

New Jersey Commissioner of Education
Final Decision

Glenn Ciripompa,

Petitioner,

v.

Board of Education of the Borough
of Bound Brook, Somerset County,

Respondent.

Synopsis

Petitioner's tenure as a physical education teacher in Bound Brook schools was revoked following two arbitration hearings and multiple court actions stemming from two charges of unbecoming conduct – namely, sending nude photographs from a school district computer and iPad, and inappropriate and harassing interactions with female staff members – filed in July 2014 by the respondent Board of Education of the Borough of Bound Brook (Board). In the instant petition, Mr. Ciripompa sought back pay for the period between the end of his 120-day suspension without pay and the resolution of the tenure charges. The Board filed a motion for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue in this case, and the matter is ripe for summary decision; following suspension from his teaching position, petitioner received income from unemployment (\$16,514), earnings from driving a school bus for Snyder's Bus Service during the 2014-15 and 2015-16 school years (\$46,335.44), earnings from driving a school bus for Snyder's during the summers of 2015 and 2016 (\$4,509.65) and earnings from umpiring games (\$3,105); petitioner's income for the period following his 120-day suspension without pay totaled \$70,464.09, which exceeded his backpay expectation of \$63,886 from employment by the Board; and petitioner is not entitled to realize the unwarranted financial gain which would result from his demand for back pay. The ALJ concluded that petitioner is not entitled to any back pay; accordingly, the Board's motion for summary decision was granted and petitioner's claim was dismissed.

Upon comprehensive review, the Commissioner concurred with the ALJ's findings and conclusions as set forth in the Initial Decision. The Commissioner noted that the only issue for consideration at this stage of the proceedings was petitioner's legal entitlement to back pay, and the Board's legal ability to deduct sums received by petitioner during his period of suspension as mitigation. Accordingly, the recommended decision of the OAL was adopted as the final decision in this matter. Summary decision was granted in favor of the Board, and petitioner's claim for back pay was dismissed with prejudice.

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.

July 8, 2019

OAL Dkt. Nos. EDU 9073-17 and EDU 10698-17 (Consolidated)
(EDU 9073-17 On Remand)
Agency Dkt. Nos. 5-1/15, 89-5/17

New Jersey Commissioner of Education

Final Decision

Glenn Ciripompa,

Petitioner,

v.

Board of Education of the Borough
of Bound Brook, Somerset County,

Respondent.

The record of this matter, the Initial Decision of the Office of Administrative Law (OAL), the exceptions filed by petitioner Glenn Ciripompa, and the reply thereto by respondent Board of Education of the Borough of Bound Brook (Board), have been reviewed and considered. The lengthy procedural history of this matter is recounted both in the Initial Decision and a previous decision by the Commissioner in this matter. Commissioner Decision No. 206-17, decided July 27, 2017. Currently at issue before the Commissioner is the petitioner's entitlement to back pay for the period between the end of his 120-day unpaid suspension and the resolution of the tenure charges filed against him by the Board. The ALJ found that the petitioner's earnings of \$70,464.09, which included earnings from unemployment, substitute employment as a bus driver during the school year and the summer, and as an umpire, exceeded his back pay expectation of \$63,886. As such, the ALJ concluded that the petitioner was not entitled to receive any back pay from the Board and granted the Board's motion for summary decision.

Petitioner argues in his exceptions that the ALJ improperly reduced his back pay by the amount of unemployment benefits he received during his 120-day unpaid suspension. Petitioner

contends that *N.J.S.A.* 18A:6-14 does not allow the board to recoup money that the employee earned during the time when the board had no obligation to pay salary. Petitioner claims that the law as applied through the Initial Decision would result in a “double punishment” whereby an employee would be deprived both of his normal earnings and of the opportunity to earn a salary from other employment during the 120-day unpaid suspension.

