

THOMAS STRASSLE, :

PETITIONER, : COMMISSIONER OF EDUCATION

V. : DECISION

BOARD OF EDUCATION OF THE :
TOWNSHIP OF OLD BRIDGE, :
MIDDLESEX COUNTY :

RESPONDENT. :

SYNOPSIS

Petitioner, a tenured teacher, challenged the actions of the respondent Board in failing to pay his salary after he was suspended without pay for 120 calendar days after the certification of tenure charges. Petitioner contended that the Board's action to withhold his pay subsequent to reinstatement to his tenured position, by way of an October 5, 2016 arbitration decision under the TEACH NJ Act, is unlawful pursuant to *N.J.S.A. 18A:6-8.3*. The arbitrator's decision found that petitioner had engaged in unbecoming conduct, and determined that the appropriate penalty for his actions would be the forfeiture of the 120 days of pay already withheld following the certification of tenure charges. The respondent Board asserted that its actions are a proper exercise of its authority under *N.J.S.A. 18A:6-14*, as petitioner collected unemployment compensation during his 120-day suspension without pay, and that his actions in applying for and receiving such compensation are in contravention of the arbitrator's decision that petitioner forfeit 120 days of pay already withheld following the certification of tenure charges. The parties filed opposing motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue here, and the matter is ripe for summary decision; pursuant to *N.J.S.A. 18A:6-8.3*, petitioner was suspended from his teaching position with pay, pending the Board's investigation of petitioner's alleged unbecoming conduct; on April 28, 2016, the Board certified tenure charges against petitioner, and his suspension converted to a suspension without pay under *N.J.S.A. 18A:6-14*; petitioner's suspension converted back to a paid suspension on September 1, 2016, as more than 120 days had elapsed since the certification of tenure charges; an arbitration award was rendered on October 5, 2016, setting forth petitioner's penalty as the forfeiture of the 120 days of pay already withheld following the certification of tenure charges; at the time of the arbitration decision, petitioner was on paid suspension since September 1, 2016; the Board ceased paying petitioner on November 30, 2016, having determined that petitioner was not entitled to his salary because he had collected unemployment benefits during the months of July and August 2016, and was not so entitled as a ten-month employee; however, *N.J.S.A. 18A:6-14* specifically legislates the time period when the Board may exclude payments to a tenured employee and does not regulate the compensation that the employee may receive while he or she is not being paid; and the Board's assertion that there is an exception to the requirements of *N.J.S.A. 18A:6-14* when an employee receives unemployment benefits is without merit. Accordingly, the ALJ granted the petitioner's motion for summary decision, and ordered that the Board restore petitioner's salary commencing with the pay period ending November 30, 2016.

Upon review, the Commissioner concurred with the ALJ's findings and conclusions, and adopted the Initial Decision of the OAL as the final decision in this matter.

<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>

May 18, 2017

OAL DKT. NO. EDU 00311-17
AGENCY DKT. NO. 312-12/16

THOMAS STRASSLE, :
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 PETITIONER, : COMMISSIONER OF EDUCATION
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 V. : DECISION
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 :
 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 such review, the Commissioner adopts the Administrative Law Judge's recommended decision for the reasons expressed therein. Accordingly, petitioner's motion for summary decision is granted. Respondent is directed to restore petitioner's salary effective November 30, 2016. A copy of this decision will be forwarded to the Department of Labor and Workforce Development, Unemployment and Disability Insurance Services.

IT IS SO ORDERED.*

ACTING COMMISSIONER OF EDUCATION

Date of Decision: May 18, 2017

Date of Mailing: May 18, 2017

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



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT. NO. EDU 00311-17

AGENCY DKT. NO. 312-12/16

THOMAS STRASSLE,

Petitioner,

v.

BOARD OF EDUCATION OF THE

TOWNSHIP OF OLD BRIDGE,

MIDDLESEX COUNTY,

Respondent.

Edward A. Cridge, Esq., for petitioner (Mellk O'Neill, attorneys)

Christopher B. Parton, Esq., for respondent (Kenny, Gross, Kovats & Parton,
attorneys)

Record Closed: March 3, 2017

Decided: April 13, 2017

BEFORE **JULIO C. MOREJON, ALJ:**

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, a tenured teacher challenges the actions of the Old Bridge Board of Education (“the Board”) in failing to pay petitioner his salary after he was suspended without pay for one-hundred twenty calendar days (120-day) after the certification of

tenure charges. Petitioner contends that the Board's decision to withhold his pay after an arbitrator's decision under TEACH NJ Act and the Tenure Employees Hearing Law, N.J.S.A. 18A:6-1, to reinstate petitioner in his tenure position and without back pay, violates the provisions of N.J.S.A. 18A:6-8.3 and 18A:6-14.

