

EDU #11980-95
C # 4-99
SB # 3-99

CONCETTA B. CAPONEGRO, VIRGINIA :
DEVANE, HOWARD JOHNSON, NORMAN :
JEFFRIES AND BESSIE WHITE, :

PETITIONERS-APPELLANTS, :

STATE BOARD OF EDUCATION

V. :

DECISION

STATE-OPERATED SCHOOL DISTRICT :
OF THE CITY OF NEWARK, ESSEX :
COUNTY, :

RESPONDENT-RESPONDENT. :

Decided by the Commissioner of Education, January 4, 1999

For the Petitioners-Appellants, Balk, Oxfeld, Mandell & Cohen (Sanford R.
Oxfeld, Esq., of Counsel)

For the Respondent-Respondent, Sills, Cummis, Radin, Tischman, Epstein &
Gross (Philip E. Stern, Esq., of Counsel)

The State Board of Education affirms the decision of the Commissioner of Education for the reasons expressed therein. We reject the petitioners' contention that the Commissioner misinterpreted the statutes at issue herein. Like the Commissioner, we find it clear from the language of those statutes that the Legislature had not intended to allow claims for accumulated sick, vacation and personal leave by individuals whose employment was terminated pursuant to either N.J.S.A. 18A:7A-44a or N.J.S.A. 18A:7A-42a(3) following the creation of a State-operated school district.

In so doing, we note that the petitioners have alleged for the first time in their arguments before us that these statutes impaired their "contractual right" to receive accumulated pay for unused sick, vacation and personal days in violation of the New

Jersey and federal constitutions. Upon review of petitioners' argument, we find that they have failed to establish such a violation. Nor do we find that their claim requires further fact-finding or educational expertise. (It is now well established that when a controversy arising under the school laws presents constitutional issues, "such issues should merely be noted....Factual presentations relevant to the constitutional issues may be made, however, to ensure an adequate record for determination on appeal. In this way both the integrity of the administrative system and the [party's] right to a judicial determination of constitutional issues will be preserved." Parents for Student Safety, Inc. v. Board of Education of the Morris School District, decided by the State Board of Education, February 5, 1986, slip op. at 5, aff'd, Docket #A-3257-85-T7 (App. Div. 1987), quoting Paterson Redevelopment Agency v. Schulman, 78 N.J. 378, 388 (1979). Moreover, "in litigation to resolve purely constitutional claims,...although an agency may base its decision on constitutional considerations, such legal determinations do not receive even a presumption of correctness on appellate review." Bd. of Ed. v. Neptune Educ. Ass'n., 293 N.J. Super. 1, 9 (App. Div. 1996), quoting Abbott v. Burke, 100 N.J. 269, 298-99 (1985). Nonetheless, the Court stressed that "[w]here the broader subject matter of a case is within the purview of an administrative agency's authority, it is valuable to have the insights and policy reflections of that agency, even if the only issue to be decided is one of constitutional dimensions, in respect of which the agency is seen to have no particular expertise or authoritative decisional role." Id.)

We therefore affirm the decision of the Commissioner.

April 7, 1999

Date of mailing _____