

EDU #8377-94  
C # 173-96  
SB # 37-96

JENNIFER C. FIGURELLI, :  
PETITIONER-RESPONDENT, :  
V. : STATE BOARD OF EDUCATION  
THE STATE-OPERATED SCHOOL : DECISION  
DISTRICT OF THE CITY OF JERSEY :  
CITY, HUDSON COUNTY, :  
RESPONDENT-APPELLANT. :

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Decided by the Commissioner of Education, May 2, 1996

For the Petitioner-Respondent, Maria M. Lepore, Esq.

For the Respondent-Appellant, Ken Iwama, Esq.

On April 4, 1990, the State district superintendent of the State-operated School District of Jersey City (hereinafter "State-operated District") abolished the position of Dr. Jennifer Figurelli (hereinafter "petitioner") as Director, Bureau of Pupil Personnel Services and appointed her as Director, CPHU-TEMP.<sup>1</sup> Such action was taken pursuant to the reorganization of administrative and supervisory staff following the creation of a State-operated school district in Jersey City. N.J.S.A. 18A:7A-44. In August 1990, the State district superintendent appointed a non-tenured individual as Executive Director, Pupil Personnel Services. In July 1991, petitioner's position was

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<sup>1</sup> "CPHU" is the Children's Partial Hospitalization Unit.

changed to Director, Special Services, Department of Pupil Personnel Services. On May 11, 1994, petitioner received notice that her position was being abolished as the result of a reduction in force (“RIF”).

On August 3, 1994, petitioner filed a two-count petition of appeal with the Commissioner of Education, claiming that she was entitled to reinstatement as the Executive Director of Pupil Personnel Services (Count One) or as a principal (Count Two) by virtue of her tenure and seniority rights. Petitioner alleged that the State-operated District had “failed to demonstrate good cause for the alleged abolition of [her] position as Director of Pupil Personnel Services and its failure to permit her to assume the position of Executive Director of Pupil Personnel Services to which she has tenure and seniority rights.” Petition of Appeal, at 3. Petitioner maintained that the Executive Director position was “ostensibly the same as the position of Director of Pupil Personnel Services.” *Id.* at 2. Petitioner also claimed that she had achieved tenure as a principal by virtue of her service as the Director, CPHU-TEMP. The parties filed cross-motions for summary decision, along with a joint stipulation of facts for purposes of summary decision only.

On March 12, 1996, the Administrative Law Judge (“ALJ”) recommended granting the State-operated District’s motion and dismissing the petition, concluding that the petition had not been filed in a timely manner. N.J.A.C. 6:24-1.2(c).<sup>2</sup> The ALJ

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<sup>2</sup> N.J.A.C. 6:24-1.2(c) provides that:

The petitioner shall file a petition no later than the 90th day from the date of receipt of the notice of a final order, ruling or other action by the district board of education, individual party, or agency, which is the subject of the requested contested case hearing.

determined that the 90-day rule had begun to run when petitioner's position as Director, Bureau of Pupil Personnel Services was abolished in April 1990.

On May 2, 1996, the Commissioner rejected the Initial Decision, finding that the petition was not time-barred. The Commissioner concluded that petitioner's rights arose in May 1994 when her position as Director, Special Services, Department of Pupil Personnel Services was abolished and the State district superintendent refused to place her in a position to which she claimed entitlement by virtue of seniority. The Commissioner stressed that it was the State district superintendent's refusal to honor petitioner's claim to a director's position which established the cause of action set forth in the petition. Noting, however, that petitioner retained no tenure or seniority rights in her abolished position, N.J.S.A. 18A:7A-44, the Commissioner remanded this matter to the Office of Administrative Law for such proceedings as were necessary to determine whether petitioner's service as the Director/CPHU-TEMP and/or as the Director, Special Services, Pupil Personnel Services accrued to the same seniority category as Executive Director, Pupil Personnel Services and, if so, whether she was entitled to the Executive Director position by virtue of seniority. The Commissioner also remanded for further proceedings on Count Two of the petition, in which petitioner claimed entitlement to a principal's position.

The State-operated District has filed the instant appeal to the State Board, arguing that the Commissioner erred in determining that petitioner's claim to the Executive Director position was filed in a timely manner.<sup>3</sup>

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<sup>3</sup> We note that the State-operated District did not appeal the Commissioner's determination to remand this matter to the Office of Administrative Law for further proceedings on petitioner's claim to a principal's position.

After a thorough review of the record, we affirm, as clarified herein, the Commissioner's ultimate determination to remand this matter to the Office of Administrative Law.