The Board contends that its actions are a legally proper exercise of its authority under N.J.S.A. 18A:16-14, as petitioner collected unemployment compensation during his 120-day suspension without pay. The Board further contends that it is not obligated to pay petitioner his salary, which they have withheld since November 30, 2016, as petitioner's actions are in contravention of the arbitrator's decision that petitioner forfeit 120 days of pay already withheld following the certification of tenure charges.

Petitioner filed a Verified Petition of Appeal with the Commissioner of Education on December 8, 2016, challenging the actions of the Board and seeking immediate restoration of his salary. Thereafter, on December 29, 2016, petitioner filed a Notice of Motion for Summary Decision with the Commissioner of Education under N.J.A.C. 6A:3-1.12. On January 3, 2017, the Board filed an Answer to Verified Petition of Appeal with the Commissioner of Education.

On January 5, 2017, the Commissioner of Education transmitted this matter to the Office of Administrative Law for a hearing on the merits of the underlying claims raised in the petition. The same was filed with the OAL Clerk's Office on January 9, 2017.

On January 20, 2017, the Board filed with the OAL Clerk's a certification in opposition to petitioner's Motion for Summary Decision, a response to statement of material facts and a brief in opposition to the petitioner's motion for summary decision.¹

¹ Petitioner had initially filed a Motion for Summary Decision with the Commissioner of Education under N.J.A.C. 6A:3-1.12. However, once the matter is transferred to the OAL, applications for summary decision shall be filed with the ALJ in accordance with applicable rules of the OAL. Summary decision motions in the OAL are governed by N.J.A.C. 1:1-12.5.

Petitioner wrote to the undersigned on January 25, 2017, requesting oral argument in connection with the motion for summary decision. The Board initially opposed petitioner's Motion for Summary Decision, urging that material issues of fact necessitated a plenary hearing. However, after a telephonic prehearing conference on February 24, 2017, the parties agreed that this matter would proceed without the need of a plenary hearing and instead, each party would submit supplemental pleadings in connection with the motion for summary decision and a ruling would be made thereafter. On March 3, 2017, petitioner and the board filed their respective pleadings requesting a ruling by summary decision as to the legal issues raised in the petition and answer.

DISCUSSION

The petitioner and the Board seek relief pursuant to N.J.A.C. 1:1-12.5, which provides that summary decision should be rendered "if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." Our regulation mirrors R. 4:46-2(c) which provides that "the judgment or order sought shall be rendered if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law."

A determination whether a genuine issue of material fact exists that precludes summary judgment requires the judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party. Our courts have held that the "judge's function is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995), citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). When the evidence "is so one-sided that one party must prevail as a matter of law," the trial court should not hesitate to grant summary judgment. Anderson, supra, 477 U.S. at 252. Conversely, it is critical that a favorable ruling on a summary judgment motion not "shut

a deserving litigant from his [or her] trial." Judson v. Peoples Bank and Trust Co. of Westfield, 17 N.J. 67, 77 (1954).

Both parties concede that the factual background which led to the filing of the petition is not in dispute. Petitioner is a tenured teacher employed by the Board as a ten-month employee, receiving twenty bi-weekly paychecks. On or about September 29, 2015, petitioner was suspended from his teaching position, with pay pursuant to N.J.S.A. 18A:6-8.3, pending the Board's investigation of petitioner's conduct. On April 28, 2016, the Board certified tenure charges against petitioner to the Commissioner of Education and petitioner's suspension converted to a suspension without pay under N.J.S.A. 18A:6-14. Petitioner's unpaid suspension took effect on May 1, 2016 and continued through June 2016 and the summer months that followed. On September 1, 2016, petitioner's suspension converted to a paid suspension, as more than one-hundred twenty days had passed since the tenure charges were certified on April 28, 2016 (N.J.S.A. 18A:6A-14).

On October 5, 2016, pursuant to the TEACH NJ Act and the Tenure Employees Hearing Law, N.J.S.A. 18A:6-10 et. seq., an Arbitration award was rendered adjudicating the tenure charges filed against petitioner by the Board. In a written opinion, the arbitrator ruled that petitioner "shall be reinstated to his position as tenured teacher in the District. The penalty for the proven allegations as set forth ...above shall be reduced from termination to a forfeiture of the 120 days of pay already withheld following the certification of the tenure charges. Therefore, there shall be no back pay awarded in connection with this 120 days loss of pay."

