

EDU #7507-93
C # 347-94
SB # 6-95

TRENTON EDUCATION ASSOCIATION, :
TRENTON ATTENDANCE OFFICERS' :
ASSOCIATION, TRENTON BUSINESS :
AND TECHNICAL EMPLOYEES' ASSO- :
CIATION, TRENTON EDUCATION :
SECRETARIES' ASSOCIATION, :
TRENTON SECURITIES OFFICERS' :
ASSOCIATION, TRENTON ADMINIS- :
TRATORS AND SUPERVISORS' ASSO- :
CIATION, AND TRENTON SCHOOL : STATE BOARD OF EDUCATION
CUSTODIANS' ASSOCIATION, :
 :
 : DECISION
 :
PETITIONERS-RESPONDENTS, :
 :
V. :
 :
BOARD OF EDUCATION OF THE CITY :
OF TRENTON, MERCER COUNTY, :
 :
RESPONDENT-APPELLANT. :
_____ :

Decided by the Commissioner of Education, December 21, 1994

For the Petitioners-Respondents, Szaferman, Lakind, Blumstein, Water & Blader (David B. Beckett, Esq., of Counsel)

For the Respondent-Appellant, Sumners, Council, George & Dortch (Thomas W. Sumners, Jr., Esq., of Counsel)

Beginning on April 23, 1993 and continuing until July 2, 1993, the Board of Education of the City of Trenton (hereinafter "Board") made adjustments to six bi-weekly paychecks issued to its twelve-month employees in order to recoup an overpayment. An explanation for the adjustment was provided by the auditor appointed by the Commissioner of Education to oversee the operation of the Board's business office. He

indicated that the Board had made the following two errors at the beginning of the 1992-93 school year:

A) The bi-weekly rate paid to each twelve-month employee was calculated in error using a 260-day work year rather than a 261-day work year; and

B) On July 17, 1992 an additional two days of pay was included in the paychecks of all twelve-month Board employees because of the miscalculation by the Board.

Stipulation of Facts, at 3.

As a result of the adjustment made by the Board, twelve-month employees received less money in their paychecks issued between April 23, 1993 and July 2, 1993 than they had received in their regular bi-weekly paychecks issued from July 1, 1992 until April 22, 1993.

The Trenton School Custodians' Association (hereinafter "petitioner"), the majority representative of the Board's custodial employees, filed a petition with the Commissioner of Education alleging that the Board's action constituted a reduction in compensation in violation of its members' tenure rights set forth in N.J.S.A. 18A:17-3 and 18A:17-4.¹ Petitioner maintained that the Board could freeze the custodians' salaries in order to recoup an overpayment, but that the Board was prohibited from reducing their regular salary payments.

On November 1, 1994, an administrative law judge ("ALJ") agreed with the petitioner and concluded that the Board had violated the custodians' tenure rights. The ALJ found that "the facts do not show a freeze of any salary increments, but rather a

¹ We note that similar petitions were filed by other bargaining units on behalf of their members. However, those petitions, which were consolidated with the custodians' petition, were subsequently withdrawn. Thus, the decisions below, as well as the instant appeal, involve only the petition filed by the School Custodians' Association.

reduction in the regular salary payments in order to recoup the overpayments.” Initial Decision, slip op. at 7. In addition, the ALJ concluded that repayment of the moneys recouped by the Board in this instance – less than \$35,119 – would not cause an undue burden on the Board. Consequently, the ALJ recommended that the Board repay the amount of the recoupment to the custodians. The ALJ recommended denying the petitioner’s claim for pre- and post-judgment interest, concluding that petitioner had not demonstrated that custodial employees were entitled to such interest under the criteria set forth in N.J.A.C. 6:24-1.16(c).

On December 21, 1994, the Commissioner adopted the findings and conclusions of the ALJ and directed the Board to repay each of the custodians represented by the petitioner the full amount of the recoupment within 60 days.

The Board filed the instant appeal to the State Board.

After a careful review of the record, we reverse the decision of the Commissioner. Under the particular facts presented herein, we conclude that the Board did not violate the tenure rights of its custodial employees when it reduced their bi-weekly paychecks to recoup an overpayment.

The overpayment in this case did not result from action by the Board in which it erred in placing these employees on the negotiated salary guide or incorrectly established such employees’ annual salaries under the terms of that guide. See, e.g., Markot v. Board of Education of the Township of East Brunswick, decided by the State Board of Education, 1989 S.L.D. 3043, aff’d, Docket #A-345-89-T5 (App. Div. 1990); Galop v. Board of Education of the Township of Hanover, decided by the Commissioner of Education, 1975 S.L.D. 358, aff’d by the State Board of Education, 1975 S.L.D. 366;

Trenton Education Association v. Board of Education of the City of Trenton, decided by the Commissioner of Education, 1986 S.L.D. 2415. Rather, the Board erred in calculating the specific amounts to be included in the custodians' bi-weekly paychecks based on their established annual salaries. We stress in that regard that there is no indication—and the petitioner does not allege—that custodial employees 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. Nor does the petitioner contend that the Board erred in placing these employees on the negotiated guide or that it had incorrectly established their annual salaries under the terms of that guide.

Under these circumstances, we conclude that the Board's action in recouping the overpayments by reducing six bi-weekly paychecks during that year did not constitute an impermissible reduction in compensation as contemplated by N.J.S.A. 18A:17-3 and 17-4.

We therefore reverse the decision of the Commissioner and dismiss the petition.

Attorney exceptions are noted.

December 1, 1999

Date of mailing _____