

EDU #12098-93, #8695-94 and #2040-95 (consolidated)
C # 70-97
SB # 22-97

IN THE MATTER OF THE TENURE :
HEARING OF LEONARD J. MARANO, :
BOARD OF EDUCATION OF THE :
BOROUGH OF LINCOLN PARK, :
MORRIS COUNTY, :

AND :

LEONARD J. MARANO, :
RESPONDENT/PETITIONER- :
RESPONDENT, :

V. :

STATE BOARD OF EDUCATION

BOARD OF EDUCATION OF THE :
BOROUGH OF LINCOLN PARK, :
MORRIS COUNTY, :

DECISION

PETITIONER/RESPONDENT- :
APPELLANT, :

AND :

LEONARD J. MARANO, :
RESPONDENT/PETITIONER- :
RESPONDENT, :

V. :

BOARD OF EDUCATION OF THE :
BOROUGH OF LINCOLN PARK, :
MORRIS COUNTY, :

PETITIONER/RESPONDENT- :
APPELLANT. :

Decided by the Commissioner of Education, February 13, 1997

Decided by the State Board of Education, June 7, 2000

Remanded by the Appellate Division, March 28, 2002

For the Petitioner/Respondent-Appellant, Lindabury, McCormick &
Estabrook (Anthony P. Sciarrillo, Esq., of Counsel)

For the Respondent/Petitioner-Respondent, Paul E. Griggs, Esq.

This matter is before us pursuant to a remand by the Appellate Division. The case involves tenure charges certified in December 1993 against Leonard J. Marano (hereinafter "Marano"), who had been employed by the Board of Education of the Borough of Lincoln Park (hereinafter "Board" or "Lincoln Park Board") as its Business Administrator/Board Secretary since October 1982. Those charges alleged that Marano had misappropriated funds from the district. On November 2, 1995, Marano pled guilty in U.S. District Court to two counts of tax evasion. Thereafter, by an order of the Superior Court dated September 20, 1996, Marano was deemed to have forfeited his position with the Board as of November 2, 1995.

On February 13, 1997, the Commissioner of Education adopted the conclusion of the Administrative Law Judge ("ALJ") that the tenure charges against Marano had been rendered moot as a result of the disposition of the criminal charges against him and the resultant forfeiture of his position. The Commissioner, however, rejected the ALJ's determination that the Board was not obligated to pay Marano his salary for the period after December 15, 1994, when the tenure matter had been removed from the inactive list and rescheduled for hearing at the request of Marano's attorney. In this respect, the Commissioner found that the record before him substantiated that on December 13, 1994, counsel for Marano had written to the ALJ requesting that the case be activated

and hearing dates scheduled and that this had been accomplished by a Notice of Plenary Hearing dated December 15, 1994 from the Office of Administrative Law rescheduling the matter for hearing on April 3, 4, 5, 6, 7, 10, and 11, 1995. Commissioner's Decision, slip op. at 12. The Commissioner concluded, however, that Marano's entitlement to pay during the period of his suspension ended on March 16, 1995, when his attorney requested that the matter be adjourned and placed again on the inactive list.

The Lincoln Park Board appealed that determination to the State Board, claiming that it should not be responsible for the payment of any additional salary to Marano. Thus, the appeal before the State Board was limited to the issue of whether the Commissioner had properly determined that N.J.S.A. 18A:6-14 required the Board to pay Marano his salary for the period from December 15, 1994 through March 15, 1995.

On June 7, 2000, the State Board affirmed the decision of the Commissioner with clarification. The Lincoln Park Board appealed to the Appellate Division from our determination.

On March 28, 2002, the Appellate Division reversed our decision. In doing so, the Court found that N.J.S.A. 18A:6-14, which provides that salary payments to an individual who is suspended pending the determination of tenure charges must be resumed if the Commissioner has not made his determination within 120 days following certification of the charges, was clearly intended to protect the employee from the negative effect of unavoidable or intentional delay in the resolution of the charges. The Court stressed that the statute expressly excludes all delays which are granted at the request of the employee and, viewing the entirety of the circumstances, found that it

was apparent from the record that Marano had no desire to proceed with the “appeal from his disciplinary dismissal” until the federal criminal charges against him were resolved.

The Court concluded that the Commissioner and the State Board had violated the legislative policy of the statute that an employee who is the subject of tenure charges cannot benefit from delay occasioned by his own requests and that this was particularly true in this case given “the ultimate result of both the criminal charges and the disciplinary appeal.” Slip op. at 13. In so concluding, the Court found that “[c]learly, the delay in meeting the one-hundred-and-twenty-day time requirement specified in N.J.S.A. 18A:6-14 was an accommodation to Morano [sic], not Lincoln Park.” Id.

On this basis, the Court reversed our decision and remanded the matter to the State Board for “adoption of an amended final administrative decision adopting the recommendation of the ALJ that Morano’s [sic] request for salary entitlement under N.J.S.A. 18A:6-14 is denied.” Id. To the extent that adoption of such a decision is required to effectuate the Court’s determination that Marano was not entitled to the salary payments he sought pursuant to N.J.S.A. 18A:6-14, and given the comprehensive system of appeals in place in this agency, Laba v. Newark Board of Education, 23 N.J. 364 (1957); In re Masiello, 25 N.J. 590 (1958), the appropriate course is to remand this matter to the Commissioner for implementation of the Court’s remand. Accordingly, we remand the matter to the Commissioner.

May 1, 2002

Date of mailing _____