Petitioner next disputes the ALJ’s finding that earnings from his employment during the summer months with Snyder’s Bus Service (Snyder’s) mitigate his back pay entitlement, arguing that because he was not entitled to receive any salary from the board during the summer, other employment during that time should not be deducted. Finally, petitioner contends that the ALJ incorrectly found that his employment with Snyder’s conflicted with his school employment. Petitioner notes that he may have worked approximately 80 potentially conflicting hours over an 18-month period but alleges that applying the entirety of his earnings as mitigation is an inequitable reading of *N.J.S.A.* 18A:6-14. Petitioner argues that he did not fail to discharge any duty imposed by the board on him during his paid suspension and, accordingly, nothing he did during that time could be incompatible with his duties.

In its reply, the Board argues that *N.J.S.A.* 18A:6-14 clearly provides that the Board is entitled to deduct “any sums received” during the “period of suspension,” and that the period of suspension runs from the filing of the tenure charges to their resolution, including the 120-day unpaid suspension period. The Board notes that if petitioner had been successful in his defense of the tenure charges and received no penalty, he would have received full back pay for the entire period of suspension, including for the initial 120 days, minus any earnings from the entire period of the suspension.

Next, the Board replies that all earnings from Snyder’s must be deducted, because petitioner did not work for Snyder’s prior to his suspension, and he could not have done so during the school year while he was teaching. The Board contends that petitioner’s exceptions distort the record

and that there were at least 419 days when petitioner's work for Snyder's conflicted with his work hours as a teacher. Finally, the Board argues that because petitioner only received summer employment at Snyder's based on his employment there during the school year, the summer earnings should also be deducted.

Upon a comprehensive review of the record, the Commissioner agrees with the ALJ's findings and determination of this matter. While the facts in this case are complex, the issue at this stage of the proceedings pertains only to the legal entitlement of the petitioner to back pay, and the legal ability of the Board to deduct sums received by the petitioner during the period of suspension as mitigation. The facts themselves are not in dispute; therefore, the ALJ's disposition of this case via summary decision was proper.

The Commissioner concurs with the ALJ's conclusion that the petitioner's unemployment benefits, including those received during his 120-day unpaid suspension, must be deducted from his back pay, pursuant to *N.J.S.A.* 18A:6-14. The "period of suspension" runs from the beginning of his unpaid suspension on September 1, 2014 until the second arbitration decision sustaining the tenure charges on June 16, 2017.¹ Nothing in *N.J.S.A.* 18A:6-14 suggests that the "period of suspension" does not include the 120-day unpaid suspension. To the contrary, all references to the suspension encompass the entire time period, beginning "[u]pon certification of any charge to the commissioner." Because the statute plainly requires that "any sums received . . . during such period of suspension" must be deducted from the back pay owed, the unemployment benefits received by the petitioner during the 120-day unpaid suspension must be deducted.

The Commissioner agrees with the ALJ that the petitioner's employment with Snyder's during the school year constitutes "substituted employment" within the meaning of

¹ This is consistent with the Commissioner's prior decision in this matter, Commissioner Decision No. 206-17, decided July 27, 2017, which found that the issue of back pay should not be dealt with in a piecemeal fashion and that the matter must instead be viewed as a whole.

N.J.S.A. 18A:6-14, as explicated in *School District of the Township of Willingboro and Gilbert*, 3 *N.J.A.R.* 206 (1981), *affirmed* at 3 *N.J.A.R.* 209 (1981). The petitioner did not obtain his employment with Snyder's until after he was suspended by the Board, and the ALJ found that the undisputed evidence from the deposition testimony of the president of Snyder's was that his employment there during the school year was inconsistent with his obligation to the Board. The routes driven by the petitioner occurred during times that he would have been required to be present at school, and the records of his work hours demonstrate that he regularly worked hours that were incompatible with his teaching hours. The Commissioner is therefore satisfied that all earnings from Snyder's during the school year may be counted as mitigation.

