

New Jersey Commissioner of Education

Decision

Tajinder Tung,

Petitioner,

v.

Board of Education of the Township of
Mount Olive, Morris County,

Respondent.

Synopsis

Petitioner – a tenured mathematics teacher in the respondent Board’s school district – contended that his tenure rights were violated when the Board suspended him without pay in August 2019 without the filing of tenure charges and prior to his indictment in November 2019 on charges of stalking and harassing a female student. The Board filed a motion to dismiss in lieu of an answer. Petitioner opposed the motion to dismiss and filed a cross motion 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:6-10, no tenured employee shall be dismissed or reduced in compensation except for inefficiency, incapacity, unbecoming conduct, or other just cause, and then only after a hearing; *N.J.S.A.* 18A:6-8.3 provides that a tenured employee may be suspended without pay only if the employee was indicted or if tenure charges were certified against him; in this matter, the Board did not file tenure charges and petitioner was not indicted until November 6, 2019; and the Board’s argument that the discipline imposed on petitioner prior to November 6, 2019 was “minor discipline” under the New Jersey Employer-Employee Relations Act, *N.J.S.A.* 34:13A-1 to -43, is without merit. The ALJ concluded that petitioner’s suspension without pay prior to November 6, 2019 was improper. Accordingly, the Board’s motion to dismiss was denied; petitioner’s motion for summary decision was granted; and the Board was ordered to reimburse petitioner for all compensation withheld between August 26, 2019 and November 6, 2019.

Upon review, the Commissioner concurred with the ALJ’s findings and conclusion, and adopted the Initial Decision as the final decision in this matter. The Board was directed to reimburse petitioner for compensation withheld between August 26, 2019 and the date of petitioner’s indictment on November 6, 2019.

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 27, 2020

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Respondent.

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

In August 2019, petitioner, a mathematics teacher, was charged with the fourth-degree crime of stalking a female student and the petty disorderly persons offense of harassing her. On August 26, 2019, the Board suspended petitioner without pay. Thereafter, on November 6, 2019, petitioner was indicted on charges of fourth-degree stalking and two counts of second-degree official misconduct. The Administrative Law Judge (ALJ) found that under *N.J.S.A.* 18A:6-8.3, a tenured employee may be suspended without pay only if the employee was indicted or if tenure charges were certified against him. The Board did not file tenure charges and petitioner was not indicted until November 6, 2019; accordingly, the ALJ found that the suspension without pay prior to that date was improper. The ALJ also explained that while *N.J.S.A.* 34:13A-24 permits boards to impose minor discipline – including fines and suspensions without pay – if collectively bargained, petitioner’s 72-day suspension cannot be considered minor discipline.

Upon review, the Commissioner concurs with the ALJ's conclusion that, in the absence of tenure charges or an indictment, the Board was not permitted to suspend petitioner without pay. Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter for the reasons expressed therein. The Board is directed to reimburse petitioner for compensation withheld between August 26, 2019 and his indictment on November 6, 2019.

IT IS SO ORDERED. ¹

INTERIM COMMISSIONER OF EDUCATION

Date of Decision: 7/27/20

Date of Mailing: 7/28/20

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).