hire any individual whose position is abolished pursuant to this provision "based upon the evaluation of the individual and the staffing needs of the reorganized district staff." The evaluation referred to is that performed pursuant to N.J.S.A. 18A:7A-44(b) and the "reorganized district staff" is that which results from the reorganization of the district's

central administrative and supervisory staff mandated by N.J.S.A. 18A:7A-44(b). It is in this context that the requirement to hire individuals with immediate tenure if they had tenure in their prior administrative/supervisory positions must be read. We find that, read in context, the language at issue confers instant tenure on an individual who had achieved tenure in an administrative/supervisory position within the central office prior to the creation of a State-operated school district only if such individual is hired to fill an administrative/supervisory position within the central office following reorganization.

Quite simply, the language of the statute provides no basis to expand the tenure rights of those individuals who had acquired tenure as part of the central office staff so as to permit them to claim instant tenure in positions in which they had never served. In this respect, we stress that, like N.J.S.A. 18A:7A-44(a), N.J.S.A. 18A:7A-44(c) provides that any individual whose administrative/supervisory position is abolished is entitled to assert a claim or be placed on a preferred eligibility list for any position to which he may be entitled by virtue of tenure or seniority within the district. This protects the tenure rights of administrative staff members whose central office positions are abolished with respect to those positions in which such individuals had served. To interpret the language at issue so as to expand those rights to encompass positions in which individuals had not served would confer on administrative/supervisory staff within the central office of a school district that has failed to assure a thorough and efficient system of education greater rights than those possessed by similar staff members serving in the central offices of school districts that are providing their students with an adequate education. N.J.S.A. 18A:7A-15; N.J.S.A. 18A:7A-34. This result would be

educationally unsound and inconsistent with the overall purpose of the statutory framework to assure correction of serious educational deficiencies.

In short, examination of the language of N.J.S.A. 18A:7A-44(c) fails to disclose any intent on the part of the Legislature to confer tenure rights with respect to positions in which they had never served on individuals affected by the statutorily-required reorganization of the central office staff following the creation of a State-operated school district. To the contrary, to interpret the provision at issue to confer instant tenure as a vice-principal on appellant, who had never served in this position, would be inconsistent with the rigorous evaluation process required with respect to building principals and assistant principals following the creation of a State-operated school district. N.J.S.A. 18A:7A-45.

Consideration of the legislative history supports this view. The language at issue was not part of the original legislation, but was added when the bill was amended by the Senate Education Committee. Senate Education Committee, Statement to Assembly Bill No. 2927 with Senate committee amendments (May 4, 1987). As expressed in the Statement:

Upon the establishment of a State-operated district the positions of the district's chief school administrator and those employees responsible for curriculum, business and finance, and personnel who report directly to the chief school administrator or the board will be abolished. Affected employees will be given 60 days notice or 60 days pay and retain "bumping rights" for other positions for which they may have seniority. The State district superintendent will evaluate all other central administration staff and reorganize the district's central administration within six months. With the implementation of the reorganization all remaining central administration staff positions will be abolished. Affected employees will be given 60 days pay and will retain "bumping rights" for other positions in the district for which

they may have seniority. Employees may be rehired based upon the evaluation and the needs of the district. Any employee who is rehired for a position in the reorganized central administration shall be hired with tenure if he had tenure in their previous position. Individuals who did not have tenure may earn tenure in the new position.

(Emphasis added.)

This Statement eliminates any doubt as to the intent of the Legislature. Therefore, for the reasons stated, the State Board of Education affirms the decision of the Commissioner.

Margaret F. Bartlett abstained.

April 4, 2001

Date of mailing _____