Regarding summer earnings, the Commission concurs with the ALJ's finding that the petitioner would not have obtained summer employment with Snyder's if he had not also worked there during the school year. The president of Snyder's so stated explicitly in her deposition, and the petitioner has not presented any evidence to refute the information she presented. Additionally, the Commissioner reiterates that the petitioner did not obtain employment with Snyder's until after he was suspended by the Board, differentiating his circumstances from those of teachers who held summer employment prior to their suspensions and whose summer earnings did not count as mitigation.

During the petitioner's period of suspension, the maximum back pay due was \$63,886. For the reasons stated above, his unemployment benefits of \$16,514, his school-year earnings from Snyder's of \$46,335.44, and his summer earnings from Snyder's of \$4,509.65 are all countable as mitigation. Additionally, the ALJ found that the petitioner earned \$3,105 as an umpire during the period of suspension. Neither party disputes this amount in the exceptions or reply, and the Commissioner concurs with the ALJ's conclusion. Accordingly, the petitioner earned \$70,464.09 during his period of suspension, exceeding the amount of his back pay expectation. The petitioner is entitled to be made whole by the Board, but he is not entitled to be made more than whole.

Accordingly, the Initial Decision is hereby adopted as the final decision in this matter; summary judgment is granted in favor of respondent, and the claim for back pay is dismissed with prejudice.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: July 8, 2019
Date of Mailing: July 8, 2019

² 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

OAL DKT. NO. EDU 9073-17
AGENCY DKT. NO. 89-5/17
OAL DKT. NO. EDU 10698-17
(ON REMAND OAL DKT. NO. EDU
9073)
AGENCY DKT. NO. 5-1/15
(CONSOLIDATED)

GLENN CIRIPOMPA,

Petitioner,

v.

**BOARD OF EDUCATION OF THE
BOROUGH OF BOUND BROOK,
SOMERSET COUNTY,**

Respondent.

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

Robert J. Merryman, Esq., for respondent (Apruzzese, McDermott, Mastro &
Murphy, attorneys)

Record Closed: April 22, 2019

Decided: May 23, 2019

BEFORE **JEFF S. MASIN**, ALJ (Ret., on recall):

The Bound Brook Board of Education seeks summary decision in the latest installment of this long-running case, which began when the District filed tenure charges against Glenn Ciripompa. After an arbitrator found Ciripompa guilty of a portion of the allegations and dismissed the remainder, the Superior Court overturned the arbitration decision, the Appellate Division reinstated the decision, and ultimately, the Supreme Court vacated the arbitration decision, remanding the matter for a new arbitration before a different arbitrator. Bound Brook Bd. of Educ. v. Ciripompa, 228 N.J. 4 (2017). That second arbitration upheld the Board's charges and revoked Ciripompa's tenure. However, the parties have been unable to reach any agreement on what, if any, back pay may be due to Ciripompa, and that dispute has now once again resulted in the Board moving for summary decision.

The chronology of these events is significant. The Board certified its charges to the Commissioner of Education on July 17, 2014. Ciripompa was then suspended without pay for 120 days, as authorized by N.J.S.A. 18A:6-14. The first arbitration decision was issued on October 20, 2014. It suspended Ciripompa for 120 days without pay for the charges he was found guilty of. Other charges were dismissed. That 120-day suspension without pay, which was separate from the statutory suspension, ended on March 9, 2015. However, as the Board was then appealing the Superior Court Order that had overturned the arbitrator's decision, the Board did not return Ciripompa to pay status. He remained unpaid until November 1, 2015, the day after the Appellate Division upheld the arbitrator's decision. He was reinstated to full pay status on November 1, 2015. The Supreme Court vacated the first arbitrator's decision on February 21, 2017. Nevertheless, Ciripompa remained in full pay status until his termination on June 16, 2017, following the issuance of the second arbitrator's decision sustaining the tenure charges.

