

New Jersey Commissioner of Education

Decision

Lorraine Taddei-Graef,

Petitioner,

v.

Board of Education of the Freehold Regional
High School District, Monmouth County,

Respondent.

Synopsis

Petitioner – a tenured teaching staff member in the respondent Board’s school district – contended that her tenure rights were violated when the Board reduced her salary without the filing of tenure charges after discovering that the institution which had granted petitioner’s Doctor of Philosophy degree in April 2006 was not accredited. However, the statute requiring such accreditation was not in effect until July 1, 2010. Petitioner filed a motion for summary decision.

The ALJ found, *inter alia*, that: the material facts at issue here are not in dispute, and the parties filed a joint stipulation of facts; petitioner received a Doctor of Philosophy degree in Curriculum and Assessment through an online program offered by Breyer State University (University) in April 2006; the Board then placed petitioner on the doctoral salary guide at the beginning of the 2006-07 school year; *N.J.S.A.* 18A:6-8.5 went into effect on July 1, 2010 and stipulates that boards of education may provide additional compensation based on degrees or credit completion *only* from duly authorized institutions of higher education, a category which excluded Breyer State University; however, as petitioner received her degree from the University in 2006, this statute was not yet in effect; on December 2, 2008, the Board notified petitioner that she was being removed from the doctoral salary guide and being placed on the Masters +30 salary guide. The ALJ concluded that petitioner’s tenure rights were violated when the Board reduced her salary without the filing of tenure charges, and petitioner was entitled to any additional compensation that she would have received had she remained on the doctoral salary guide from December 2, 2008 until June 30, 2010.

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 retroactively reinstate petitioner to the doctoral salary guide from December 2, 2008 until June 30, 2010.

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.

October 6, 2020

213-20

OAL Dkt. No. EDU 02617-09 ()
Agency Dkt. No. 19-2/09

New Jersey Commissioner of Education
Decision

Lorraine Taddei-Graef,

Petitioner,

v.

Board of Education of the Freehold Regional
High School District, Monmouth County,

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.

Petitioner, a tenured teacher, received a Doctor of Philosophy degree in Curriculum and Assessment through an online program from Breyer State University (University) in April 2006. Subsequently, the Board placed petitioner on the doctoral salary guide at the start of the 2006-07 school year. Following an Office of Fiscal Accountability and Compliance investigation, the New Jersey Commission on Higher Education advised petitioner in October 2008 that the University is not accredited and therefore she cannot continue to use the title or reference her degrees. Thereafter, on December 2, 2008, the Board notified petitioner that she was being removed from the doctoral salary guide and being placed on the Masters +30 salary guide. Petitioner filed a petition of appeal challenging her salary reduction on the basis that it violated her tenure rights.

The Administrative Law Judge (ALJ) found that the Board violated petitioner's tenure rights under *N.J.S.A.* 18A:28-5 and *N.J.S.A.* 18A:6-10 when it reduced her salary without bringing tenure charges. Although case law enables boards to correct salary mistakes at the end of a school year, the ALJ noted that the Board did not make a clerical error. At the time the Board increased petitioner's salary, there was no law prohibiting a Board from increasing a teacher's salary based on a degree from a non-accredited institution. However, on July 1, 2010, *N.J.S.A.* 18A:6-8.5 went into effect, permitting boards to provide additional compensation based on degrees or credit completion *only* from duly authorized institutions of higher education. As such, the ALJ found that petitioner was entitled to any additional compensation that she would have received had she remained on the doctoral salary guide from December 2, 2008 until June 30, 2010.

Upon review, the Commissioner agrees with the ALJ – for the reasons thoroughly expressed in the Initial Decision – that the Board violated petitioner's tenure rights. Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter. The Board is directed to retroactively reinstate petitioner to the doctoral salary guide from December 2, 2008 until June 30, 2010.

IT IS SO ORDERED. ¹

INTERIM COMMISSIONER OF EDUCATION

Date of Decision: October 6, 2020
Date of Mailing: October 6, 2020

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).



