

CYNTHIA SCHALAGO-SCHIRM, :
MARLENE DI PASQUALE, FRANK :
TSIEN, NANCY ZIMMERMAN, :
KATHLEEN HOELLER, PATRICIA :
IOVINO, :
PETITIONERS, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE TOWN : DECISION
OF KEARNY, HUDSON COUNTY, :
RESPONDENT. :
:

SYNOPSIS

Petitioners, tenured teaching staff members, alleged the Board improperly reduced their salaries for the 1996-97 school year thereby violating their tenure rights pursuant to *N.J.S.A.* 18A:28-5. Board contended that it did not improperly reduce the salaries, rather they were reduced in accordance with the effective 1996 Agreement, negotiated by the teachers' bargaining agent with the Board.

ALJ concluded that the Board had no legal authority for its reduction of petitioners' salaries during the 1996-97 school year as the Board had expressly set each petitioner's salary on June 17, 1996, had notified each individual of the approved salary by letter dated June 18, 1996 and had begun to pay the established salaries in September 1996. Thus, petitioners acquired vested rights to the established salaries and the Board's subsequent action to reduce their salaries was in violation of their tenure rights. ALJ ordered that the salaries of petitioners be in accordance with the levels established in the respective June 18, 1996 letters until each petitioner attained the next salary step. ALJ further ordered that the amounts recouped from each petitioner be repaid.

Commissioner adopted findings and determination in initial decision as his own and directed the Board to repay petitioners for the 1996-97 school year those amounts which represent the difference between their stated salaries as per the June 18, 1996 letters and their salaries pursuant to the 1996 bargaining agreement. (The Board may freeze petitioners' salaries at the 1996-97 level until the 1996 salary guide "catches up" to their salaries.)

AUGUST 6, 1998

OAL DKT. NOS. EDU 1449-97, 1450-97, 1451-97, 1452-97, 1453-97 and 1454-97,
(CONSOLIDATED)
AGENCY DKT. NOS. 609-12/96, 606-12/96, 607-12/96, 605-12/96, 608-12/96 and 597-12/96

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The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. Both the Board’s and petitioners’ exceptions are duly noted as submitted in accordance with *N.J.A.C.* 1:1-18.4, and were considered by the Commissioner in rendering the within decision.

Upon careful and independent review of the record in this matter, which included a transcript of the hearing conducted on February 18, 1998, the Commissioner concurs with the findings of the Administrative Law Judge (ALJ), as well as his conclusion that the Board violated petitioners’ statutory tenure rights when it acted to recoup the amounts paid in excess of step 15*, as per the 1996 bargaining agreement. As noted in *Bd. of Education of Twp. of Neptune v. Neptune Twp. Bd. of Education*, 144 *N.J.* 16 (1996), “[o]nce an increment pursuant to a salary schedule ‘accrue[s],’ those tenure rules [found at *N.J.S.A.* 18A:28-5] apply to it and

render it ‘beyond recall.’”¹ (*Neptune* at 25, citing *Greenway v. Board of Education*, 129 N.J.L. 461, 464 (E. & A. 1942))

Accordingly, the initial decision of the OAL is adopted for the reasons expressed therein. The Board is hereby directed to repay petitioners for the 1996-97 school year those amounts which represent the difference between their stated salaries as per the June 18, 1996 letters, and their salaries pursuant to the 1996 bargaining agreement.² The Board may freeze petitioners’ salaries at the 1996-97 level, as determined herein, until the 1996 salary guide “catches up” to their salaries.³

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

AUGUST 6, 1998

¹ The Commissioner recognizes that the 1994 contract in question in this matter was a two-year agreement, rather than a three-year agreement, as in *Neptune*, *supra*. While this fact may bear upon the applicability of *Neptune*’s ultimate holding with respect to a Board authority to award increments under an expired contract pursuant to N.J.S.A. 18A:29-4.1, this question is not at issue herein, and would not, in any case, render inapposite the Court’s declaration as to the affect of the tenure laws under circumstances similar to those herein.

² Those amounts were identified in the initial decision at page 4, footnote 2, as \$4,104 for Marlene DiPasquale; \$3,650 for Kathleen Hoeller; \$4,250 for Patricia Iovino; \$2,425 for Cynthia Schalago-Schirm; \$4,250 for Frank Tsien and \$4,250 for Nancy Zimmerman.

³ This decision, as the Commissioner’s final determination in the instant matter, may be appealed to the State Board of Education pursuant to N.J.S.A. 18A:6-27 *et seq.* and N.J.A.C. 6:2-1.1 *et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.