On April 28, 2017, this judge issued a decision on a previous motion, establishing the Board's back pay responsibility in light of the need for Ciripompa to mitigate damages for the period from March 9, 2015 until October 31, 2015, that is, the period following the conclusion of the first arbitrator's suspension until Ciripompa's return to

paid status, while noting that any remaining issues of additional back pay and mitigation should be the subject of a new petition to the Commissioner.³ The second arbitrator's decision was issued on June 16, 2017. On July 27, 2017, the Commissioner rejected the April 28, 2017, decision, determining that the back-pay issue should be resolved for the entire period from September 1, 2014 through June 16, 2017 in one proceeding.

In June 2018, the Board moved for summary decision, arguing that the undisputed facts confirmed that Ciripompa's salary from substitute employment with Snyder's Bus Service, combined with unemployment benefits and additional earnings working as an umpire, exceeded those he would have received from Bound Brook and thus no back pay was due. However, on July 30, 2018, I issued an Order Denying Summary Decision, finding that there were disputed facts as to whether the employment at Snyder's during the school year would have conflicted with Ciripompa's responsibilities to Bound Brook. Subsequently, a subpoena was issued to Snyder's for Ciripompa's work records and a deposition was taken of Tina Snyder, the president of Snyder's Bus Service. The Board again moves for summary decision, and Ciripompa responds that the facts show that he is indeed entitled to back pay.

The Board's claim is based upon N.J.S.A. 18A:6-14, which in pertinent part, provides that while a Board is required to pay the suspended tenured employee his full salary after the completion of the initial 120-day period following the certification of tenure charges, any back pay award must be mitigated and the "board of education shall deduct from such full salary any sums received by such employee or officers by way of pay or salary from any substituted employment assumed during such period of suspension."

The Board offers that given the undisputed rates of pay that Mr. Ciripompa would have or did receive in his role as a teacher in school years 2014-15, and 2015-16, his back pay for those periods in those two school years in which he did not receive pay

³ Based upon the then available evidence, I held that Ciripompa was entitled to \$22,000.53 for the period between March 10, 2015 and October 31, 2015.

totalled \$50,104 for 2014-15 and \$13,782 for 2015-16, for a total back pay due of \$63,886. During his unpaid suspension he received unemployment benefits totaling \$16,514. In addition, he earned \$68,960.75 from Snyder's Bus Company, of which \$4,509.65 was paid for summer work performed from July 1, 2015, through August 31, 2015, and July 13 through August 31, 2016. Additionally, the Board offers that he earned another \$18,115.31 from June 17, 2017, the day after his termination, until December 31, 2017. Finally, after subtracting certain sums previously disallowed as mitigation in a prior ruling, the Board contends that he earned \$3,105 as an umpire during 2015 and 2016. Mr. Ciripompa does not appear to dispute these figures. He asserts that he should receive \$34,494.41 in back pay. The Board claims that he is not entitled to receive any back pay, as his earnings, combined with the unemployment benefits, totaled 65,954.44, exceeding the total of back pay that would be due. Indeed, this total does not include the summer earnings from Snyder's. However, the Board urges that given new evidence, the summer earnings should be included in the mitigation calculation.

In reply to the Board's motion, Mr. Ciripompa contends that the back-pay calculations must be made for four distinct time frames. These are the (1) the statutory unpaid suspension (effectively September 1, 2014 through November 17, 2014); (2) the arbitrator-imposed 120-day unpaid suspension from November 17, 2014 through March 9, 2015; (3) the unpaid period, following the March 10 conclusion of the arbitrator's suspension until pay was restored on November 1, 2015, and (4) from November 1, 2015 until termination on June 16, 2017, during which time Ciripompa received his full pay. In regard to the third of these periods, Ciripompa argues that in rejecting the April 28, 2017, decision, the Commissioner did not dispute the initial decision's calculation of the back pay and mitigation for the period from March 10, 2015 through October 31, 2015, that is, the period when the 120-day suspension ordered by Arbitrator Pecklers ended through the date Ciripompa was reinstated to pay status after the Appellate Division reinstated that arbitrator's decision. As such, Ciripompa contends that the back pay due for the third unpaid suspension period of March 10, 2015 through October 31, 2015, has already been established at \$22,000.53. However, the Board argues that the