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION ON MOTION FOR
SUMMARY DECISION**

OAL DKT. NO. EDU 2617-09

AGENCY DKT. NO. 19-2/09

LORRAINE TADDEI-GRAEF,

Petitioner,

v.

**FREEHOLD REGIONAL HIGH SCHOOL
DISTRICT BOARD OF EDUCATION,**

Respondent.

Stephen Hunter, Esq., for petitioner (Detzky & Hunter, attorneys)

Mark G. Toscano, Esq., for respondent (Comegno Law Group PC, attorneys)

Record Closed: March 27, 2020

Decided: August 26, 2020

BEFORE **PATRICIA M. KERINS**, ALJ:

STATEMENT OF THE CASE

Petitioner Lorraine Taddei-Graef moves for summary decision on whether respondent Freehold Regional High School Board of Education (Freehold) violated her tenure rights by reducing her salary upon discovering that she received a doctoral degree from an unaccredited university, along with the reinstatement of her previous salary in accordance with Freehold's doctoral degree salary schedule.

STATEMENT OF FACTS

The parties have submitted a lengthy joint stipulation of facts and the material facts are not in dispute. The Stipulation of Facts are as follows:

1. Petitioner, Lorraine Taddei-Graef, resides at 1209 Koa Drive, Forked River, New Jersey, 08731.
2. Petitioner is a tenured teaching staff member employed by Freehold. Petitioner is currently assigned as a Learning Consultant and Child Study Team Leader at the Freehold Township High School.
3. In or around May 2005, petitioner enrolled in a coursework program through the on-line program provided by Breyer State University (University). The University held itself out as an institution with the authority to confer doctorate degrees on individuals who completed the program.
4. On or about April 26, 2006, petitioner was advised by Dominick Flarey, Ph.D., via electronic mail, that she met the University's coursework requirement, and a Degree of Doctor of Philosophy, Curriculum and Assessment, was conferred.
5. Upon receipt of the degree, petitioner was placed on the doctorate salary guide for the 2006-2007 school year pursuant to the collective bargaining agreement entered into by respondent and the Freehold Regional High School District Education Association. Petitioner's salary was \$58,410. See, Official Salary Card, attached hereto as Exhibit A.
6. Petitioner remained on the doctorate guide until on or about December 2, 2008. Between September 1, 2008, and December 2, 2008, petitioner was placed on Step 10 of the doctorate guide, for a base salary in the amount of \$73,620. See, 2008-2009 Collective Bargaining Agreement, attached hereto as Exhibit B. The differential in base salary between Step 10 of

Masters +30 guide, where petitioner would have been placed if she had not earned the doctorate, and the Step 10 of the doctorate salary guide was \$1,500. See, 2008-2009 Collective Bargaining Agreement between the Freehold Regional High School District Board of Education and the Freehold Regional High School Education Association, attached hereto as Exhibit B.

7. In or around August 2008, the Office of Fiscal Accountability and Compliance (OFAC) conducted an investigation assessing the respondent's policies and practices relating to tuition reimbursement and salary increases upon completion of a doctorate degree program. The OFAC investigation centered around several administrators employed by respondent. Each had received doctorate degrees from the University. See, OFAC report attached hereto as Exhibit C.
8. OFAC did not determine whether the degrees received from the University were valid and recognizable in the State of New Jersey. The matter was referred to the New Jersey Commission on Higher Education (Higher Education), the agency charged with regulation of degrees of higher education, for further evaluation.
9. Although petitioner was not a subject of the initial OFAC investigation, Higher Education subsequently learned that she had received a degree from the University. On October 8, 2008, Higher Education issued a letter to petitioner advising her that degrees from the University did not meet the accreditation standards required for degree recognition. See, October 8, 2008, letter to petitioner attached hereto to Exhibit D.
10. Higher Education advised petitioner that continued use of her title was "legally impermissible" and in "violation of State law and must cease and desist." See Exhibit D.

