

EDU #10333-96 and 6748-97 (consolidated)
C # 352-02
SB # 41-02

JOHN SCOTT AND CHARLES YARNALL, :
PETITIONERS-CROSS/APPELLANT, :

V. :

BOARD OF EDUCATION OF THE CITY :
OF TRENTON, MERCER COUNTY, :
AND BOARD OF EDUCATION OF :
THE MERCER COUNTY VOCATIONAL :
TECHNICAL SCHOOL DISTRICT, :
MERCER COUNTY, :

STATE BOARD OF EDUCATION
DECISION

RESPONDENTS-APPELLANT, :

AND :

JAMES PUPALAIKIS, AUGUSTINE :
SPAGNOLA AND EDWARD SCHMIDT, :

PETITIONERS-CROSS/APPELLANT, :

V. :

BOARD OF EDUCATION OF THE CITY :
OF TRENTON, MERCER COUNTY, :
AND BOARD OF EDUCATION OF :
THE MERCER COUNTY VOCATIONAL :
TECHNICAL SCHOOL DISTRICT, :
MERCER COUNTY, :

RESPONDENTS-APPELLANT.¹ :

¹ Charles Yarnall and James Pupalaiakis were the only petitioners whose claims were determined by the Commissioner and, consequently, the only petitioners involved in the instant appeal. Thus, all references herein to “the petitioners” refer to Yarnall and Pupalaiakis only. We note, in addition, that the Board of Education of the Mercer County Vocational Technical School District was dismissed as a respondent to this matter during the proceedings in the Office of Administrative Law.

Decided by the Commissioner of Education, September 30, 2002

For the Respondent-Appellant Board of Education of the City of Trenton,
Sumners George (Thomas W. Sumners, Jr., Esq., of Counsel)

For the Petitioners-Cross Appellants Charles Yarnall and James
Pupalaikis, Ridgway and Stayton, LLC (Herbert J. Stayton, Jr.,
Esq., of Counsel)

Petitioner Charles Yarnall, a tenured teaching staff member, was employed as a teacher by the Board of Education of the City of Trenton (hereinafter "Board") commencing in September 1992. In September 1996, the Board abolished Yarnall's position, effective November 25, 1996, as the result of a reduction in force ("RIF"). In October 1996, Yarnall filed a petition with the Commissioner of Education challenging the Board's action and seeking reinstatement and back pay. In a letter to the Assistant Superintendent dated November 20, 1996, Yarnall questioned the propriety of the Board's action. On January 23, 1998, the Board reinstated Yarnall. In a letter dated March 30, 1998 to the Administrative Law Judge ("ALJ"), counsel for the Board acknowledged that Yarnall's seniority rights had entitled him to another teaching assignment at the time of his RIF in November 1996. Counsel added, however, that Yarnall's back pay should be limited to the period between November 26, 1996 and June 30, 1997 since he would have been subject to another RIF at the end of the 1996-97 school year. Counsel subsequently acknowledged in July 2002 that Yarnall's seniority rights also had entitled him to a teaching assignment in 1997-98.

Petitioner James Pupalaikis, also a tenured teaching staff member, began his employment as a teacher with the Board in September 1990. By letter dated April 15, 1997, the Board advised Pupalaikis that his position was being abolished as the result

of a reduction in force, effective June 30, 1997. In a memorandum dated April 25, 1997, Pupalaikis notified the Board that it had erred in calculating his seniority since it had not given him credit for his military service and had failed to include all of the endorsements on his instructional certificate. In July 1997, Pupalaikis filed a petition with the Commissioner challenging the Board's action and seeking reinstatement and back pay. The Board reinstated Pupalaikis to a teaching assignment on February 10, 1998. In the letter dated March 30, 1998 to the ALJ, counsel for the Board acknowledged that Pupalaikis should have been returned to employment on September 1, 1997 in an assignment teaching computer literacy held by a teacher with less seniority and, as a result, that he was entitled to back pay for the period from September 1, 1997 through February 9, 1998.

During the course of these proceedings, the parties stipulated to the amount of the petitioners' lost wages, along with the amount of unemployment compensation benefits they had received. However, the petitioners also sought prejudgment interest and consequential damages from the Board.

On August 13, 2002, the ALJ recommended denying the petitioners' claim for consequential damages, concluding that the Commissioner did not have the authority to award such damages. She, however, recommended granting the petitioners' claim for prejudgment interest.

