

New Jersey Commissioner of Education**Decision**

Richeall Kennedy,

Petitioner,

v.

Board of Education of the Passaic Valley Regional
High School District No. 1, Passaic County,

Respondent.

Synopsis

Petitioner – a tenured science teacher employed since 2005 by the respondent Board’s school district – challenged the Board’s reduction in her salary as a violation of her tenure rights under *N.J.S.A. 18A:28-5*. The Board initially contended that the appeal should be dismissed as it is strictly a contractual matter that is pending in other forums. After jurisdiction was decided in favor of the petitioner, the parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts in dispute here, and the matter is ripe for summary decision; the petitioner has been employed under tenure by the Board since 2005; during the entire 2020-2021 school year, the petitioner was approved to be absent from work for legitimate Covid-related reasons; as a result of her absence she was not advanced to the next step on the district’s salary guide upon her return to work in 2021-2022; the issue herein stems from the Board’s adoption of a new Collective Bargaining Agreement (CBA), with associated salary guide, covering 2022-2024; the new guide reduced the salary for petitioner’s salary step; petitioner alleged under *N.J.S.A. 18A-25 et. seq.* that the Board impermissibly reduced her compensation in violation of the tenure laws by paying her the reduced salary step included in the 2022-2024 salary guide. The ALJ concluded that petitioner’s tenure rights were violated when the Board reduced her salary upon her return to work in 2021-2022, which is prohibited by the tenure laws. Accordingly, the ALJ granted summary decision in favor of petitioner and denied the Board’s motion for summary decision.

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 Commissioner directed the Board to immediately restore petitioner’s salary to her October 2021 level of \$114,251, and to compensate petitioner for the difference between the reduced salary she has received under the new salary guide since November 2021 and her prior salary.

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.

New Jersey Commissioner of Education
Final Decision

Richeall Kennedy,

Petitioner,

v.

Board of Education of the Passaic Valley
Regional High School District No. 1,
Passaic County,

Respondent.

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

Upon review, the Commissioner concurs with the Administrative Law Judge that the respondent Board unlawfully reduced petitioner's salary in violation of *N.J.S.A. 18A:6-10* and *N.J.S.A. 18A:28-5*. See *Cohen v. Board of Education of the Borough of South River, Middlesex County*, 94 *N.J.A.R.2d* (EDU) 242 (Comm'r Jan. 28, 1994) (holding that *N.J.S.A. 18A:6-10* and *N.J.S.A. 18A:28-5* prohibit boards of education from placing an employee at a step on a new salary guide which reduces their salary from its previous level).

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter. Petitioner's motion for summary decision is granted, and the Board's motion for summary decision is hereby denied. The Board is directed to immediately restore petitioner's salary to

her October 2021 level of \$114,251, and to compensate petitioner for the difference between the reduced salary she has received under the new salary guide since November 2021 and her prior salary.

IT IS SO ORDERED.¹



ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 1, 2024

Date of Mailing: March 6, 2024

¹ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A.* 18A:6-9.1. Under *N.J.Ct.R.* 2:4-1(b), a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 01309-22

AGENCY DKT. NO. 17-2/22

RICHEALL KENNEDY,

Petitioner,

v.

PASSAIC VALLEY REGIONAL HIGH SCHOOL,

DISTRICT NO. 1 BOARD OF EDUCATION,

PASSAIC COUNTY,

Respondent.

Richard A. Friedman, Esq., for petitioner (Zazzali, Fagella Nowak Kleinbaum & Friedman, attorneys)

Raymond B. Reddin, Esq., for respondent (Reddin Masri, LLC, attorneys)

Record closed: December 18, 2023

Decided: January 24, 2024

BEFORE **ANDREW M. BARON, ALJ:**

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

Petitioner, a science teacher with the Passaic Valley Regional High School (Respondent or District), brings this appeal challenging a reduction in salary as a violation of her tenure rights. Respondent contends the appeal should be dismissed as it is strictly

a contractual matter, which is pending in the form of a grievance filed with the Public Employees Retirement Commission and in a separate action pending in Superior Court.

FACTUAL DISCUSSION

Petitioner is employed by respondent as a Science teacher. The District says during the 2020-2021 school year, the petitioner did not report to work. As a result, the District says petitioner failed to advance herself on the salary guide for the 2021-2022 school year.