Since this case arises from the reorganization of administrative staff following the creation of a State-operated school district in Jersey City, it is necessary to consider the statutory provisions governing the creation and operation of State-operated districts. N.J.S.A. 18A:7A-44(c) provides in pertinent part:

Notwithstanding any other provision of law or contract, the positions of the central administrative and supervisory staff...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 individual and the staffing needs of the reorganized district staff....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....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 positions abolished herein. (Emphasis added.)

It is clear from the express language of the statute that petitioner retains no tenure or seniority rights in her former position as Director of Pupil Personnel Services, which was abolished in April 1990 following the creation of the State-operated District. See Van Dyke v. State-Operated School District of the City of Jersey City, decided by the Commissioner, 91 N.J.A.R.2d (EDU) 43, aff'd by the State Board, 91 N.J.A.R.2d

(EDU) 46, appeal dismissed, Docket #A-3633-91T2 (App. Div. 1992). Petitioner, however, claimed in her petition that the State-operated District had failed to demonstrate good cause for the “alleged abolition” of that position and for the State district superintendent’s failure to assign her to the Executive Director position, which had been created during the statutorily-mandated reorganization of administrative and supervisory personnel. Petitioner further contended that the Executive Director position was “ostensibly the same” as her abolished position as Director of Pupil Personnel Services.<sup>4</sup>

We stress, however, that the abolishment of petitioner’s position was effectuated by operation of law. Moreover, pursuant to the clear language of N.J.S.A. 18A:7A-44(c), petitioner did not retain any right to her abolished position even if it were re-created, as she now contends. Cirasa v. State-Operated School District of the City of Paterson, Docket #A-2408-93T2 (App. Div. 1995). N.J.S.A. 18A:7A-44 “does not mandate the rehiring of any of those [displaced administrative and supervisory staff] in the reorganized district. The statute clearly places that decision within the power of the State district superintendent....N.J.S.A. 18A:7A-44(c) evinces a legislative intent to permit the State district superintendent to assemble the best possible central administrative and supervisory staff to move the school district toward the required goal of providing a thorough and efficient education to its students.” Id., slip op. at 10-11. Since the statute is permissive rather than mandatory with respect to the rehiring of individuals displaced in a reorganization, petitioner had no entitlement to

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<sup>4</sup> Although petitioner contends in her petition that the State-operated District “allegedly” abolished her position of Director of Pupil Personnel Services in May 1994, the parties stipulated for purposes of summary decision that such position was abolished on April 4, 1990. Exhibit C-1, in evidence.

reappointment in the newly-established Executive Director position by virtue of her service in the abolished Director of Pupil Personnel Services position, even if the duties were “ostensibly the same,” as she now contends.

In any event, we note that petitioner did not challenge the abolishment of her Director of Pupil Personnel Services position until August 1994, after her position as Director of Special Services was abolished. As a result, any claim she might have to the Executive Director position is time-barred to the extent that it is predicated on the validity of the statutorily-mandated reorganization of administrative and supervisory staff in 1990. N.J.A.C. 6:24-1.2(c). See Kaprow v. Berkeley Twp. Bd. of Ed., 131 N.J. 572 (1993). Moreover, under the circumstances, we find that petitioner has provided no basis for relaxation of the 90-day rule. N.J.A.C. 6:24-1.15.

Consequently, while we agree with the Commissioner that petitioner’s instant claim arose in May 1994 when her position as Director of Special Services was abolished and the State district superintendent refused to appoint her to the Executive Director position, we grant in part the State-operated District’s motion for summary decision and dismiss Count One of the petition to the extent that it is predicated on a challenge to the reorganization of administrative and supervisory personnel following the creation of a State-operated school district in Jersey City in 1990.

In view of such determination, we affirm, as clarified herein, the ultimate determination of the Commissioner to remand this matter to the Office of Administrative Law for further proceedings in order to determine whether petitioner’s employment in the district subsequent to the abolishment of her Director of Pupil Personnel Services position in 1990 accrued to the same regulatory category as that of Executive Director,

Pupil Personnel Services, N.J.A.C. 6:3-5.1(g), and, if so, whether she had any entitlement by virtue of seniority to the Executive Director position at the time of the RIF in May 1994.<sup>5</sup>

We do not retain jurisdiction.

Attorney exceptions are noted.

August 6, 1997

Date of mailing \_\_\_\_\_

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<sup>5</sup> Since the instant appeal is limited to the Commissioner's determination to remand this matter to the Office of Administrative Law for further proceedings on petitioner's claim to the Executive Director position, we have not addressed that portion of the Commissioner's decision remanding this matter for further proceedings on Count Two of the petition, in which petitioner claimed entitlement to a principal's position.