mitigation offset to any back-pay award must be measured by Ciripompa's total earnings from September 1, 2014 through June 17, 2017, that is, the entire period from the start of the 2014-15 school year through the date when Ciripompa was terminated after Arbitrator De Treux's decision sustaining the termination of tenure.

Considering these arguments, I **CONCLUDE** that given the Commissioner's rejection of the initial decision and determination that the back pay and mitigation issues should be resolved for the entire period of suspension, it is appropriate to reconsider the matter without considering the prior initial decision to be in any manner the law of the case. And this is particularly true as there is now additional evidence to consider, especially the deposition testimony of Ms. Snyder. The record existing at the time of the prior initial decision lacked evidence that would have clarified two key questions. One is the question whether Ciripompa's work at Snyder's during the school year was inconsistent with his obligations to the Board. The second is whether his summer earnings from Snyder's were dependent upon his employment already existing prior to the summer, or whether, alternatively, those summer earnings were independent of any need for Ciripompa to have been already employed by Snyder's during the school year.⁴

⁴ In the prior ruling, I noted that the Board asserted it should be entitled to mitigation for earnings received by petitioner while working for Snyder Bus Service during the summer months of 2015. The basis for this claim is that while the Board recognizes that it is generally not permitted to seek mitigation for earnings during a period of time when an employee would not have been working for the Board, in this case it posits that were it not for petitioner's employment with the bus company during the school year while he was serving his suspension, he would never have been employed by the company during the summer . . . The Board notes that Mr. Ciripompa did not work for the bus company prior to his suspension and could not have done so had he been actively working for the Board. The Board cites cases in which an employee had already been employed by an outside employer prior to a suspension and continued that employment during the period of suspension. In such cases mitigation has not been permitted from the earnings obtained from that employer. However, here, employment with the bus company did not predate the suspension. Thus, the Board argues that mitigation should be permitted from these earnings.

Mr. Ciripompa does not appear to respond to the Board's contentions regarding the summer employment with Snyder Bus Service. However, he more generally notes that earnings during the summer when an employee is not expected to be working for the school employer are generally not subjected to mitigation. Presumably he contends that as for the monies earned from the bus service during the summer which the Board seeks to be included in mitigation, no mitigation should be permitted.

Based upon the record then existing, I concluded that "any determination of whether Mr. Ciripompa might have obtained employment with the Bus Service for the summer of 2015 had he been actively employed by the Board for the entire 2014-2015 school year must be based upon speculation," as "neither party had

In her deposition, Ms. Snyder explained that Mr. Ciripompa started working for Snyder's part-time in late 2014, as he attempted to qualify for a commercial driver's license, or CDL. He began driving for the company shortly thereafter. In late 2014, Ciripompa was serving the 120-day suspension ordered by the first arbitrator, which followed upon the issuance of that arbitrator's decision on October 20, 2014. That suspension lasted until March 9, 2015. Thus, Mr. Ciripompa's employment with the bus company did not begin until after he had been initially suspended in July 2014. Thus, all of his earnings with Snyder post-date that initial suspension date. Some of the monies he earned were for employment that occurred during the school year, some for work performed in the summer when school was not in session and Ciripompa would not have been expected to be performing duties for the Board even if not suspended.