According to the District, under Article 15 of the 2018-2021 Collective Bargaining Agreement between the Passaic Valley Education Association, of which petitioner was a member, and the District, that provision states: “for purposes of advancement on the salary guide and years of service to the District, a member must work nine consecutive weeks in order to earn sufficient credits for that year.

Under this criteria, the District contends that petitioner did not earn the necessary credits to advance on the salary guide. As such, it was petitioner herself, and not the District who failed to advance herself on the salary guide.

The District says that the old CBA expired in June 2021, resulting in a new three-year agreement being implemented for the 2022-2024 school years. At the start of the new 2021 school year, all employees were paid under the old salary guide because the new guide had not yet been established. Once the new guide was finalized and approved by the Board, all employees received retroactive pay to make them whole for any difference in salary from the old agreement to the new agreement.

The Board says that petitioner did receive her longevity pay that was due as of September. However, since petitioner did not advance another step up the guide, presumably because she missed almost a full year away from teaching, she was paid the salary under the new guide at the step where she remained. What causes the dispute here is that the salary was less than the salary for the same step under the old guide.

The Board continued its prior argument that this matter is a contractual dispute that should be heard and decided in a different venue other than the Office of Administrative Law. They contend that because the petitioner filed a grievance and requested the appointment of a panel of arbitrators with the Public Employees Retirement Commission, her grievance should be decided in that forum.

Petitioner argues that the issue of whether her tenure rights were violated should be considered separate and apart from her contractual grievance before PERC. She argues that the reduction in salary that was imposed on her is not permissible as a matter of law, and specifically is a violation of the tenure laws. For the reasons set forth herein, while seemingly unintentional, the net effect of keeping petitioner at the same grade under the new agreement had the net result of a forced salary reduction. Accordingly, **I agree** that petitioner's salary was wrongfully reduced as a matter of law and constitutes a violation of her tenure rights.

UNDISPUTED FINDINGS OF FACT

1. Petitioner Richeall Kennedy was hired as a science teacher with the Passaic Valley School District in 2005.
2. Petitioner has tenure with the District.
3. Petitioner is a member of the Passaic Valley Education Association which is the sole entity designated with negotiating rights on behalf of petitioner and her fellow union members.
4. An agreement which petitioner was party to was in effect from July 30, 2018 until June 30, 2021.
5. During the 2020-21 school year, petitioner did not work any day during that period of time as a teacher. At that time, her earned annual base salary was \$112,367.00.
6. In June 2021, the Collective Bargaining Agreement between the District and petitioner's union expired, and following negotiations, the parties entered into a new contract for the years 2021-24 on October 26, 2021. Since a new

salary guide was not yet approved at the beginning of the school year, all employees including petitioner were initially paid under the expiring salary guide.

7. In November 2021, it is undisputed that respondent reduced petitioner's annual base salary under the new Collective Bargaining Agreement from \$114,251.00 to \$107,770.00
8. No tenure charges were filed against petitioner.
9. Petitioner stayed at Step 19 under the new salary guide.
10. Petitioner was subsequently paid \$111,190.00 for the 2022-23 school year and was due to earn \$112,904.00 for the 2023-24 school year.
11. Upon returning to school for the next school year after a year away for legitimate reasons, petitioner was not eligible to advance to the next step under the new salary guide due to the fact that she had not worked for nine consecutive weeks during the previous school year.
12. As a result of the lower salary from when the old agreement expired and the new agreement was implemented, I **FIND** without placing blame or determining fault, the resulting salary reduction, was a violation of petitioner's tenure rights, the net effect is that she was penalized for not actively teaching while a new agreement was negotiated and implemented, and I further **FIND**, as such, she is entitled to retroactive pay and reinstatement to the appropriate salary level under the Collective Bargaining Agreement Step Guide.

LEGAL DISCUSSION AND ANALYSIS

Among other things, the Board previously argued in an earlier Motion that pursuant to N.J.A.C. 6A:3-1.10, a petition may be dismissed if no valid cause of action is advanced with the pleadings, and the Office of Administrative Law does not have jurisdiction over the claim.

The Board argued that the nature of petitioner's claim is contractual and is already pending in the form of a PERC filing. Finally, with a claim pending in another forum, the

Board argued that the “entire controversy” doctrine bars arguing the same matter in two forums at the same time.

