

EDU #7884-96
C # 27-98
SB # 29-98

MANUEL GONZALEZ, :
 :
 PETITIONER-APPELLANT, :
 :
 V. : STATE BOARD OF EDUCATION
 :
 BOARD OF EDUCATION OF THE : DECISION
 CITY OF ELIZABETH, UNION COUNTY, :
 :
 RESPONDENT-RESPONDENT. :
 _____ :

Decided by the Commissioner of Education, January 27, 1998

For the Petitioner-Appellant, Maria M. Lepore, Esq.

For the Respondent-Respondent, Murray, Murray & Corrigan (David F. Corrigan, Esq., of Counsel)

In February 1995, Manuel Gonzalez (hereinafter "petitioner") entered into a three-year employment contract to be the superintendent of schools for the Board of Education of the City of Elizabeth (hereinafter "Board") for a term commencing on July 1, 1996. On July 3, 1996, petitioner filed the instant petition with the Commissioner of Education, alleging that the newly-constituted Board had acted improperly by not allowing him to begin employment as superintendent.

On November 25, 1997, the Administrative Law Judge ("ALJ") recommended granting the Board's motion for summary decision and dismissing the petition. The ALJ stressed that "a board of education is a non-continuous body whose authority is limited

to its own official life and whose actions can bind its successors only in those ways and to the extent expressly provided by statute.” Initial Decision, slip op. at 4, quoting Cummings v. Bd. of Education of Pompton Lakes, 1966 S.L.D. 155, 166. Noting that the position of superintendent had not been vacant in February 1995 when the Board entered into a contract with petitioner, the ALJ concluded that the Board had no authority to reach beyond its official life and into the term of the successor Board by making a decision which was not due to be made until July 1, 1996. Consequently, the ALJ concluded that petitioner’s appointment as superintendent in 1995 was null and void. The ALJ also rejected petitioner’s claim that the Board had violated the provisions of the Open Public Meetings Act (“OPMA”).

On January 27, 1998, the Commissioner granted summary decision to the Board, but modified the ALJ’s recommendation. The Commissioner observed that N.J.S.A. 18A:17-15 et seq. does not require that there be a vacancy in the position of superintendent before a district board may enter into an agreement to employ a subsequent superintendent. The Commissioner asserted that:

[T]he statute appears to contemplate, indeed, compel that local boards will anticipate vacancies by notifying superintendents of their decisions not to reappoint them ‘at least one year prior to the expiration’ of their contracts, N.J.S.A. 18A:17-20.1. This notification requirement, however, does not provide a board with the unfettered power to bind future boards. Instead, the Commissioner holds that the appropriate balance between the well-established stricture against binding future boards and the clear demands of N.J.S.A. 18A:17-20.1 may be struck by a reading which permits, apart from a current board, only that board constituted immediately prior to twelve months before the expiration of its superintendent’s contract to appoint a successor.

Commissioner's Decision, slip op. at 19-20 (emphasis in original).

The Commissioner found that the Board had "acted beyond the scope of its lawful authority in binding both the April 1995 Board and the April 1996 Board by voting in February 1995 to appoint a superintendent effective July 1996." Id. at 20 (emphasis in original). The Commissioner agreed with the ALJ that petitioner had not demonstrated a violation of the OPMA. Accordingly, he dismissed the petition.

Petitioner filed the instant appeal to the State Board of Education.

After a careful review of the record, we affirm the decision of the Commissioner with the following modification.

After careful review, we can find no authority in law to support the general proposition put forward by the Commissioner that "apart from a current board, only that board constituted immediately prior to twelve months before the expiration of its superintendent's contract [may] appoint a successor." Id. Hence, we reject that proposition.

As a consequence, we find that the action taken by the Board in February 1995 to enter into an employment contract with petitioner commencing in July 1996 was void ab initio. Accordingly, the action was invalid at the time it was taken and could not, as petitioner contends in this appeal, subsequently be validated through ratification by the newly-constituted Board. As a result, we need not determine whether the Board had, in fact, ratified such action. Rather, under the facts in the record before us, and substantially for the reasons expressed by the ALJ in his initial decision, we affirm the

Commissioner's determination to grant summary decision to the Board and to dismiss the petition.¹

June 3, 1998

Date of mailing _____

¹ We note that since petitioner has not challenged on appeal the Commissioner's conclusion that the Board did not violate the OPMA, we have neither addressed nor decided that issue.