In seeking to include all of Ciripompa's earnings from Snyder's as mitigating his back-pay award, the Board relies on School District of the Township of Willingboro and Gilbert, 3 N.J.A.R. 206 (1981). In Gilbert, Administrative Law Judge Beatrice Tylutki considered the meaning of "substituted employment," the type of employment specified in the statute as the type of earnings to be included in calculating mitigation ("any sums received by such employee or officers by way of pay or salary from any substituted employment assumed during such period of suspension.") After his suspension, Gilbert obtained employment at a job that involved working hours which Judge Tylutki concluded were "not consistent with his employment as a teacher." Thus, while earnings from an employment held prior to the suspension and not inconsistent with his teaching responsibilities would not be included as mitigation, as it was not "substituted" for the employment with the District, the "set off of wages earned by the employee" applied to "a position which the employee could not have held while employed by the [school district]." The judge held that as the teacher had never been employed by the

presented any affidavits or certifications from anyone connected to Snyder, nor otherwise addressing the circumstances under which the employment was obtained, or might, or might not, have been obtained, in a different factual scenario." Because of this, I concluded that, since it was not unreasonable to assume that even if Ciripompa was not employed by Snyder before his suspension that he could have secured employment for the summer, the summer earnings from Snyder Bus Service were not subject to mitigation.

outside employer prior to his suspension and "it appears to be a substitute employment sought out by Mr. Gilbert because of his suspension," the earnings were required to be included in calculating mitigation against the back pay. 3 N.J.A.R. 209. Allowing Gilbert to exclude the earnings from such employment from the calculation of mitigation "would be to permit Mr. Gilbert, during a period of suspension and while receiving his full teacher's salary, to realize a financial gain." Id. On review, the Commissioner of Education adopted Judge Tylutki's decision. 3 N.J.A.R. 209.

As Ciripompa's employment with Snyder, like that of Gilbert's post-suspension job, was a position only secured after his July 2014 suspension, it seems clear enough that the earnings from Snyder are included as mitigation as "substituted employment," unless it were shown that that employment was not inconsistent with the obligations that Ciripompa would have had to the Board, thus, as Judge Tylutki suggested, employment he "could . . . have held while employed by the [school district]." In Gilbert's case, the testimony made it clear that he secured the post-suspension employment to replace income lost from the Board during his suspension. It is not clear how the judge would have ruled if Gilbert's new employment had involved time commitments that would have not clashed with those he would have had to the district. One way of understanding "substituted employment" could be that any post-suspension employment is "substituted," for any money earned could be viewed as "substituted" for the lost wages. Another understanding could focus on the "consistency" or "inconsistency" of the time obligations, considering that only work "inconsistent" with the time requirements as a teacher was actually "substitute" employment, while work performed at times consistent with maintaining the teacher's obligations to the district was "supplemental" employment," not includable as mitigation. But in Mr. Ciripompa's case, the undisputed evidence garnered from Ms. Snyder's deposition testimony makes it clear that his employment with Snyder's during the school year was inconsistent with this obligation to Bound Brook and thus countable as mitigating earnings. And, there is no evidence to suggest other than that he sought this employment to substitute the earnings therefrom for that he was not receiving from Bound Brook during his unpaid suspension.

According to Ms. Snyder's deposition testimony, her company is located in Washington Township, Warren County. Ms. Snyder explained that the company's morning bus routes run from 6:30 a.m. to 9:05 a.m., however, "most everyone comes in at 6:00." These routes usually last between two and three hours. Some afternoon routes start between 1:00 and 2:00 p.m., but "most everyone comes in between 2:00 and 3:00." These routes generally last until 4:00 and 4:30. She confirmed that the company had no morning routes that finished before 6:45 a.m. or any regular afternoon routes that started after 3:40 p.m., except perhaps a late start at 3:30 p.m. Bound Brook High School is in Somerset County. According to a regular day schedule for 2014-15, the school day periods ran from 7:35 a.m. until 2:52 p.m. In 2015-16 and 2016-17, the schedule of periods ran from "Teacher Arrival" at 7:30 a.m. until "Teacher Dismissal" at 2:55 p.m. According to a MapQuest printout offered as Exhibit J to the Board's brief, the 32.0-mile trip from Bound Brook to Snyder's facility in Washington Township (based on traffic conditions at 3:15 p.m. on March 20, 2019) lasted for 47 minutes. Given these time frames, which appear reasonably translated to the time frame of Ciripompa's employment in 2014-17, the Board posits that Mr. Ciripompa could not have worked at Snyder's during the school year if he had been working his required hours at Bound Brook, as he could not have operated the company's morning routes and arrived at school by 7:35 a.m. or have left school at 2:52 or 2:55 p.m. and arrived at Snyder's before about 3:45 p.m. Thus, he could not have obtained work at Snyder's if he had been working at Bound Brook. And the records of his work hours in 2015 amply support that he did in fact regularly work during hours incompatible with employment as a teacher for Bound Brook. Thus, I **FIND** that the employment for Snyder's was "substitute" employment, inconsistent with his obligations to Bound Brook, rather than "supplemental," non-conflicting employment.