With respect to Pupalaikis, the ALJ concluded that the Board's failure to adjust its seniority list and to rescind the termination notice prior to the commencement of the 1997-98 school year constituted "constructive bad faith." The ALJ observed that the Board had all the information necessary to correct its mistake in April 1997 when

Pupalaikis, in his memorandum, specifically identified the error the Board had committed in computing his seniority.

The ALJ also concluded that Yarnall was entitled to prejudgment interest. Although finding that there was insufficient evidence to conclude that the Board's error in calculating Yarnall's seniority was anything other than a good faith mistake, the ALJ observed that the Board had conceded since March 30, 1998 that Yarnall was entitled to salary withheld for the period from November 26, 1996 through June 30, 1997 and that the Board had acknowledged on July 2, 2002 that Yarnall was entitled to salary withheld for the period from September 1, 1997 through January 22, 1998.

On September 30, 2002, the Commissioner adopted with modification the ALJ's recommended decision. The Commissioner agreed with the ALJ that he did not have the authority to award consequential damages. He also concurred that the Board's failure to return Pupalaikis to employment prior to the 1997-98 school year satisfied the regulatory standard for the awarding of prejudgment interest. Under these circumstances, the Commissioner agreed with the ALJ that the Board's failure to reinstate Pupalaikis in September 1997 represented "a knowing disregard of the law amounting to constructive bad faith." Commissioner's Decision, slip op. at 20. He therefore directed that Pupalaikis be awarded prejudgment interest calculated from September 1, 1997.

The Commissioner also agreed that Yarnall was entitled to prejudgment interest for the period subsequent to the Board's concession of his entitlement to reemployment, observing that "[o]nce Yarnall's entitlement was conceded...the two Petitioners shared substantially the same posture...." Id. at 21. He therefore directed that Yarnall be

awarded prejudgment interest calculated from May 30, 1998 on the back pay due for the 1996-97 school year, along with prejudgment interest calculated from August 31, 2002 on back pay due for 1997-98.

The Commissioner modified the ALJ's conclusion that the Board was not entitled to deduct unemployment compensation benefits received by the petitioners from their back pay awards. Instead, he directed that the Board offset the back pay awards by the amount of unemployment compensation the petitioners had received and reimburse the Division of Unemployment Compensation for those amounts.

The Board filed the instant appeal to the State Board, challenging the Commissioner's decision to award prejudgment interest to the petitioners.² The petitioners filed a notice of cross-appeal.

Initially, we dismiss the petitioners' cross-appeal for failure to perfect. The petitioners filed their cross-appeal on October 30, 2002. Pursuant to N.J.A.C. 6A:4-1.11(b), the brief in support of their cross-appeal was due on December 16, 2002, 30 days after the Board filed its appeal brief. The petitioners, however, failed to file a brief by that date. By letter dated December 24, 2002, the Director of the State Board Appeals Office notified counsel for the petitioners of his failure to file a brief in support of the cross-appeal and informed him that this matter was being referred to the Legal Committee of the State Board for consideration of the petitioners' failure to perfect the cross-appeal.

The petitioners have still failed to file a brief in support of their cross-appeal. Nor have they offered any explanation for their failure to file or requested an extension of

² The petitioners did not file an answer to the Board's brief in support of its appeal.

time. As a result, we dismiss the petitioners' cross-appeal for failure to perfect. N.J.A.C. 6A:4-1.12(a). See Paszamant v. Board of Education of the Borough of Highland Park, decided by the State Board of Education, April 1, 1992, aff'd, Docket #A-4812-91-3 (App. Div. 1993).

Turning to the merits of the Board's appeal, we affirm with modification the Commissioner's determination to award prejudgment interest to Yarnall and Pupalaikis. We fully agree with the Commissioner that "[w]hatever other issues may have remained in dispute among the parties, there was no dispute about Petitioners' respective entitlements to at least that portion of back pay not affected by unemployment compensation offset, and there appears to be no reason why the Board could not and should not have remitted these monies to Petitioners forthwith." Commissioner's Decision, slip op. at 21. However, we modify the dates from which prejudgment interest is to be calculated.

N.J.A.C. 6A:3-1.17 provides, in pertinent part:

(a) The Commissioner may, pursuant to the criteria of this section, award prejudgment and/or postjudgment interest in any circumstance in which a petitioner has sought such relief and has successfully established a claim to a monetary award.