11. Higher Education instructed petitioner to submit a notarized letter avowing that she has ceased appending the degree designation to the end of her name (i.e., Ed.D., Dr. or Ph.D.). On or about October 20, 2008, petitioner complied with this directive. See, October 20, 2008, letter from petitioner to Higher Education attached hereto as Exhibit E.
12. On or about September 2, 2008, the Commissioner of Education issued a memorandum reiterating the requirements for degrees of higher education. See, September 2, 2008, letter from Commissioner Davy attached hereto as Exhibit F.
13. On or about December 2, 2008, the Assistant Superintendent for Business Administration notified petitioner that the respondent was removing petitioner from the doctorate column of the salary guide, and placed on the Masters +30 guide, as a result of the aforesaid correspondences from the Commission on Higher Education and the Department of Education. See, Salary letter to petitioner, dated December 2, 2008, attached hereto as Exhibit G. Step 10 of the Masters +30 salary guide provided a salary of \$72,160. See Exhibit B.
14. On or about January 28, 2008, petitioner filed the instant Petition of Appeal. She seeks to be replaced on the doctoral salary column of the salary guide contained collective bargaining agreement. Petitioner further seeks reinstatement of the use of her title.
15. Petitioner never filed an appeal of the October 8, 2008, Higher Education determination.

LEGAL ANALYSIS

The purpose of teacher tenure laws is “to aid in the establishment of a competent and efficient school system by affording teachers ‘a measure of security in the ranks they hold after years of service.’” Carpenito v. Rumson Bd. of Educ., 322 N.J. Super. 522,

528-29 (App. Div. 1999) (quoting Viemeister v. Prospect Park Bd. of Educ., 5 N.J. Super. 215, 218 (App.Div.1949)); N.J.S.A. 18A:28-1 to -18; N.J.S.A. 18A:6-10 to -18.1 (“Tenure Employees Hearing Law”). As such, a tenured teacher may not be dismissed or reduced in compensation except for inefficiency, incapacity, unbecoming conduct, or other just cause, and then only after the appropriate procedural requirements under the Tenure Employees Hearing Law have been met. N.J.S.A. 18A:28-5; N.J.S.A. 18A:6-10.

A person shall not append to his name any letters in the same form designated by the Commission on Higher Education as entitled to the protection accorded to an academic degree unless the person has received from a duly authorized institution of higher education the degree or certificate for which the letters are registered. N.J.S.A. 18A:3-15.3; N.J.A.C. 9A:1-8.1.

A motion for summary decision shall be granted “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.” N.J.A.C. 1:1-12.5(b).

There are several school law decisions that offer support for the proposition that Freehold violated petitioner’s tenure rights by unilaterally reducing her compensation without adhering to the procedural requirements of the Tenure Employees Hearing Law. In Fedor v. Elmwood Park Bd. of Education, 97 N.J.A.R.2d (EDU) 96, a school board adopted a resolution to increase the salary of a tenured principal who was transferred from a high school to an elementary school, and then three weeks later adopted another resolution rescinding the original resolution and reinstating his previous salary amount. In voiding the school board’s second resolution as a violation of the principal’s tenure rights, ALJ Springer provided a summary of school law decisions establishing tenured teachers’ rights when a school board attempts to reduce their salaries:

[a] long line of school law decisions has interpreted this reduction-in-compensation language [at N.J.S.A. 18A:28-5 and the Tenure Employees Hearing Law] as prohibiting a local board from rescinding a resolution approving a tenured employee’s salary in a given year, unless the board

