

**New Jersey Commissioner of Education****Final Decision**

German Rojas,

Petitioner,

v.

Board of Education of the City of Union City,  
Hudson County,

Respondent.

**Synopsis**

Petitioner claimed that the respondent Board violated his tenure and seniority rights by transferring him from a twelve-month teaching position to a ten-month teaching position, which allegedly resulted in a reduction of petitioner's salary. The petitioner sought an order requiring that the Board restore him to a twelve month-position, restore his salary to the appropriate twelve-month amount, and reimburse him for back pay and other emoluments.

The ALJ found, *inter alia*, that: there is no genuine issue as to any material fact, and the matter is ripe for summary decision; it is well-settled that a board of education has the managerial prerogative to transfer teaching staff members within the scope of the endorsements on his or her Instructional Certificate; prior to the 2017-2018 school year, petitioner was assigned to teach at the school district's Adult Learning Center, an assignment that required an extended school year; under the collective bargaining agreement, a teacher assigned to work in an extended year program receives an additional 10 percent over the negotiated ten-month salary; in August 2017, the district superintendent recommended that petitioner be reassigned and transferred from his twelve-month position as an ESL Teacher of Spanish in the Adult Learning Center to a ten-month position as a Computer Teacher in the district's Alternative Design Academy, due to a poor evaluation and resulting corrective action plan as an ESL teacher; the petitioner did not suffer a reduction in compensation from his twelve-month position in 2016-2017 to his ten-month position in 2017-2018 because the Board ultimately restored petitioner to the same salary he had been paid for the 2016-2017 school year, \$75,053; and the Board's deduction of \$284.29 from one of petitioner's paychecks – which corrected a mistake on a previous paycheck – did not constitute an impermissible reduction in compensation. The ALJ concluded that petitioner's tenure and seniority rights were not violated. Accordingly, the ALJ granted summary decision to the Board, and dismissed the petition.

Upon comprehensive review, the Commissioner concurred with the ALJ's findings and conclusions as thoroughly set forth in the Initial Decision. Accordingly, the recommended decision of the OAL was adopted as the final decision in this matter.

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.

March 13, 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, as have the exceptions filed pursuant to *N.J.A.C.* 1:1-18.4 by the petitioner, German Rojas, and the Union City Board of Education's (Board) reply thereto. In this matter, the petitioner alleges that the Board violated his tenure and seniority rights by transferring him from a twelve-month teaching position to a ten-month teaching position which resulted in a reduction in salary. The Administrative Law Judge (ALJ) found that the Board did not violate the petitioner's tenure and seniority rights and granted summary decision in favor of the Board. In so doing, the ALJ determined that the petitioner did not suffer a reduction in compensation from his twelve-month position in 2016-2017 to his ten-month position in 2017-2018 because the Board paid him \$75,453.00 for the 2017-2018 school year, which was the same salary he had earned during the 2016-2017 school year. Finally, the ALJ found that the Board's deduction of a \$284.29 overpayment from the petitioner's second paycheck of the 2017-2018 school year did not constitute an impermissible reduction in compensation.

The petitioner's exceptions substantially reiterated the substance of his submissions at the OAL, recasting the arguments therein to support the contention that the ALJ erroneously granted summary decision in favor of the Board. Specifically, the petitioner maintains that the Board did not pay him the amount that it agreed to pay the petitioner in the August 15, 2017 letter and that the ALJ improperly relied on the Board's language in the August 15, 2017 letter. Moreover, petitioner contends that the board reduced his compensation when it transferred him to a ten-month position and his immediate salary for the 2017-2018 school year was simultaneously reduced from the first pay period to the second pay period. In support of his argument the petitioner distinguishes the circumstances in this case from the issues raised in *Williams v. Plainfield Board of Education*, 176 N.J. Super. 154, 162 (App. Div. 1980), *certif. denied*, 87 N.J. 306 (1981), where the Appellate Division found that "tenured employees have no vested right in any future increases in salary."

The petitioner also contends the cases cited by the ALJ that address clerical errors for simply overpayments do not apply here because the petitioner is entitled a salary of \$79,453.00, which his first paycheck of the school year properly reflected, but which was subsequently reduced. Therefore, the petitioner asserts that the Board improperly reduced his compensation in contravention of *N.J.S.A.* 18A:28-5 when it transferred him from a twelve-month position to a ten-month position. In reply, the Board reiterated the positions advanced in its submissions at the OAL and responded to the arguments made in the Petitioner's exceptions, stressing that the ALJ properly granted its motion for summary decision.

Upon a comprehensive review of the record in this matter, the Commissioner concurs with the ALJ – for the reasons set forth in the Initial Decision – that the Board did not violate the petitioner's tenure and seniority rights and properly granted summary decision in favor of the Board. The Commissioner is also in accord with the ALJ's determination that the Board's deduction of the \$284.29 overpayment from the petitioner's second paycheck of the 2017-2018

school year did not constitute an impermissible reduction in compensation. The Commissioner also finds the petitioner's exceptions to be unpersuasive, largely reflecting arguments previously raised before the ALJ and thoroughly considered by her in determining that the petitioner's compensation was not wrongfully reduced when he was transferred from a twelve-month position to a ten-month position.

Accordingly, the Initial Decision is adopted as the final decision in this matter and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.<sup>1</sup>

COMMISSIONER OF EDUCATION

Date of Decision: March 13, 2020

Date of Mailing: March 16, 2020

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<sup>1</sup> 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)*.