(b) "Interest" is defined as follows:

1. Pre-judgment interest is interest awarded for that period of time prior to the adjudication of the monetary claim.

(c) The following criteria shall be applied when awarding interest:

1. The Commissioner shall award prejudgment interest when he or she has concluded that the denial of the monetary claim was an action taken in bad faith and/or has

been determined to have been taken in deliberate violation of statute or rule.

We conclude that Yarnall is entitled to prejudgment interest calculated from March 30, 1998 for the 1996-97 school year and from July 2, 2002 for the 1997-98 school year, when the Board conceded his entitlement to such pay, rather than 60 days thereafter as computed by the ALJ and the Commissioner. As previously stated, the Commissioner adopted the ALJ's conclusion that prejudgment interest to Yarnall should be calculated from May 30, 1998 and August 31, 2002, 60 days after the Board acknowledged his entitlement to back pay for 1996-97 and 1997-98 respectively, "as suggested in N.J.A.C. 6A:3-1.17(c)2." Initial Decision, slip op. at 11. The cited provision, however, expressly applies to postjudgment interest, providing for such interest in the event that the party responsible for payment of an adjudicated judgment fails to satisfy the claim within 60 days after its award. N.J.A.C. 6A:3-1.17(c)1, which establishes the criteria for an award of prejudgment interest, does not include a waiting period.

Review of Board of Educ. Of City of Newark, Essex County v. Levitt, 197 N.J. Super. 239 (App. Div. 1984), which led to the adoption of the regulation at issue, reinforces our conclusion that the 60-day period applies to postjudgment interest only. In Levitt, in which the awarding of prejudgment and postjudgment interest were deemed to be within the Commissioner's incidental powers, the Court cautioned that "a public body should be accorded a reasonable time under the circumstances to make payment of the judgment before post-judgment interest begins to run." Id. at 248, n.3 (emphasis added). Significantly, the Court did not indicate or suggest that a waiting period also should apply to an award of prejudgment interest. Hence, we conclude that Yarnall's

prejudgment interest should be calculated from March 30, 1998 for the 1996-97 school year and from July 2, 2002 for the 1997-98 school year, when the Board conceded his entitlement to such pay.

With regard to Pupalaikis, we conclude that his prejudgment interest should be calculated from March 30, 1998, when the Board acknowledged his entitlement to back pay. The fact that Pupalaikis sent a memorandum to the Board in April 1997 contending that it had erred in calculating his seniority does not in itself demonstrate that the Board was acting with the requisite bad faith in not reemploying him until February 1998 after it determined that there was a teaching assignment to which he was entitled by virtue of his seniority as against other tenured teachers. See Takajian v. Board of Education of the Borough of Fairview, decided by the Commissioner of Education, 93 N.J.A.R.2d (EDU) 184 (an action contrary to seniority rights is not per se a basis for granting prejudgment interest). Thus, we modify the Commissioner's decision to the extent that he concluded that Pupalaikis is entitled to prejudgment interest calculated from September 1, 1997.

Finally, we reject the Board's argument that it should not be responsible for prejudgment interest since the petitioners "never demanded payment of the back wages to stop the tolling of interest accrual" after the Board conceded their entitlement to back pay. Appeal Brief, at 7. As previously indicated, N.J.A.C. 6A:3-1.17(c)1 provides for the awarding of prejudgment interest when the Commissioner concludes that "the denial of the monetary claim was an action taken in bad faith..." Here, the petitioners had filed petitions with the Commissioner seeking lost wages resulting from the Board's violation of their tenure and seniority rights. Those claims were denied by the Board. Thereafter,

during the course of these proceedings, the Board reinstated the petitioners and acknowledged that they had been entitled to other assignments at the time of their RIF's, along with back pay. It was not necessary for the petitioners to renew their demand for lost wages, which remained unsatisfied and pending before the Commissioner. We add in that regard that, under the circumstances presented by this matter, the Board's failure to pay the petitioners that portion of their back pay which was undisputed and readily calculable after it acknowledged their entitlement thereto was tantamount to a refusal to pay.³

Accordingly, as modified herein, we affirm the Commissioner's decision to award prejudgment interest to the petitioners.

June 2, 2004

Date of mailing _____

³ We note that the only matter of contention between the parties involved whether the Board was entitled to offset the back pay it owed the petitioners by the amount of unemployment compensation benefits they had received.