

JOHN MANLEY, :
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 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF OLD BRIDGE : DECISION
 TOWNSHIP, MIDDLESEX COUNTY, :
 :
 RESPONDENT. :
 _____ :

SYNOPSIS

Petitioner, a tenured special education teacher, alleged that the Board violated his tenure rights by terminating his employment as a Subject Area Coordinator, resulting in a reduction in salary and elimination of one of petitioner’s contractually delineated duties. Petitioner contends that he attained tenure in the coordinator position by serving the statutorily-prescribed period in the position. Respondent Board maintains that tenure does not attach to a position compensated by stipend.

The ALJ found that: the matter was ripe for summary judgment; service in the title of Subject Area Coordinator leads to tenure as a teacher, not to the specific position of Subject Area Coordinator; the Subject Area Coordinator position was extracurricular; and the petitioner’s stipend for work in the position of Subject Area Coordinator was not treated as salary by the Board, and was granted pursuant to another agreement as “extra compensation”. The ALJ concluded that the Board did not violate petitioner’s tenure rights by transferring him to another teaching position where he does not receive additional Subject Area Coordinator stipend, and ordered the petition dismissed with prejudice.

Upon a thorough and independent review, the Commissioner determined, pursuant to *Shriner v. Board of Education of Boonton*, 75 S.L.D. 939, that the Board had treated petitioner’s stipend position monies as an integral part of his salary. However, notwithstanding petitioner’s loss of compensation due to the non-availability of a coordinator stipend position at his newly assigned school, he suffered no reduction in pay. Rather, petitioner’s teaching salary for the 2004-2005 school year increased as a result of his progression on the salary guide. The Commissioner, therefore, determined that there was no relief to be accorded petitioner, adopted the Initial Decision as modified above, and dismissed the instant petition.

<p>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.</p>

OAL DKT. NO. EDU 10644-04
AGENCY DKT. NO. 368-10/04

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner’s exceptions, filed in accordance with the provisions of *N.J.A.C. 1:1-18.4*, were fully considered by the Commissioner in reaching her determination herein. The Board did not file reply exceptions.

Petitioner excepts to the Administrative Law Judge’s (ALJ) conclusion that his compensation for functioning as a Subject Area Coordinator was not treated as an integral portion of his salary by the Board and that he, therefore, possesses no entitlement to these moneys. Rather, petitioner argues, compensation for this position was included in the paycheck he received for his teaching duties and was subject to pension contributions. Thus, petitioner maintains that he is entitled to retain the salary for this additional position even though he no longer serves as a Subject Area Coordinator. (Petitioner’s Exceptions at 1-2) In support of his argument, petitioner first cites to *N.J.A.C. 17:3-4.1* which, he avers, in pertinent part specifies:

- (a) Only a member’s base or contractual salary shall be subject to pension***contributions***(1) “Base salary” means the annual compensation of a member, in accordance with contracts, ordinances, resolutions, or other established salary policies of the

member's employer for all employees in the same position, or all employees covered by the collective bargaining agreement, which is reported in regular, periodic installments in accordance with the payroll cycle of the employer. (2) "Extra compensation" means individual salary adjustments which are granted primarily in anticipation of a member's retirement or as additional remuneration for performing temporary duties beyond the regular work day or work year.¹
(Petitioner's Exceptions at 2-3)

Although the ALJ determined that "inclusion of his stipend in pension contributions should not affect the tenure analysis" (Initial Decision at 8), pursuant to this regulatory provision, petitioner submits, "such inclusion is the tenure analysis." (*Id.* at 3) (emphasis in text)

Next, despite the ALJ's Initial Decision discussion of the Commissioner's holding in *Shriner v. Board of Education of Boonton*, 75 S.L.D. 939, which petitioner advances appears factually identical to the situation here, wherein he recognized

[t]here it was stated that because the Board incorporated the Petitioner's stipend into his contract salary, and in all other ways treated the stipend as salary (including pension payments), the stipend amount was protected by tenure even though the position for which Petitioner received the stipend was not. (Initial Decision at 8)

the ALJ nonetheless tried to distinguish this matter when he further stated that here "the Respondent did not treat Petitioner's stipend as salary as it was granted pursuant to another agreement and referred to as 'extra compensation.'" (Petitioner's Exceptions at 4) Petitioner maintains that the verbal categorization of these payments utilized by the Board is wholly irrelevant to the analysis. Solely germane, he argues, is that "payment for his duties as Subject Area Coordinator was part and parcel of his salary for his duties as a teacher. The former was an

