

HUGO VICARI, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE : DECISION
HUDSON COUNTY AREA
VOCATIONAL-TECHNICAL SCHOOLS, :
HUDSON COUNTY, :

RESPONDENT. :

SYNOPSIS

Petitioner, tenured principal, asserted that the Board's action suspending him without pay after issuance of an initial decision, but prior to the Commissioner's decision dismissing him from his tenured employment, violated *N.J.S.A.* 18A:6-14.

ALJ found that the Board improperly changed petitioner's suspension status to without pay. Even if the Board originally had suspended him without pay, pursuant to *N.J.S.A.* 18A:6-14, the Board was required after 120 days to resume payment of petitioner's full salary until the date of determination of the charges by the Commissioner. ALJ noted there is nothing in this statute that permitted the Board herein to discontinue payment of petitioner's full salary until the Commissioner rendered his determination. ALJ granted petitioner's motion for summary decision and ordered the Board to pay petitioner the salary to which he was entitled under *N.J.S.A.* 18A:6-14 for the period June 1 to July 22, 1996, the date on which the Commissioner rendered a final decision in his tenure matter. Moreover, the ALJ concluded that petitioner was not entitled to salary increments during his period of suspension. Board's counterclaim for return of increment monies was dismissed as the Board must seek the return of these monies in a court of competent jurisdiction.

Commissioner concurred with the ALJ that the Board was without the authority to discontinue petitioner's salary payment prior to July 22, 1996. Citing *Castaldo* and *DiPillo*, the Commissioner noted Board correctly asserted that petitioner had no legal entitlement to receive a salary amount that included an award of increments during his suspension; nor is a local board required to take formal action to withhold increments during such period. However, the Board herein increased petitioner's salary on three separate occasions, notwithstanding his suspension. Thus, the Commissioner concluded the Board was without legal authority to recover the salary increments as such action would constitute improper reduction of salary. Therefore, Commissioner modified initial decision. Commissioner directed Board to compensate petitioner for back pay and emoluments consistent with above parameters. Board's counterclaim was dismissed.

January 23, 1998

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The record of this matter and the initial decision of the Office of Administrative Law have been reviewed. Petitioner's exceptions are duly noted as submitted in accordance with *N.J.A.C. 1:1-18.4*, and were considered by the Commissioner in rendering the within decision.¹

Initially, the Commissioner concurs with the Administrative Law Judge (ALJ) that the Board was without the authority to discontinue petitioner's salary payment prior to July 22, 1996, the date on which the Commissioner rendered a final decision in the tenure matter entitled *In the Matter of the Tenure Hearing of Hugo Vicari, Hudson County Area Vocational-Technical School District, Hudson County*, 96 *N.J.A.R. 2d* (EDU) 888.

Further, the Commissioner notes that the Board is correct in asserting that petitioner had no legal entitlement to receive a salary amount that included an award of increments during his suspension following the Board's certification of tenure charges against Petitioner Vicari in October 1994. *Castaldo, supra*, at 3026. Nor is a local board required to

take formal action to withhold increments during such period. *DiPillo v. Township of Randolph*, 97 N.J.A.R. 2d (EDU) 237, 243, aff'd State Board August 6, 1997, slip op. at p. 3. However, in the instant matter, the Board increased petitioner's salary on *three separate occasions*, notwithstanding his suspension on tenure charges. Thus, the Commissioner concurs with petitioner's view that the Board is without the legal authority to recover the salary increments paid to petitioner, as such action would constitute an improper reduction of petitioner's salary.

In this regard, the Commissioner recognizes that

*** tenured teachers [have] "acquired vested rights to the salaries established for them by the Board's adoption of their salary placement" and that they [may] not "be deprived of a right they had acquired by action of the board." *Fedor v. Elmwood Park Board of Education*, 97 N.J.A.R. 2d (EDU) 96, 98, citing *Anson v. Bridgeton Bd. of Educ.*, 1972 S.L.D. 638, 640; *Docherty v. West Paterson Bd. of Educ.*, 1967 S.L.D. 297 ***.

Accordingly, the initial decision of the ALJ is modified as set forth herein. The Board is directed to compensate petitioner for back pay and emoluments, consistent with the above parameters, and the Board's counterclaim is hereby dismissed.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

January 23, 1998

¹ Petitioner's exceptions are an essentially verbatim reiteration of those arguments presented to the ALJ, which, the Commissioner finds, were fully and fairly considered by her, as well.