

MARIA PARISE, :

PETITIONER, :

V. :

BOARD OF EDUCATION OF THE BOROUGH OF BUTLER, MORRIS COUNTY, :

RESPONDENT, :

AND : COMMISSIONER OF EDUCATION

IRIS C. STOCK, : DECISION

PETITIONER, :

V. :

BOARD OF EDUCATION OF THE BOROUGH OF BUTLER, MORRIS COUNTY, :

RESPONDENT. :

SYNOPSIS

Petitioners challenged the Board’s action eliminating their positions as tenured social workers on the District’s child study team due to a reduction in force (RIF) in 2003; petitioner Stock remains a titled petitioner, although her issues were resolved by a prior Commissioner’s decision, dated June 10, 2005, which found the RIF to be invalid. However, the Commissioner remanded the matter regarding petitioner Parise for a determination of appropriate relief in light of pending tenure charges against her, and her retirement on a disability pension subsequent to the filing of the original petition. Ms. Parise subsequently noted her intention to return to work, and an independent medical examiner has found her fit to do so; respondent has not, however, returned her to work because of the pending tenure charges and her retirement. The instant matter seeks to determine the appropriate relief to be given Ms. Parise in light of the invalid RIF.

The ALJ found that: although petitioner was determined to be capable of returning to work, and is entitled to do so under statute and case law, she cannot do so since respondent Board filed tenure charges and suspended her without pay in 2003; the tenure charges remain unresolved and are scheduled for a hearing in April 2007; pursuant to *N.J.S.A. 18A:6-14*, if a final determination is not made within 120 days after certification of tenure charges, an employee is entitled to full salary until such determination is reached. The ALJ concluded that until a final determination is made in the tenure case, respondent can continue Ms. Parise’s suspension, but she is entitled to back pay from September 26, 2003 until August 1, 2004 – the date on which she received her disability pension.

Upon independent and careful review of the record, the Commissioner adopted the Initial Decision with the clarification that the award of back pay is subject to recoupment should the Board prevail on its position that Parise’s rejection of a .10 position was tantamount to her resignation, which matter is currently pending hearing at the OAL.

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.

April 11, 2007

OAL DKT. NO. EDU 7451-05
(NOS. EDU 5953-03 AND EDU 7633-03 – CONSOLIDATED - ON REMAND)
AGENCY DKT. NOS. 181-6/03 AND 238-7/03

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The Board’s exceptions were filed in accordance with *N.J.A.C* 1:1-18.4. No reply exceptions were filed by or on behalf of petitioner Parise.^{1 2}

¹ It is noted that because this remanded matter has, since May 4, 2004, proceeded as a consolidated petition, Iris C. Stock remains a titled petitioner, notwithstanding that the issues with respect to this individual were resolved by the Commissioner’s prior decision dated June 10, 2005.

² By letter dated March 6, 2007 Nancy I. Oxfeld, Esq., of the firm Oxfeld Cohen, P.C., advised that the instant Initial Decision erroneously lists John Boppert, Esq. of that firm as Ms. Parise’s representative in this remanded case. She reports “the record should note that while our law firm did represent Ms. Parise in the initial matter before Judge Jones (OAL Docket No. EDU 5953-03, Agency Docket No. 181-6/03), Ms. Parise represented herself *pro se* before the Commissioner and, upon the remand, before Judge Jones.” However, by letter dated March 12, 2007,

The Board advances two exceptions to the Initial Decision. First, it avers, the Administrative Law Judge (ALJ) was mistaken with respect to one of the dates she utilized in the calculation of back pay awarded to petitioner. Specifically, the ALJ “ordered back pay for the period from the 121st day after the tenure charges were certified, which is correctly given as being September 26, 2003, until the date Ms. Parise started receiving her disability pension, which is given as August 1, 2005. The correct date on which the disability pension began is August 1, 2004.”³ (Board’s Exceptions at 1)

Next, the Board contends that the award of any back pay to petitioner here is premature. Such is the case, it maintains, because the issue of whether Ms. Parise effectively resigned by declining the Board’s offer of a .10 position created after her full time position was abolished in the RIF is still pending adjudication before ALJ Celentano at the OAL (OAL Docket No. EDU 9055-03). Should that matter be resolved in the Board’s favor, any back pay which might have been due petitioner pursuant to the tenure statute would be nullified by her resignation. (*Id.* at 2)

Upon a thorough and independent review, the Commissioner, fully cognizant that this matter was explicitly remanded for a determination of relief due petitioner Parise as a consequence of the Board’s invalid RIF of her child study team social worker position - in light of the pending tenure charges against her and her retirement on a disability pension - is in accord with the ALJ’s conclusion that Ms. Parise is entitled to her full salary for the period September 26, 2003 (the 121st day after certification of the tenure charges against her, adjusted

Ms. Oxfeld filed a Substitution of Attorney form advising that, from that date forward, the firm of Oxfeld Cohen, PC would again be representing Ms. Parise in this matter.

³ In support of this correction, the Board enclosed a copy of the Appellate Division decision in the matter entitled *Parise v. Board of Review and Butler Board of Education*, App. Div. Dkt. No. A-5260-04T1, which confirms that petitioner’s disability pension benefits became effective as of August 1, 2004.

for the fourteen-day extension she requested to file an answer to such charges)⁴ to August 1, 2004⁵, the effective date of her disability pension. Given the specificity of the remand directive in this matter, the Commissioner rejects as without merit the Board's exception argument that this back pay award is premature. However, such award is granted subject to recoupment should the Board ultimately prevail on its position that Ms. Parise's rejection of a .10 position - created after the abolition of her full-time position – was tantamount to her resignation, which matter is currently pending hearing at the OAL.

Accordingly, the recommended decision of the OAL is adopted as clarified above. As a consequence of its improper RIF of her position, the Board is hereby directed to remit back pay to Ms. Parise for the period September 26, 2003 to August 1, 2004.

IT IS SO ORDERED.⁶

COMMISSIONER OF EDUCATION

Date of Decision: April 11, 2007

Date of Mailing: April 12, 2007

⁴ The Commissioner notes that the record reflects that the parties agreed that the Board's tenure charges against Ms. Parise, OAL Docket No. EDU 5793-2003, should be held in abeyance until the instant matter, involving Ms. Parise's claim that the Board improperly abolished her position, and OAL Docket No. EDU 9055-2003, involving Ms. Parise's challenge to the Board's contention that she resigned her position (currently pending at the OAL), had both been adjudicated – as the resolution of these matters might serve to render the tenure charges moot.

⁵The ALJ's use of the date August 1, 2005 in her Initial Decision order (Page 5) is an obvious typographical error (See Initial Decision, Page 4, footnote 1, paragraph 5, where it is clear that she recognized that Ms. Parise's ordinary disability became effective on August 1, 2004.)

⁶ This decision may be appealed to the State Board of Education pursuant to *N.J.S.A. 18A:6-27 et seq.* and *N.J.A.C. 6A:4-1.1 et seq.*