successfully brings tenure charges or the employee is laid off or demoted as the result of a reduction in force. Illustratively, in Anson v. Bridgeton Bd. of Educ., 1972 S.L.D. 638, 640 (Comm'r Dec. 5), the Commissioner declared that tenured teachers 'acquired vested rights to the salaries established for them by the Board's adoption of their salary placement' and that they could not 'be deprived of a right they had acquired by action of the board.' Accord, Docherty v. West Paterson Bd. of Educ., 1967 S.L.D. 297 (Comm'r Oct. 23), where the Commissioner ruled that a board may not adopt a subsequent resolution to correct a mistake in a tenured teacher's placement on the salary guide, if the mistake "was not of the teacher's making." See also, Rivers v. Mercer Cty. Area Vo-Tech. Sch., 1984 S.L.D. 102, 108 (Comm'r Jan 17) and Galop v. Hanover Twp. Bd. of Educ., 1975 S.L.D. 358 (Comm'r May 16), aff'd 1975 S.L.D. 366 (St. Bd. Sept. 10), where the Commissioner invalidated attempts by local boards to recoup small overpayments of salary that were not 'of windfall proportions.'

In that case, ALJ Springer also noted that the school board's original decision reflected "a good faith effort" by the school board "to set a fair salary for an administrator who had been involuntarily transferred to a new position" and that "the situation is very different from genuine mistake, such as inadvertently placing a teaching staff member on the wrong step of the salary guide for a person with his particular experience and qualifications."

Here, unlike in Fedor, Freehold did not attempt to set a fair salary for a teacher who is transferred. However, upon receipt of her doctoral degree, petitioner "was placed on the doctorate salary guide for the 2006-2007 school year pursuant to the collective bargaining agreement" between Freehold and the teachers' union, and remained on the doctorate guide until December 2, 2008 when Freehold unilaterally reduced petitioner's salary by \$1500. See Joint Stipulation of Facts ¶5, 6, 13. Thus, as in Fedor, once Freehold set petitioner's salary for the 2007-2008 school year, Freehold could not rescind its resolution approving petitioner's salary unless Freehold successfully brought tenure charges. As such, Freehold improperly reduced petitioner's salary by failing to bring tenure charges against her.

Most school law cases in which a tenured teacher argues that his or her salary has been illegally reduced involved a clerical error in which an employee of the school board mistakenly set a tenured teacher's salary at a level at which the teacher should not have received his or her salary. See, e.g., Stockton v. Trenton Bd. of Educ., 1987 S.L.D. 512, 521; Trenton Educ. Assn. v. Trenton Bd. of Educ., 1986 S.L.D. 2415, 2434; Rivers v. Mercer Cty. Vo-Tech Sch. Bd. of Educ., EDU 1368-83, Initial Decision (November 30, 1983), aff'd, Comm'r (January 17, 1984). In Stockton, for example, the Trenton Board of Education incorrectly placed Stockton on a higher step on the salary guide. While the Commissioner in that case held that the Board could correct its mistake, he found that the teacher was entitled to be paid at the incorrect level for the rest of the school year and that the board had to reimburse him for the difference between what he was paid after the Board corrected its mistake and what he should have been paid at the incorrect salary step. According to the Commissioner, a board may correct a clerical error with respect to salary; however, "during a given school year, once an individual has been placed and paid at a given step of the salary guide, he or she may not be subject to any corrective action during that year, which reduces his or her salary . . ." Id. at 521. In such instances, the Commissioner stated that "only a board of education may act to correct an error/mistake and it must provide reasonable notice to the individual that a correction is to be made." Ibid. Thus, under circumstances involving a clerical error in which a tenured teacher's salary is inadvertently increased, it appears that a school board does not have to file tenure charges in order to correct its mistake.¹

Here, it is not clear that Freehold actually made an error in increasing petitioner's salary. Yes, it appears that Freehold believed at the time it approved petitioner's salary

¹ There is a case that is more directly on point. Unfortunately, the case was dismissed for procedural reasons. In Hoffman v. Bd. of Educ. of the Twp. of Hillsborough, 96 N.J.A.R.2d (EDU) 944, the school board mistakenly increased a tenured teacher's salary after she obtained a doctoral degree from LaSalle University in Louisiana.¹ When the school board realized that the university was not an accredited institution, the school board notified the teacher that her advancement on the salary guide was denied despite the fact that she had already received a paycheck reflecting her placement on the doctoral scale. While the Commissioner dismissed the teacher's petition as untimely under the 90-day rule for appeals, the Commissioner noted that "a board may not act to unilaterally recoup monies erroneously paid to a teaching staff member as numerous Commissioner and State Board of Education decisions so aptly point out."