¹ Petitioner asserts that, pursuant to *Siri v. Board of Trustees of the Teachers' Pension & Annuity Fund*, 262 N.J. Super. 147, 152 the term "temporary duties" is only applicable in cases where a teaching staff member is temporarily assigned to substitute for the regular holder of the position. (*Id.* at 3)

integral part of the latter. Petitioner is therefore entitled to this extra compensation for Subject Area Coordinator, even if he is no longer entitled to the position.” (*Ibid.*)

Upon careful and independent review of the record, and full consideration of petitioner’s exception advancements, the Commissioner concurs with the ALJ that Summary Decision is appropriately granted to the Board. In so determining, the Commissioner is satisfied -- for the reasons detailed in the ALJ’s decision at pp. 3-7 -- that petitioner did not acquire tenure in his coordinator position, nor were the duties of this position other than extracurricular in nature. The crux of petitioner’s remaining claim of entitlement to the additional compensation is that, pursuant to *Shriner, supra*, because the Board incorporated the stipend for his Subject Area Coordinator duties as an *integral* part of his contractual teaching salary, depriving him of these monies equates to a reduction in salary which -- absent the certification of tenure charges to the Commissioner -- is violative of his tenure rights pursuant to *N.J.S.A.* 18A:6-10. The Commissioner finds that, to the extent that *Shriner, supra*, may be read to provide petitioner relief in this matter, a reasoned reading of this decision in its entirety conclusively demonstrates that, under the circumstances existing here, such is not the case.

In *Shriner, supra*, petitioner -- a tenured teacher -- also served in the stipended position of athletic director/head of the physical education department, for which he received an additional \$550 a year. In 1964, at petitioner’s request, the Board incorporated his stipend into a single contract salary for teaching. Thereafter, it provided annual notification to petitioner of renewal of his appointment as a teacher and the athletic director/head of physical education department position at a single designated salary for the ensuing year through the 1972-73 school year, at which time his salary was \$16,500. Between May and July 1973, the Board acted to assign the duties of athletic director/head of physical education department to another individual

and reduced petitioner's 1973-74 salary by \$1,000, the amount he would have received had he continued to serve in his stipend position, which resulted in an overall reduction in salary of \$520.² On appeal, it was found

that the Board, having incorporated petitioner's stipend for performing as athletic director into his contract salary in 1964, thereafter treated it as a single salary. Payments that were made to the Teacher's Pension and Annuity Fund on petitioner's behalf were computed on the total amount of the contract salary. Such action by the Board is supportive of the conclusion that the Board, while it did negotiate the amount of stipend to be paid an athletic director, looked upon, and in fact established the additional compensation of its athletic director, as an integral portion of his salary as a teaching staff member. It therefore follows that when the Board established petitioner's salary at \$15,980 for the 1973-74 school year, it reduced his salary from the \$16,500 he was paid in 1972-73 by \$520.
Shriner at 940

As such, the Commissioner held that -- absent the certification of tenure charges -- such reduction was impermissible and must be restored.

However, Shriner's claim of entitlement to a continuing salary that was \$1,000 higher than that of other negotiated teaching staff members with equal training, assigned duties and years of experience -- irrespective of the fact that he was no longer performing the duties of the stipend position -- was rejected. Rather, the Commissioner concluded:

Petitioner has no continuing entitlement beyond 1972-73 to a salary \$1,000 greater than that called for in the negotiated salary policy for a teaching staff member of his years and experience, training, and assigned duties. The Commissioner so holds. *Consequently, the Board may establish petitioner's salary at \$16,500 subsequent to school year 1972-73 until his years of experience entitle him to receive the next increment on his assigned salary scale.* (citation omitted) *Shriner* at 942 (emphasis added)

² Such is the case because the Board established petitioner's 1973-74 school year salary at \$15,980, which incorporated a scheduled increment progression at the beginning of the school year.

With this background in mind, the Commissioner turns to the factual situation existing in the case at bar. The record reflects that, despite the fact that the within Board did treat petitioner's stipend payment as an integral part of his teaching salary, pursuant to *Shriner, supra*, and -- notwithstanding his loss of compensation due to the non-availability of a coordinator stipend position at his newly assigned school -- *petitioner has suffered no reduction in salary*. Indeed, it is uncontroverted that his salary as a teacher for the 2004-05 school year *increased* as a result of his progression on the negotiated salary guide. Given that petitioner is no longer performing the duties of the coordinator stipend position, and has not been impermissibly reduced in salary, the Commissioner finds and concludes that there is no relief which can be accorded him in this matter.

Accordingly, the Initial Decision of the OAL, as modified above, is adopted as the final decision in this matter and the instant Petition of Appeal is hereby dismissed.

IT IS SO ORDERED.³

ACTING COMMISSIONER OF EDUCATION

Date of Decision: December 19, 2005

Date of Mailing: December 20, 2005

³ This decision 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. 6A:4-1.1 et seq.*