Essentially, the Board argued that PERC has primary jurisdiction over the dispute, and once that aspect of the case is completed, there is nothing left for the OAL to review.

The issue of jurisdiction was previously decided in favor of petitioner, and the matter proceeded with both sides submitting briefs leading to a determination by way of summary disposition on the papers.

Petitioner brings this claim alleging under N.J.S.A. 18A-25 et. seq. that the Board impermissibly reduced her compensation in violation of the tenure laws, which is an entirely separate claim from the grievance filed before PERC.

N.J.S.A. 18A-6-10 provides that “no person shall be dismissed or reduced in compensation, (emphasis added), if he or she shall be under tenure of office, position or employment during good behavior and efficiency...except for inefficiency, incapacity unbecoming conduct or other just cause, and then only after a hearing held by the Commissioner or their designee... (Emphasis added). Thus, the petitioner argues that the issue of whether the Board violated her tenure rights is a genuine disputed fact constituting a valid cause of action, separate and apart from the PERC grievance.

The existence of a compensation provision in a collective bargaining agreement does not abrogate the protections of the tenure statute nor remove the matter from the Commissioner or OAL’s jurisdiction. See: Laufenberg v. Ramapo Indian Hills Reg’l High School Dist., OAL Dkt. No. EDU 5576-90, Agency Dkt. No. 207-6/90 (Dec. 12, 1991).

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 Ed., 322 N.J. Super. 522, (App. Div. 1999). It is well-settled that a teacher in a tenured position may not have his or her salary reduced except under the procedures set forth in the tenure statute. Harris v. Bd. of Educ. Pemberton Twp. 1039-1949 S.L.D. 164 (Comm’r Dec. 1938).

N.J.S.A. 18A:28-5 specifies that teaching staff members who meet the statutory standards for the acquisition of tenure “shall be under tenure during good behavior an efficiency and they shall not be dismissed or reduced in compensation, except for inefficiency, incapacity or conduct unbecoming such a teaching staff member or for other just cause.”

Petitioner correctly points out that there is also a distinction between a collective bargaining action, which is brought by the member’s association as a contractual claim, and a tenure violation action, which is brought by the individual. See Hoffman v. Bd. of Ed. of Hillsborough, 1996 N.J. AGEN. LEXIS 740 EDU 678-96 22-1/96 Initial Decision (Aug. 9, 1996) adopted by Commr. of Educ. (June 24, 1996).

A board of education does not have legal authority to reduce the salary of a tenured teacher once the salary has been established. In fact, tenured teachers may not have their compensation reduced, even under the terms of a Collective Bargaining Agreement. See, Spiewak v. Rutherford Bd. of Educ. 90 N.J. 63 (1982).

For some time, the Commissioner of Education has stood for the precedent that similar to the facts of this case, the terms of negotiated Collective Bargaining Agreement cannot override tenure law protections against reductions in salary. (Emphasis added). In a case which essentially mirrors the within dispute between Ms. Kennedy and Passaic Valley, a board placed a teacher on a different step under a newly ratified Collective Bargaining Agreement which effectively reduced that teacher’s salary by \$6,000. The Commissioner ruled that this reduction was a violation of the teacher’s tenure rights. Cohen v. Bd. of Educ. of the Borough of South River., 1994 N.J. AGEN LEXIS 74 (Final Agency Decision January 28, 1994). See also: Stockton v. Bd. of Ed. of the City of Trenton, 210 J.J. Super 150. (App. Div. 1986). And see: Schalango-Schirm v. Kearny Bd. of Educ. 1998 N.J. AGEN. LEXIS 356 adopted Comm’r 1998 N.J. AGEN. LEXIS 1064, (Aug. 6, 1998, affirmed, State Bd. of Educ. 1998 N.J. AGEN. LEXIS (Dec. 2, 1998), which also stands for the principle that a tenured teacher’s salary may not be reduced even if a new Collective Bargaining Agreement is adopted which changes the levels of pay at various steps on the guide. Using firm language which clearly makes salary reduction for

tenured teachers a prohibited practice, the Commissioner in the Schalango-Schirman case opined that “once a salary is established tenure rules apply to it and render it beyond recall.

