

EDU #9852-94  
C # 423-95  
SB # 1-96

BARBARA SKLUTE, FAYE MOUNTFORD :  
AND JAN OLIVER,

PETITIONERS-APPELLANTS,

V.

BOARD OF EDUCATION OF THE CITY  
OF TRENTON, MERCER COUNTY,

RESPONDENT-RESPONDENT.

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STATE BOARD OF EDUCATION

DECISION

Decided by the Commissioner of Education, December 1, 1995

For the Petitioners-Appellants, Zazzali, Zazzali, Fagella & Nowak (Kathleen A. Naprstek, Esq., of Counsel)

For the Respondent-Respondent, Sumners, Council, George & Dortch (Thomas W. Sumners, Jr., Esq. and Guiffre M. Hollingsworth, Esq., of Counsel)

Barbara Sklute, Faye Mountford and Jan Oliver (hereinafter "petitioners"), school secretaries employed by the Board of Education of the City of Trenton (hereinafter "Board"), filed a petition of appeal with the Commissioner of Education alleging that the Board had improperly reduced their salaries in violation of their tenure rights. As stipulated by the parties, each of the petitioners had acquired tenure in the district as a secretary under N.J.S.A. 18A:17-2.

In September 1993, the Board assigned the petitioners to the Adult Evening High School as part-time senior secretaries for the period from September 1, 1993 through June 30, 1994. These assignments were in addition to petitioners' regular full-time secretarial positions in the district. The petitioners' salaries for their duties at the evening school were established by the Board as follows: Sklute was to be paid at a rate of \$18.78 per hour, Mountford was to be paid \$18.27 per hour, and Oliver was to be paid \$15.95 per hour. Although the petitioners each received a single paycheck covering all of their secretarial responsibilities in the district, earnings they received as a result of the performance of their duties at the evening school were identified separately on their pay stubs. Thus, the petitioners received their regular paychecks which also included an additional sum as payment for services rendered at the evening school.

On June 8, 1994, the petitioners were advised by the Board that they had received an overpayment in their June 3, 1994 paychecks. Petitioner Sklute was advised that she had received an overpayment in the amount of \$244.14, petitioner Mountford was advised that she had received an overpayment of \$219.12, and petitioner Oliver was advised that she had received an overpayment of \$191.28. The overpayments occurred when the district's payroll office erroneously used a rate of time-and-a-half instead of the per-hour rate in calculating the petitioners' earnings at the evening school for the pay period running from May 14 to May 27, 1994. In order to recoup these overpayments, the Board deducted the amount of the overpayments from petitioners' paychecks dated June 17, 1994. The deductions were made from the amounts received by the petitioners in connection with their assignments at the evening school. Petitioners contend that the

Board's action constituted a reduction in compensation in violation of their tenure rights acquired under N.J.S.A. 18A:17-2.<sup>1</sup>

During the proceedings in the Office of Administrative Law, the parties submitted cross-motions for summary decision. On October 18, 1995, an administrative law judge ("ALJ") recommended granting the Board's motion for summary decision and dismissing the petition. The ALJ concluded that the petitioners had no tenure rights in their part-time evening school assignments. Consequently, since the overpayments occurred only in connection with the petitioners' duties at the evening school and the recoupment of those overpayments affected only subsequent earnings attributable to the evening school assignments, the ALJ determined that the Board had not reduced any compensation protected by the tenure laws.

On December 1, 1995, the Commissioner adopted the ALJ's findings and conclusions and dismissed the petition. The Commissioner agreed that the petitioners' evening school assignments were separate and distinct from their full-time secretarial positions and that the petitioners had not achieved tenure in their evening school assignments. As a result, the Board could reduce the portion of their paychecks attributable to the evening school assignments in order to recoup an overpayment made in

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<sup>1</sup> N.J.S.A. 18A:17-2 provides in pertinent part:

c. Any person, who has acquired, or shall hereafter acquire, tenure in any secretarial or clerical office, position or employment under the board of education of a school district and has been appointed district clerk or secretary, or shall hereafter be appointed secretary of said district, as such secretary, shall hold his office, position or employment under tenure during good behavior and efficiency and shall not be dismissed or suspended or reduced in compensation, except for neglect, misbehavior or other offense and only in the manner prescribed by subarticle B of article 2 of chapter 6 of this title.

connection with those assignments without violating the tenure rights acquired by the petitioners in their full-time secretarial positions.

The petitioners filed the instant appeal to the State Board.

After a thorough review of the record, we affirm the Commissioner's determination to dismiss the petition, but modify his analysis. Under the circumstances, we find it unnecessary to determine whether the petitioners had tenure rights in their part-time assignments at the adult evening school.

The facts herein are analogous to the situation in Trenton Education Association, et al. v. Board of Education of the City of Trenton, decided by the State Board of Education, December 1, 1999, in which we determined that the Trenton board had not violated the tenure rights of its custodial employees when it reduced six of their bi-weekly paychecks during the 1992-93 school year in order to recoup an overpayment. The overpayment in that case had not resulted from action by the Trenton board in erroneously placing the custodians on the negotiated salary guide or incorrectly establishing their salaries under the terms of that guide. Rather, the board had erred in calculating the specific amounts to be included in the custodians' bi-weekly paychecks based on their established annual salaries. Nor was there any indication in that case that the custodial employees had received compensation for the 1992-93 school year which was less than the amount established by the board under the terms of the district's negotiated guide or as set forth in that guide. Under those circumstances, we concluded that the Trenton board's action in recouping the overpayments by reducing the custodians bi-weekly paychecks during the course of the year did not constitute an impermissible reduction in compensation as contemplated by N.J.S.A. 18A:17-3 and 17-4.

Similarly, it is undisputed in the instant case that the overpayments did not result from the incorrect establishment of the petitioners' salaries in their part-time evening school assignments. Rather, the district's payroll office erroneously used a time-and-a-half rate in calculating the petitioners' earnings in those assignments for one two-week period. Pursuant to our determination in Trenton Education Association, supra, the tenure laws do not prohibit the Board from recovering such an overpayment by reducing the petitioners' paychecks. Thus, under the particular circumstances presented herein, we conclude that the Board's action in deducting the amount of the overpayment from subsequent paychecks issued to the petitioners, regardless of whether they had tenure rights in the evening school assignments, did not constitute an impermissible reduction in compensation.

We therefore affirm the Commissioner's determination to dismiss the petition, but do so for the reasons expressed herein.

Attorney exceptions are noted.

February 2, 2000

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