

#292-13 (OAL Decision: Not yet available online)

ROSALEE S. ELSON, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE CITY OF : DECISION
 NEW BRUNSWICK, MIDDLESEX COUNTY, :
 :
 RESPONDENT. :
 _____ :

SYNOPSIS

Petitioner – a tenured teaching staff member employed by the respondent Board since 2001 – challenged the Board’s action in reducing her salary to recoup alleged overpayments made to petitioner during the time period from September 2009 to January 2010. Petitioner contended that the Board violated her tenure rights when it withheld a total of \$5,000 in five monthly installments to reimburse for a stipend which was inadvertently double-paid to the petitioner; petitioner sought to have the Board reissue the \$5,000 recoupment to her, and then recapture the same amount by freezing petitioner’s salary for future years until the \$5,000 is recouped. The Board contended that there was no violation of petitioner’s tenure rights and she was not financially harmed by the recoupment, as she was at all times fully aware of her appropriate salary step and the fact that she had received a \$5,000 overpayment for the period from September 2009 to January 2010.

The ALJ found, *inter alia*, that: although there is a body of case law that has established that a board of education cannot require reimbursement of money paid in error through no fault of the employee, the facts in the case at bar clearly differ in that here there is no dispute regarding petitioner’s position on the salary guide nor the amount of salary she was entitled to for the 2009-2010 school year; petitioner received full salary for the year, with full benefits; the contention that petitioner’s salary was reduced by virtue of the withheld recoupment payments is without merit; petitioner was clearly aware that she had received double payment of her stipend, as she brought the initial overpayment to the attention of respondent’s payroll department and jokingly indicated that she would “love to keep it”; the \$5,000 overpayment was recaptured in the same manner in which it made; and the \$5,000 double payment to petitioner was rightfully recouped as it was not a salary guide error but rather an overpayment of which petitioner was aware. Accordingly, the ALJ ordered the petition dismissed.

Upon full review, the Commissioner concurred with the findings and conclusions of the ALJ, and adopted the Initial Decision of the OAL as the final decision in this matter. The petition was dismissed.

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.

August 15, 2013

ROSALEE S. ELSON, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE CITY OF : DECISION
 NEW BRUNSWICK, MIDDLESEX COUNTY, :
 :
 RESPONDENT. :
 _____ :

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner’s exceptions and the Board’s reply thereto were filed in accordance with the prescriptions of *N.J.A.C. 1:1-18.4*, and were fully considered by the Commissioner in reaching his determination herein.

Petitioner’s exceptions and the Board’s reply essentially replicate the briefs submitted to the Administrative Law Judge (ALJ) in support of the parties’ respective cross-motions for summary decision below. The Commissioner finds that the arguments advanced therein were fully considered and addressed by the ALJ in his Initial Decision. Accordingly, they will not be revisited in depth here.

Upon his full review, the Commissioner agrees with the ALJ’s determination that, under the circumstances of this case, the Board did not violate petitioner’s tenure rights when it reduced her semi-monthly paychecks to recoup an overpayment. The Commissioner further agrees with the ALJ’s determination that the cases cited by petitioner respecting salary guide errors are distinguishable from this case. The Commissioner finds the salient facts in this matter

more closely analogous to the situation in *Trenton Education Association, et al. v. Board of Education of the City of Trenton*, decided by the State Board of Education, December 1, 1999.

In *Trenton Education Association, supra*, the State Board held that the Trenton board had not violated the tenure rights of its custodial employees when it reduced six of their bi-weekly paychecks during the 1992-93 school year in order to recoup an overpayment. The overpayment in that case had not resulted from action by the Trenton board in erroneously placing the custodians on the negotiated salary guide or incorrectly establishing their salaries under the terms of that guide. Rather, the Trenton board had erred in calculating the specific amounts to be included in the custodians' bi-weekly paychecks based on their established annual salaries. Nor was there any indication in that case that the custodial employees had received compensation for the 1992-93 school year which was less than the amount established by the Trenton board under the terms of the district's negotiated guide or as set forth in that guide. Under those circumstances, the State Board concluded that the Trenton board's action in recouping the overpayments by reducing the custodians bi-weekly paychecks during the course of the year did not constitute an impermissible reduction in compensation as contemplated by *N.J.S.A. 18A:17-3 and 17-4*.

Similarly, it is undisputed in the instant case that the overpayments did not result from the incorrect establishment of petitioner's salary. Rather, the district's payroll department erroneously double-paid the stipend amount owing to petitioner. Pursuant to the decision in *Trenton Education Association, supra*, the tenure laws do not prohibit the Board from recovering such an overpayment by reducing the petitioner's paychecks. *See also, Sklute et al. v. Board of Education of the City of Trenton*, OAL Docket No. EDU 9852-94 (October 18, 1995), *aff'd*, Comm'r of Educ. (December 1, 1995), *aff'd* State Board, (February 2, 2000). Thus, under the

particular circumstances presented herein, the Commissioner concludes that the Board's action in deducting the amount of the overpayment from subsequent paychecks issued to the petitioner did not constitute an impermissible reduction in compensation as contemplated by *N.J.S.A. 18A:6-10*.

Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter and the within petition of appeal is hereby dismissed.

IT IS SO ORDERED.¹

COMMISSIONER OF EDUCATION

Date of Decision: August 15, 2013

Date of Mailing: August 15, 2013

¹ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36*.