

221-17 (OAL Decision: Not yet available online)

NEIL THOMAS, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
STATE-OPERATED SCHOOL DISTRICT : DECISION
OF THE CITY OF NEWARK, :
ESSEX COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner – a tenured teacher employed by the Newark School District since the 2000-2001 school year – asserted that the District acted in violation of *N.J.S.A. 18A:29-14* when it improperly withheld his salary increment for the 2014-2015 school year. The District maintained that, pursuant to a collective bargaining agreement (CBA) between the Newark Teacher’s Union (NTU) and the District, petitioner was not entitled to a salary increment as a result of having received “partially effective” performance evaluations. The District had previously brought tenure charges of inefficiency against petitioner in September 2014; however, those charges were dismissed by the arbitrator assigned to the case in November 2014, and petitioner was reinstated to his teaching position with back pay, benefits and seniority. The parties filed cross-motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue in this matter, and the case is ripe for summary decision; the withholding of teacher salary increments is addressed in *N.J.S.A. 18A:29-14*, which clearly sets forth that a school district’s obligation to provide notice of a decision to withhold a teacher’s increment, and the ability of a teacher to appeal the withholding of an increment, are mandatory and imperative terms of public employment reflecting a public policy position established by the legislature; accordingly, these requirements are non-negotiable; there is no dispute herein that petitioner neither received an increment for the 2014-2015 school year, nor was he notified of the District’s decision to withhold the increment, or the reasons supporting that decision; as a result, petitioner had no opportunity to appeal the decision; while the District conceded that none of the imperative obligations imposed upon school districts by *N.J.S.A. 18A:29-14* were met in this case, the District maintained that this was all justifiable because it was agreed upon in the CBA; and while the portion of the CBA relevant to this dispute appears to be in violation of New Jersey law, it is nonetheless not within the jurisdiction of the instant court to settle that issue. The ALJ concluded that the District violated *N.J.S.A. 18A:29-14* and improperly withheld petitioner’s salary increment for the 2014-2015 school year. Accordingly, the ALJ granted petitioner’s motion for summary decision and denied respondent’s motion for summary decision; further, the ALJ ordered that the District calculate petitioner’s salary increment for the 2014-2015 school year, as well as any increment due to petitioner for subsequent years, and pay petitioner the amount of the increment less all appropriate statutory tax and other deductions.

Upon comprehensive review, the Commissioner concurred with the ALJ’s findings and conclusion, and adopted the Initial Decision as the final decision in this matter.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.
--

August 10, 2017

OAL DKT. NO. EDU 13591-15
AGENCY DKT. NO. 159-7/15

NEIL THOMAS, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 STATE-OPERATED SCHOOL DISTRICT : DECISION
 OF THE CITY OF NEWARK, :
 ESSEX COUNTY, :
 :
 RESPONDENT. :

The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. The parties did not file exceptions to the Initial Decision.

Upon a comprehensive review of the record in this matter, the Commissioner concurs with the Administrative Law Judge that the District violated *N.J.S.A.* 18A:29-14 and improperly withheld the Petitioner's salary increment for the 2014-2015 school year. Accordingly the Initial Decision is adopted as the final decision in this matter. The District is hereby ordered to provide the petitioner with his 2014-2015 salary increment.

IT IS SO ORDERED.¹

COMMISSIONER OF EDUCATION

Date of Decision: August 10, 2017

Date of Mailing: August 11, 2017

¹ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L.* 2008, *c.* 36. (*N.J.S.A.* 18A:6-9.1)