This language from the Commissioner suggests that but for the 90-day rule violation, the Board would have had to have brought tenure charges against Hoffman in order to reduce her salary after it affirmatively increased it.

increase that Breyer University had been or was accredited even though it was not (or subsequently lost its accreditation before petitioner received her degree). However, there also appears to be no language in the relevant CBA or Freehold's policy (which is not in evidence here but is referred to in the Office of Fiscal Accountability and Compliance's (OFAC) report, Stipulation of Facts, Exhibit C) that would have prohibited Freehold from placing on the doctoral salary scale a tenured teacher who obtained a doctoral degree from a non-accredited university. Moreover, at the time of the salary increase, the Legislature had yet to address this issue, and the Commission on Higher Education regulations address degree designations and not salary increases in response to degrees obtained from non-accredited institutions. Freehold determined that petitioner had obtained a doctoral degree and accordingly increased her salary under the salary guide set forth in the relevant CBA. Therefore, as noted in Fedor, Freehold should have brought tenure charges against petitioner if it believed it had just cause to reduce her compensation and petitioner should have had the opportunity to defend her rights pursuant to the Tenure Employees Hearing Law. Since Freehold did not do so, Freehold violated petitioner's tenure rights and she is entitled to a doctoral salary retroactive to December 2, 2008, until the end of the 2009-2010 school year when P.L. 2010, c.13 goes into effect.

Nevertheless, the legislature has enacted a law prohibiting a local board of education from increasing a teacher's salary upon completion of a degree program unless the institution from which she obtained the degree meets the requirements of N.J.S.A. 18A:3-15.3.² According to the act, "[t]his act shall take effect on July 1 of the school year next following the date of enactment, except that this act shall not be deemed to impair an obligation set forth in a [CBA] or an individual contract of employment in effect on the effective date." P.L. 2010, c. 13. In addition to the relevant CBA, OFAC report, and higher education laws, this legislative development shows that at the time of Freehold's decision to approve Taddei-Graef's salary there was no authority prohibiting such action. Thus, since P.L. 2010, c. 13 was not effective until the start of the 2010-2011 school year, petitioner is entitled to compensation under the doctoral scale until June 30, 2010, and

² P.L. 2010, c. 13.

reimbursement from Freehold to compensate her for the reduction in salary unilaterally implemented by Freehold in December 2008.

CONCLUSION

Freehold violated petitioner's tenure rights by unilaterally reducing her salary without bringing tenure charges or holding a tenure hearing. While there is case law that stands for the proposition that a school board may correct at the end of the relevant school year any clerical error that results in an increase in a tenured teacher's salary, Freehold does not here appear to have made a clerical error. In addition, at the time of the increase in petitioner's salary, there was no law barring such action by a school board, and Freehold policy and the relevant CBA did not prohibit such action. Finally, the legislature enacted a statute which prohibits salary increases for teachers who attain degrees from non-accredited universities. That act went into effect July 1, 2010. As a result, Freehold violated petitioner's tenure rights and she is entitled to be reinstated to the doctoral salary guide until June 30, 2010 and reimbursed for any monies she should have received had she remained on that guide retroactive to December 2, 2008. While such a result contravenes a proper public policy that frowns upon using public money pay educators for degrees from unaccredited institutions, there was no law in place at the time of petitioner's increase and the tenure laws protect tenured teachers' rights against unlawful reductions in salary.

ORDER

It is hereby **ORDERED** that petitioner be reinstated to the doctoral salary guide from December 2, 2008, until June 30, 2010.

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.



August 26, 2020

DATE

PATRICIA M. KERINS, ALJ

Date Received at Agency:

August 26, 2020 (emailed)

Date Mailed to Parties:

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