

STATE OF NEW JERSEY  
DEPARTMENT OF EDUCATION  
TRENTON, NEW JERSEY

-----  
IN THE MATTER OF TENURE HEARING OF )  
STATE-OPERATED SCHOOL DISTRICT OF THE )  
CITY OF NEWARK, ESSEX COUNTY )  
 )  
-against- )  
 )  
NEIL THOMAS )  
 )  
 )  
Docket No. 59-3/15 )  
 )  
 )  
-----

OPINION  
AND  
AWARD

Before: Robert T. Simmelkjaer, Esq.  
ARBITRATOR

APPEARANCES

FOR THE BOARD

Brenda C. Liss, Esq., Riker Danzig Scherer Hyland Perritti, LLP

FOR THE RESPONDENT

Kathleen Naprstek Cerisano, Esq., Zazzali Fagella Nowak Kleinbaum & Friedman, PC

## BACKGROUND

On November 19, 2014, the undersigned issued his decision I/M/O/ Tenure Charge Neil Thomas, State-Operated School District of the City of Newark ("District") (Agency Docket No. 244-9/14) dismissing a Charge of Inefficiency brought under Section 25 of TEACHNJ. On or about March 24, 2015, the School District filed an Amended Charge of Inefficiency with the Commissioner under Section 8 of TEACH NJ.

On April 8, 2015, the Respondent filed a Motion for Summary Judgment. On April 10, 2015, the District submitted its preliminary response to the motion. On April 13, 2015, the Commissioner referred the charge to the arbitrator "to handle as he deems appropriate."

Subsequently, on May 19, 2015, the District filed its Opposition to the Motion for Summary Judgment. At the same time, the District filed a motion with the Commissioner requesting a stay of this matter pending its appeal to the Superior Court of New Jersey, Appellate Division, challenging, *inter alia*, the assignment of the Amended Inefficiency Charge to arbitration. On May 28, 2015, the Respondent submitted his letter-brief in Opposition to the Motion for a Stay of the Commissioner's Decision to refer the instant matter to the undersigned arbitrator. On June 1, 2015, the District submitted a reply to the Respondent's letter- brief.

By letter dated June 4, 2015, the Commissioner determined that he "lacks jurisdiction to hear and decide petitioner's Motion for Stay Pending Appeal. This determination shall not preclude the parties from seeking the desired relief before the arbitrator pursuant to *N.J.A.C. 6A:3-5.5(b)*."

On June 15, 2015, the Respondent submitted his reply to the District's Opposition to Respondent's Motion for Summary Judgment.

On June 17, 2015, the District renewed its request that the arbitrator "hold this matter in abeyance pursuant to *N.J.A.C. 6A:3-5.5 (l)(b)* until our appeal of the Commissioner's action, referring this matter to arbitration is resolved ..." On June 22, 2015, the Respondent submitted his Opposition to the District's request to stay the matter.

On July 2, 2015 the District advised the Arbitrator that it "hereby withdraws the tenure charge of inefficiency against Respondent Neil Thomas in its entirety." By letter dated July 8, 2015, the District was "advised that *N.J.A.C. 6A:3-5.6* requires the approval of the arbitrator for withdrawal."

By letter dated August 3, 2015, the District requested the approval of the Arbitrator pursuant to *N.J.A.C. 6A:3-5.6* to withdraw the tenure charge filed against Neil Thomas. (See attached.).

I have reviewed the District's request in accordance with *N.J.A.C. 6A:3-5.6*, Withdrawal, settlement or mooted of tenure charges, and the standards set forth in the matter entitled *In re Cardonick*, State Board decision of April 6, 1983 (1990) *School Law Decisions (S.L.D.)* 842, 846 and found that the District's request meets the statutory criteria.

The District has delineated the circumstances that have persuaded it that Respondent can effectively perform his duties as a teacher, having "received an annual summative evaluation rating of 'effective' for the 2014-2015 school year." Given this

rating, "the School District has determined that these circumstances justify withdrawal of the tenure charge, and that withdrawal of the tenure charge is in the public interest.

The District also has addressed additional criteria for the withdrawal of tenure charges to the satisfaction of the arbitrator. The District has affirmed that "the withdrawal is not the result of a settlement; the School District has neither sought or obtained any agreement by Respondent in exchange or withdrawal of the tenure charge against him; the withdrawal does not involve any terms that would restrict access to information or records deemed public by law or result is misrepresentation of the reason for Respondent's separation from service (no such separation will occur as a result of the proposed withdrawal."

Finally, the District notes that "the facts underlying the tenure charge of inefficiency against Respondent do not constitute grounds for disciplinary action or penalty imposed on Employee and do not give rise to any obligation on the part of the school District to notify the State Board of Examiners or Division of Pension. The School District does not intend to seek suspension or revocation of Employee's teaching certification."

Based on the foregoing representations of District Counsel and pursuant to the criteria for withdrawal of Tenure Charges set forth in *N.J.A.C. 6A; 3-5.6*, the District's Motion to withdraw the tenure charges filed against Neil Thomas is granted

Very truly yours,

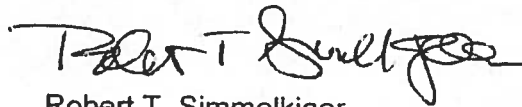
*Robert T. Simmelkjaer*  
Robert T. Simmelkjaer

NOW THEREFORE, as the duly selected Arbitrator, having heard the evidence presented, I hereby issue the following:

**AWARD**

The District's request to withdraw the Tenure Charge against Neil Thomas, Respondent and Tenured Teacher, pursuant to N.J.A.C. 6A:3-5.6 is granted.

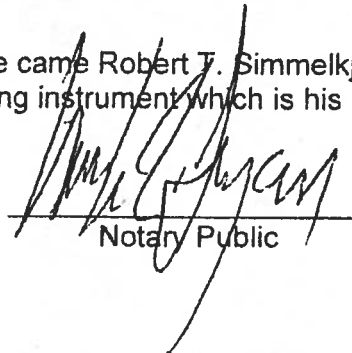
Very truly yours,



Robert T. Simmelkjaer

STATE OF NEW JERSEY}  
COUNTY OF BERGEN}

On the 5<sup>th</sup> day of August 2015 before me came Robert T. Simmelkjaer to me known as the person who executed the foregoing instrument which is his award.

  
Notary Public

William G. Doogan  
Notary Public, State of New Jersey  
No. 2235499  
Qualified in Bergen County  
Commission expires 12/21 20 19