As for his summer earnings, Ms. Snyder testified that her company does not hire summer employees. Instead, the work is performed by the same drivers who work for the company during the school year.

- Q. Do you hire from outside for the summer work or do you use the same drivers?
A. No. We use the same drivers but they don't all work.
Q. You don't hire just summer drivers?
A. No.

In his response to the current motion, Mr. Ciripompa does not present any evidence to refute Ms. Snyder's testimony. As such, in the absence of any affidavit or certification disputing her answers regarding summer employees, I **FIND** that Snyder's Bus Service did not hire additional employees for summer work and that to have worked for the company during the summer months following the conclusion of the school years 2015-16 and 2016-17, Mr. Ciripompa would have had to have been employed by Snyder's during the school year. And, since he could not have worked for Snyder's during the school year without substantial, disqualifying schedule conflicts with his obligations to Bound Brook or have been hired for solely summer work, as the company did not hire separate employees for the summer, I **FIND** that all of the earnings from Snyder's, both that earned during the school year and that earned in the summers, must be included as income in calculating the mitigation against back pay. Taking these facts into account, I **FIND** that Mr. Ciripompa received

\$16,514.00	Unemployment
\$46,335.44	School year earnings from Snyder's in 2014-15 and 2015-16
\$ 4,509.65	Summer earnings from Snyder's in July/August 2015 and July/August 2016
\$ 3,105.00	Umpiring
<hr/>	
\$70,464.09	

Even if the summer earnings are not included, the total earnings were \$65,954.44, which exceeded his backpay expectation of \$63,886 from employment by the Board during the entire period from September 1, 2014 through the resumption of pay on November 1, 2015. Mr. Ciripompa is not entitled to realize a financial gain from his substituted employment. Gilbert. And, of course, as explained above, the summer earnings count as well. Thus, receipt of any back pay would provide such an unwarranted gain.

I **CONCLUDE** that there are no genuine disputes of material fact that need resolution and that applying the applicable standard of review and substantive law to the undisputed facts, Bound Brook Board of Education, as the moving party, is entitled to summary decision in its favor. N.J.A.C. 1:1-12.5; Brill v. The Guardian Life Ins. Co. Of America, et al., 142 N.J. 520 (1995).

ORDER

I **CONCLUDE** that Mr. Ciripompa is not entitled to any back pay. **IT IS HEREBY ORDERED** that the Board's motion for summary decision is **GRANTED** and the claim for back pay is **DISMISSED**.

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.



May 23, 2019

DATE

JEFF S. MASIN, ALJ (Ret., on recall)

Date Received at Agency:

Date Mailed to Parties:

mph

EXHIBITS

For petitioner:

- Exhibit A Initial Decision dated April 28, 2017
- Exhibit B Interlocutory Decision dated July 30 , 2018

For respondent:

Certification of Robert J. Merryman, Esq., March 21, 2019, with attached Exhibits A through D, E-1 through 5, F (referred to as F in Certification but labeled "6" in binder), G through J