

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, :

PETITIONER-RESPONDENT, :

V. : STATE BOARD OF EDUCATION

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

RESPONDENT-APPELLANT, :

AND :

LEONARD J. MARANO, :

PETITIONER-RESPONDENT, :

V. :

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

RESPONDENT-APPELLANT. :

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Decided by the Commissioner of Education, February 13, 1997

For the Petitioner/Respondent-Appellant, Anthony P. Sciarrillo, Esq.

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

This consolidated matter 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 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. 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. See N.J.S.A. 18A:6-14.<sup>1</sup>

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<sup>1</sup> N.J.S.A. 18A:6-14 provides, in pertinent part, that:

Upon certification of any charge to the commissioner, the board may suspend the person against whom such charge is made, with or without pay, but, if the determination of the charge by the Commissioner of Education is not made within 120 calendar days after certification of the charges, excluding all delays which are granted at the request of such person, then the full salary (except for said 120 days) of such person shall be paid beginning on the one hundred twenty-first day until such

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 us is limited to the issue of whether the Commissioner properly determined that the Board was required to pay Marano his salary for the period from December 15, 1994 through March 15, 1995.

After reviewing the record in this matter, we affirm the decision of the Commissioner as clarified herein.

Initially, we agree with the Commissioner that Marano did not waive his claim to salary for the controverted period by virtue of a Consent Order signed by the ALJ on June 15, 1994. By the express terms of that Order, the Board and Marano agreed to place this matter “on inactive status for a period not to exceed four (4) months” and, “during this said inactive period,” Marano agreed “to forgo any legal right he has pursuant to N.J.S.A. 18A:6-14 to receive his full salary.” The Order directed that Marano’s entitlement to salary was waived “until the matter is rescheduled for a hearing.” On December 15, 1994, the case was rescheduled for hearing on April 3, 4, 5, 6, 7, 10 and 11, 1995. The fact that the matter was adjourned once again at Marano’s request in March 1995 does not alter his entitlement to salary under N.J.S.A. 18A:6-14 for this limited period.

We reject the Board’s contention that this result is altered by the fact that it took action in September 1994 to eliminate the position of Business Administrator/Board Secretary, or, in the alternative, that this matter should be remanded for further

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determination is made. Should the charge be dismissed, the person shall be reinstated immediately with full pay from the first day of such suspension. Should the charge be dismissed and the suspension be

proceedings on Marano's petition challenging the action by the Board to abolish his position during the pendency of the tenure proceedings. As determined by the Commissioner, the tenure charges against Marano were rendered moot by the subsequent forfeiture of his position. In addition, we find that Marano's challenge to the abolishment of his position has been rendered moot by virtue of the fact that no further relief could be afforded him if his petition challenging such action were to be reinstated. If he ultimately were to prevail on that claim, he would not be entitled to any compensation beyond the amount awarded herein. Nor, given the forfeiture of his employment, would he be entitled to placement on a preferred eligibility list for possible future employment. Under these circumstances, we reject the view that the Board can avoid its obligations under N.J.S.A. 18A:6-14 by now raising as an affirmative defense the contention that it had acted properly to eliminate Marano's position pursuant to N.J.S.A. 18A:28-9 during the pendency of the tenure charges.

Therefore, as clarified herein, we affirm the Commissioner's determination that the Board was responsible for the payment of Marano's salary for the period from December 15, 1994 through March 15, 1995.

Attorney exceptions are noted.

June 7, 2000

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

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continued during an appeal therefrom, then the full pay or salary of such person shall continue until the determination of the appeal....