

EDU #9576-99
C # 349-00
SB # 71-00

DONNA CUSTODE, :
 :
 PETITIONER-RESPONDENT, :
 : STATE BOARD OF EDUCATION
V. :
 : DECISION ON MOTION
BOARD OF EDUCATION OF THE TOWN OF :
HACKETTSTOWN, WARREN COUNTY, :
 :
 RESPONDENT-APPELLANT. :
_____ :

Decided by the State Board of Education, April 4, 2001

Decided by the Commissioner of Education, October 30, 2000

For the Respondent-Appellant, Apruzzese, McDermott, Mastro & Murphy
(David A. Wallace, Esq., of Counsel)

For the Petitioner-Respondent, Bucceri and Pincus (Sheldon H. Pincus, Esq.,
of Counsel)

On April 4, 2001, the State Board of Education affirmed the decision of the Commissioner of Education in this matter for the reasons expressed in his decision. The Commissioner, in turn, had adopted the initial decision of the Administrative Law Judge ("ALJ"). In his decision, the ALJ had concluded that the Board of Education of the Town of Hackettstown (hereinafter "Board") had violated the tenure rights of Donna Custode (hereinafter "petitioner") by compensating her at a lower salary for the 1998-99

school year than the salary it had established for her when it approved her movement on the then applicable salary guide on May 13, 1998.

In the proceedings before the ALJ, the Board had argued that its actions were not in violation of petitioner's tenure rights because on June 10, 1998, it had reassigned her from a 12-month secretarial position compensated under one salary guide to another 12-month secretarial position compensated pursuant to a lower paying guide. The Board argued that any salary loss was justified because it was merely the consequence of a demotion to a lower paying position as the result of a reduction in force. The Board also maintained that because it had resolved to fix petitioner's salary at the amount she was actually paid during 1997-98, and because petitioner had been reassigned before she had begun receiving the increased salary amount established by the Board on May 13, 1998, it had not reduced petitioner's salary in violation of her tenure rights.

As stated, the ALJ rejected the Board's arguments, and, based on the undisputed facts, found that the Board's action of June 10, 1998 constituted an impermissible reduction in compensation. The ALJ therefore directed the Board to reinstate petitioner's salary in the amount it had established by its May 13, 1998 action and to pay petitioner within thirty days of the final administrative decision in the matter the difference between that amount and the amount she had received for 1998-99 and 1999-2000.

As noted previously, the Commissioner adopted the ALJ's initial decision and directed the Board to compensate petitioner within 60 days of his decision. In doing so, he concurred with the ALJ that the Board's action of June 10, 1998 was without effect

given its action the previous month approving her advancement on the then applicable salary guide. He also stressed that as a secretary, the petitioner was serving in the same tenurable position in which she had served prior to the reduction in force that had resulted in her reassignment. Commissioner's Decision, slip op. at 10.

We agreed with both the ALJ's initial decision and the Commissioner's decision adopting that decision. Consequently, we affirmed the Commissioner's decision for the reasons expressed therein.

On April 19, 2001, the Board moved for reconsideration of our decision pursuant to N.J.A.C. 6A:4-2.7. In its brief in support of the motion, the Board renews its argument that its actions did not constitute a reduction of petitioner's salary, but rather a permissible "freezing" of her salary. The Board argues that reconsideration is required because its legal arguments "have not yet been addressed at any level in this proceeding." Brief in support of motion, at 2.

We disagree. The record reflects that the Board's legal argument was considered by the ALJ and the Commissioner, both of whom rejected it. On appeal to the State Board, the Board's argument was again considered with the same result. Given that its arguments have been considered at three levels of administrative review, and based on our review of the papers submitted by counsel in support of the motion, the State Board of Education denies the Board's motion for reconsideration. In so doing, we note that, pursuant to the Commissioner's decision and in the absence of a stay, the Board was required to compensate the petitioner by December 29, 2000. The State Board reaffirms that the petitioner was entitled to receive the additional compensation which she was due under the Commissioner's decision within 60 days of

the date of the Commissioner's decision, and directs that any amounts still owing to the petitioner be paid immediately.

June 6, 2001

Date of mailing _____