In support of its position that petitioner’s new reduced salary did not constitute a tenure violation, the District cites several cases, each of which involves teachers who relied upon their tenure rights to challenge a resulting salary reduction.

First, the District argues that most cases of a similar nature involve a clerical error or mistake where a teacher received a lower salary than they were entitled to. See Stockton v. Trenton Bd. of Educ. 1987 S.L.D. 512 and Rivers v. Mercer County Vo. Tech. School Bd. of Ed. EDU 1368-83, Initial Decision (November 30, 1983) aff’d Comm’r (January 17, 1984). In seeking to distinguish those cases from that of petitioner, the Board argues that it did not set petitioner’s new salary, it was done by petitioner’s Union ratifying a new contract, thus her Union and not the Board was responsible for the reduced salary, and there was no mistake involved for the Board to correct.

Since the Board was a party to the Collective Bargaining Agreement, and a majority of its members had to vote to approve the contract, I **CONCLUDE** that this argument, that petitioner was somehow responsible for the reduction defies logic and cannot be sustained.

In more of an effort to distinguish petitioner’s case from the reality of other caselaw, and the tenure laws which prohibit a reduction, the board relies on Anson v. Bridgeton Bd. of Ed. 1972 S.L.D. 638 (Comm’r Dec. 5) which stands for the proposition that tenured teachers acquire vested rights to the salaries established for them by the Board’s adoption of their salary placement, and they cannot be deprived of such a right by a subsequent action of the Board. Because the Teacher’ Union in Anson, established the salary step guide, and the Board simply approved it, the Board was precluded from adopting a subsequent resolution to modify that teacher’s salary. See also, Docherty v. West Paterson Bd. of Ed. 1967 S.L.D. 297 (Comm’r Oct. 23) preventing a Board from correcting a mistake by subsequent resolution regarding a teacher’s placement on the salary guide. Again here, the Board attempts to justify the end result by simply stating it

had not initiated tenure charges against petitioner, so she has to live with the end result, even though both the Union and the Board approved the new salary step guide. I **CONCLUDE** that argument simply does not make sense, as petitioner was a tenured teacher who was approved to be away from her teaching duties for a full year, only to return under a new Collective Bargaining Agreement where the Step she returned to was reduced by several thousand dollars from her prior salary. I further **CONCLUDE** that what amounts to an indirect penalty for not working the minimum nine weeks in the prior year, and forcing her to return at a reduced salary, even with her longevity in the District is a violation of her tenure rights that cannot be sustained.

Here, the petitioner alleges that her tenure rights were violated when she returned to work with a lower salary under the new Collective Bargaining Agreement as a result of remaining on the same Step level. It is undisputed that she was absent from teaching for a full year for a variety of reasons, all of which were justified, including but not limited to her own medical leave, and her need to stay home with her child while their school remained closed due to Covid protocols. There is no indication that by remaining home and away from teaching for a full year, she was ever deemed insubordinate by the District, and/or that the District ever contemplated bringing disciplinary or tenure charges against her. While part of her claim may be decided later from a contractual standpoint under a PERC grievance, it is difficult to determine to reach any conclusion other than the reduction in salary upon her return to work was a violation of her tenure rights, which is prohibited by law.

Accordingly, pursuant to Brill v. Guardian Life Insurance Company of America, 142 N.J. 520 (1995) I **CONCLUDE** with no genuine issues of material fact remaining, that petitioner's Motion for Summary Decision should be **GRANTED**, and the District's Cross-Motion for Summary Disposition should be **DENIED**.

ORDER

Summary Disposition is hereby **GRANTED** in favor of petitioner. Respondent's Motion for Summary Disposition is **DENIED**.

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.

Andrew Baron

January 24, 2024

DATE

ANDREW M. BARON, ALJ

Date Received at Agency:

January 24, 2024

Date Mailed to Parties:

January 24, 2024

sej

APPENDIX

EXHIBITS

For Petitioner:

P-1 Certification of Richeall Kennedy

For Respondent:

R-1 2018-21 Collective Bargaining Agreement (ref. to s Exhibit A)

R-2 Longevity and Salary Guide for 2018-21 (ref. to as Exhibit B)

R-3 Salary Guide for years 2021,22, 23 and 24, (ref to as Exhibit C)

R-4 Certification of Colin Monahan, Business Administrator