

# 277-05 (OAL decision not yet available on-line)

DIANE M. TUCKER, :  
 :  
 PETITIONER, :  
 : COMMISSIONER OF EDUCATION  
 V. :  
 : DECISION  
 BOARD OF EDUCATION OF THE :  
 TOWNSHIP OF MONTGOMERY, :  
 SOMERSET COUNTY, :  
 :  
 RESPONDENT. :  
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SYNOPSIS

Petitioner contended that the respondent Board improperly reduced her salary in violation of her tenure rights when they adjusted her regular semi-monthly paycheck to compensate only for the days she actually worked during the pay period in which she returned to work after an approved maternity disability leave; this pay period coincided in part with the district's spring break.

The ALJ found that the Board's recalculation of petitioner's semi-monthly salary on a *per diem* basis constituted an improper reduction in compensation in violation of *N.J.S.A.* 18A:28-5, and ordered the Board to compensate petitioner in the amount of \$1,310.40, and to pay such pension credits as it would otherwise have been required to make.

The Commissioner adopts the Initial Decision as the final decision in this matter, concurring with the petitioner and the ALJ that the applicable statute and the case law interpreting it require that teacher salaries, including those of tenured teachers and teachers who work less than a full year, be calculated on the basis of monthly or semi-monthly pay periods. The Commissioner orders the Board to remit to the petitioner the sum of \$1,310.40, which represents the difference between the salary payment she was owed and what she actually received, together with appropriate additional pension contributions.

<p>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.</p>
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August 3, 2005

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the Board of Education's (Board) exceptions filed pursuant to *N.J.A.C.* 1:1-18.4. Petitioner did not file reply exceptions.

In its exceptions, the Board urges that additional findings of fact be made, based upon the testimony of Associate School Business Administrator Rossi as contained in the transcript of hearing, with respect to the district's long-established manner of making payroll adjustments for days off and leaves without pay. (Board's Exceptions at 2-4) The ALJ's failure to make such findings, according to the Board, is indicative of his misunderstanding of the issues involved in this matter:

The ALJ never specifically discussed or challenged the [Board's] overall methodology. His conclusory analysis in the last full paragraph on page 11 of the Initial Decision is myopic in that it focuses solely on a single pay period (April 15 to 30), compares [petitioner] to employees who took *no* leave, and asks the Commissioner to put blinders on with respect to the rest of her work year and salary payments. This analysis ignores the inescapable reality that the semi-monthly check that other employees received for this period is *not really a payment for the four days of work in that pay period*. It is really an installment payment for the entire year's salary, and is based on an assumption that the employee will work the

entire year. As [Associate School Business Administrator] Rossi testified, teachers do not receive any paid vacation. They are simply paid a salary for the total number of workdays in the year. Thus, no one is really paid for spring break days per se; rather, they are paid for the entire school year, and some of the regular payments happen to fall in periods when there are few school days. (*Id.* At 9-10, emphasis in text)

The Board again urges that, because statute does not specify how the salary of a teacher who does not work for the entire school year is to be adjusted, the appropriate standard of review in judging the present claim is whether the Board's methodology of payroll adjustment 1) is impermissible because it violates a statute or regulation or 2) constitutes an abuse of the Board's discretionary authority because it is arbitrary, capricious or unreasonable. The Board reiterates that if neither of these conditions applies, petitioner cannot be found—as she was by the ALJ—to have suffered a reduction in salary in violation of her tenure rights. (*Id.* at 5-6, 13)

