

July 13, 2000

Arnold M. Mellk, Esq.  
Wills, O'Neill & Mellk  
10 Nassau Street  
P.O. Box 614  
Princeton, NJ 08542

Sanford D. Brown, Esq.  
Cerrato, Dawes, Collins, Saker,  
Brown & Wilder  
509 Stillwells Corner Road  
P.O. Box 6009  
Freehold, NJ 07728

Dear Parties:

Upon review of the papers filed in the matter entitled *Lawrence Tave v. Board of Education of the Manalapan-Englishtown Regional School District, Monmouth County*, Agency Dkt. No. 112-4/00, I have determined to dismiss the Petition of Appeal.

This matter was opened by way of the filing of a Petition of Appeal on March 29, 2000. The petition alleges that the Board improperly suspended petitioner, a tenured teacher, without pay from January 3, 2000 through January 14, 2000. Petitioner asserts that this suspension without pay was contrary to law because he had neither been indicted nor subjected to certified tenure charges.

The Board submitted its Answer to the petition on April 19, 2000 asserting as a separate defense that the Commissioner lacks jurisdiction since the Board's action constitutes minor discipline under *N.J.S.A. 34:13A-24*; and, thus, the matter is subject to the grievance and arbitration procedures of the contract between the Manalapan-Englishtown Education Association and the Board. *N.J.S.A. 34:13A-24* provides, as follows:

- a. Notwithstanding any other law to the contrary, and if negotiated with the majority representative of the employees in the appropriate collective bargaining unit, an employer shall have the authority to impose minor discipline on employees. Nothing

contained herein shall limit the authority of the employer to impose, in the absence of a negotiated agreement regarding minor discipline, any disciplinary sanction which is authorized and not prohibited by law.

b. The scope of such negotiations shall include a schedule setting forth the acts and omissions for which minor discipline may be imposed, and also the penalty to be imposed for any act or omission warranting imposition of minor discipline.

c. *Fines and suspensions for minor discipline shall not constitute a reduction in compensation pursuant to the provisions of N.J.S. 18A:6-10.* (emphasis supplied)

By letter of May 17, 2000, the Director of the Bureau of Controversies and Disputes notified the parties that it appeared that the disputed issue was amenable to resolution as a matter of law. A briefing schedule was, therefore, established to provide the parties an opportunity to set forth their legal arguments as to whether the suspension without pay was unlawful.

Petitioner filed his response on May 30, 2000. Citing *Slater v. Board of Educ. of Ramapo-Indian Hills Reg. High Sch. Dist.*, 237 N.J. Super. 424 (App. Div. 1989), petitioner reiterates his argument that a board may suspend a tenured employee without pay only if the employee is either under indictment or the board has certified tenure charges, neither of which is present in this instance. (Petitioner's Brief at 2)

The Board's response was filed on June 9, 2000. Therein, the Board restates its argument that the Commissioner lacks jurisdiction in this matter since petitioner's suspension without pay constitutes minor discipline pursuant to N.J.S.A. 34:13A-24, which authorizes a board to impose minor discipline on an employee in accordance with the negotiated agreement of the appropriate collective bargaining unit. The Board notes that N.J.S.A. 34:13A-24c specifically states that "[f]ines and suspensions for minor discipline shall not constitute a reduction in compensation pursuant to the provisions of N.J.S. 18A:6-10." (Board's Brief at 2) The Board further argues that petitioner's reliance on *Slater, supra*, is misplaced since *Slater* was decided before the enactment of N.J.S.A. 34:13A-24. (*Id.* at 4) The collective bargaining agreement between the Board and the Teacher's Association, the Board submits, provides for the imposition of minor discipline, as follows:

Article IV, Section 4.16

No teacher shall be disciplined or reprimanded without just cause. Any action asserted by the Board or any agent or representative thereof shall be subject to the grievance procedures as contained herein.

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Article IV, Section 4.17

All discipline of any member of this unit shall be progressive in nature and proportionate to the action alleged to have been committed. The penalties for any alleged action may be as follows:

1. oral warning
2. written reprimand
3. suspension without pay
4. docking
5. increment withholding
6. dismissal

(Respondent's Brief, Attachment 1, at 6)

The Board avers that a Scope of Negotiations Determination has been filed with the Public Employment Relations Commission in this matter and that petitioner is not without remedy, but that the appropriate remedy is arbitration. (*Id.* at 5)

Upon a thorough review of this matter, I note that *N.J.S.A.* 34:13A-24 carves out a clear and unambiguous exception to *N.J.S.A.* 18A:6-10, authorizing a board to suspend teaching staff members without pay for minor discipline if negotiated with the majority representative of the employees in the appropriate bargaining unit. Since that appears to be the case in this instance, there is no basis on which I may order relief on the present appeal in the absence of a determination by a court or agency of appropriate jurisdiction that the Board's action against petitioner did not constitute "minor discipline" within the meaning of *N.J.S.A.* 34:13A-24.

Accordingly, I hereby dismiss the petition for the reasons set forth above, without prejudice to any appeal arising from a determination that the Board's action did not fall within the purview of *N.J.S.A.* 34:13A-24.\*

Sincerely,

David C. Hesper  
Commissioner

c: County Superintendent  
Board Secretary

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\* This decision, as the Commissioner's final determination, may be appealed to the State Board of Education pursuant to *N.J.S.A.* 18A:6-27 and *N.J.A.C.* 6A:4-1.1 *et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.