This is where the parties' understanding of "suspension without pay" differs and why this matter is in dispute. At the time the Arbitration award was entered on October 5, 2016, petitioner was on paid suspension since September 1, 2016. The Board ceased paying petitioner on November 30, 2016, as it determined that petitioner was not entitled to his salary because he had collected unemployment benefits during the

summer months of July and August 2016.² The Board opined that petitioner was not entitled to unemployment benefits as he is a ten-month employee and is not paid for the summer months, and in addition, he was on suspended pay for 120 days, for the months of May through August 2016. The Board determined further, that petitioner was not entitled to his salary on November 30, 2016, as it interpreted the Arbitration award as ruling that a “forfeiture of pay” against petitioner included all compensation received by petitioner during his 120 suspension-including the unemployment compensation.

The Board has decided to withhold petitioner’s pay effective November 30, 2016, pending a determination by the OAL and the Commissioner of Education, as to the correct amount to release to petitioner, net petitioner’s salary that the Board is holding in escrow. The Board acknowledges that under N.J.S.A. 18A:6-14, the 120-day suspension period “generally” includes, summer months “even” for 10-month employees like petitioner. The Board is of the opinion, however, that petitioner did not comply with the 120-day suspension period by applying for and receiving unemployment compensation during the said period. The Board does not present any exception to the 120-suspension rule in N.J.S.A. 18A:6-14 as proof, but does cite several cases for the proposition that any delay that negatively impact the 120-day suspension is counted against the employee, and not counted towards the 120-day period. The same are not dispositive of the issue before the OAL as the petitioner did not cause any delay in the accumulation of the 120-day suspension.

The Board also relies upon the Arbitration Award for authority to withhold petitioner’s salary. A review of the Award indicates that the arbitrator’s ruling was consistent with N.J.S.A. 18A:6-14; a “forfeiture of the 120 days of pay already withheld following certification of the tenure charges. Therefore, there shall no back pay awarded in connection with this 120 day loss of pay.” The Arbitration proceeding is

² Petitioner had applied for unemployment compensation on July 10, 2016, and received unemployment benefits through the end of August 2016. Thereafter, petitioner refiled for unemployment benefits in December 2016 (after the Board withheld his November 30 paycheck), and was granted the same. It appears from the pleadings submitted that the Board did not contest the July 10 unemployment filing and did contest the December filing, which initially denied petitioner unemployment benefits. This decision was reversed by the Appeal Tribunal on February 7, 2017, and petitioner was granted unemployment benefits from November 27, 2016 through April 2017. The Appeal Tribunal informed the Board that they can notify the Department of Labor as to any back pay that petitioner received after November 15, 2016.

governed by N.J.S.A. 18A:6-16, and the arbitrator has ruled consistent with the applicable law for said proceedings as allowed under N.J.S.A. 18A:6-14. There is no exception to the 120-day suspension as the Board has carved out for petitioner. The Board argues that the arbitrator had some greater power than allowed by N.J.S.A. 18A:6-14, as the award was not the typical “suspend and restore” decision but an actual “penalty” imposed by the arbitrator. The Board fails, however, to present regulatory proof or cite a case that substantiates this argument.

N.J.S.A. 18A:6-14, provides specifically that the Board is to pay the employee commencing on “the one hundred twenty-first day [following the 120 calendar days of suspension] until such determination is made [excluding the 120 days].” This statutory language explicitly legislates the time period when the Board may exclude payments to a tenured employee and does not regulate the compensation that the employee may receive while he or she is not being paid. For the Board to now imbue an exception to N.J.S.A. 18A:6-14 when an employee receives unemployment benefits, or any compensation, is contrary to the statutory language.

The Board also makes an argument that petitioner should not be allowed to collect unemployment as he has abused the system regulating unemployment benefits. The petitioner cites N.J.S.A. 43:21-5(b), regarding the return of unemployment benefits collected when an individual receives back pay during the unemployment period. Moreover, the Appeal Tribunal ruled that the Board was not prevented from notifying the Department of Labor of any back pay issued to petitioner while he received unemployment compensation after November 15, 2016, which is the date of petitioner’s last paycheck.

Accordingly, the Board’s motion for summary decision is **DENIED**. Petitioner’s motion for summary decision seeking relief in the form of an order directing his restoration to full paid status to November 30, 2016 is **GRANTED**.

ORDER

It is hereby **ORDERED** that the Board's motion for summary decision be **DENIED**. It is hereby **ORDERED** that petitioner's motion for summary decision is **GRANTED**. It is hereby **ORDERED** that the Board is to restore petitioner's salary commencing with the pay period ending on November 30, 2016 through the date of this decision.

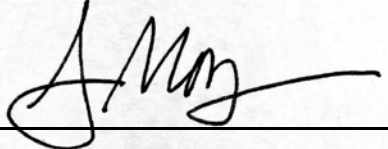
I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

April 13, 2017

DATE



JULIO C. MOREJON, ALJ

Date Received at Agency:

April 13, 2017

Date Mailed to Parties:
lr