The Board counters that, even granting, *arguendo*, that the statute cited by the ALJ and petitioner, *N.J.S.A.* 18A:27-6, applies to tenured teachers—who, since the advent of collective bargaining, are generally not issued individual contracts of employment—the Board pays its annual salaries in semimonthly installments on the dates specified, and nothing in the statute speaks to what is to be done when an employee works less than the full year necessary for straightforward application of a scheme based on equal installments; thus, no violation has occurred. (*Id.* at 6-8) With respect to arbitrariness, the Board points to the explanation of its Associate School Business Administrator for the rationale of each and every aspect of its method of calculating salary adjustments for payroll purposes and urges that—in the absence of a statewide mandate and given that no system is likely to yield consistently perfect results because the teacher work year is invariably less than the 200-day figure assumed by related statute

and used by school districts statewide<sup>1</sup>—the Board’s methodology must be afforded a presumption of correctness, with modification, if any, left to the collective bargaining process. (*Id.* at 8-13)<sup>2</sup>

Reviewing the case law cited by the ALJ—as well as the other cases cited in the parties’ post-hearing submissions at the OAL—the Board reiterates its argument that those cases are factually or legally distinguishable, do not address important arguments raised by the Board, or are not supportive of petitioner’s position, and thus are neither determinative of the within matter nor clear in their establishment of a framework within which to analyze petitioner’s claim.<sup>3</sup> (*Id.* At 13-19)

Upon careful and independent review, the Commissioner adopts the Initial Decision as the final decision in this matter.

In so doing, the Commissioner concurs with petitioner and the ALJ that *N.J.S.A.* 18A:27-6(3) and the case law interpreting it—regardless of differences in argument and circumstances—fundamentally require that teacher salaries, including those of tenured teachers and teachers who work less than a full year, be calculated on the basis of monthly or semi-monthly pay periods. While this certainly does not preclude receipt of an adjusted paycheck for any pay period during which a teacher does not have sufficient leave days to cover an absence occurring on a day when school is in session—

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<sup>1</sup> The Board observes, for instance, that the ALJ’s solution, according petitioner a total salary of \$33,742.80 (\$32,432.40 already paid + \$1310.40 recommended relief) would result in petitioner being paid at a higher daily rate than employees who worked the entire year. (Board’s Exceptions at 10)

<sup>2</sup> Clarifying its position with respect to jurisdiction, the Board notes that its contention is not—as stated in the Initial Decision at 8—that the Commissioner has no jurisdiction over this matter, but rather that his jurisdiction is limited to deciding whether the Board’s payroll adjustment methodology is a violation of school law or an abuse of discretion, and does not extend to issues relating to terms and conditions of employment. (Board’s Exceptions at 13, footnote 5)

<sup>3</sup> The Board also notes its abandonment of the argument that petitioner is estopped from claiming salary for days not worked because she had previously waived this right. The Board now finds it sufficient to note the lack of prior agreement between the parties as to the methodology of salary calculation to be used upon petitioner’s return to work following leave. (Board’s Exceptions at 2)

indeed, *N.J.S.A.* 18A:30-6 expressly contemplates such adjustment—it *does* preclude a board from adjusting the contracted salary installment for a teacher not on leave status who has worked each day during the period that teaching staff members were required to report to work. To the extent that, in the current situation, this preclusion produces a result deemed inequitable by the Board, such result could have been avoided—as noted by the ALJ—by the Board’s exercising its undisputed authority to change the requested end date of petitioner’s leave so as to prohibit her return to full status on the first day of a pay period encompassing a substantial number of days when school was not in session.<sup>4</sup>

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter for the reasons expressed therein. The Montgomery Township Board of Education is directed to compensate petitioner for the \$1,310.40 difference between the salary payment she was owed for the second pay period of April 2003 and what she actually received, together with such additional pension contributions as are necessitated by this action.

IT IS SO ORDERED.<sup>5</sup>

COMMISSIONER OF EDUCATION

Date of Decision: August 3, 2005

Date of Mailing: August 4, 2005

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<sup>4</sup> This holding makes it unnecessary to find additional facts with respect to the Board’s method of payroll calculation and the qualifications of its Associate School Business Administrator, as requested by the Board. The Commissioner notes, however, that nothing in the record suggests that petitioner disputes the Board witness’s recitation of the manner in which the Board calculates its payroll.

<sup>5</sup> This decision may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 *et seq.* and *N.J.A.C.* 6A:4-1.1 *et seq.*