

CHARLES WEISBERG, :  
 :  
 PETITIONER, :  
 :  
 V. : COMMISSIONER OF EDUCATION  
 :  
 BOARD OF EDUCATION OF THE : DECISION  
 TOWNSHIP OF RIVERSIDE, :  
 BURLINGTON COUNTY, :  
 :  
 RESPONDENT. :

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### SYNOPSIS

Petitioner, Director of Special Education, alleged the Board improperly reduced his salary by refusing to compensate him for a total of two sick days, even though he had a sufficient number of days to cover such absences. The Board reinstated petitioner's half-day salary for January 3 and 4, 2001 after he provided verification for those absences but the salary for January 2 was still withheld as petitioner did not provide the requested verification for that day's absence, namely, a physician's note indicating he had been ill.

The ALJ found that pursuant to *N.J.S.A.* 18A:30-4 the Board *may* require a physician's certificate before accepting a tenured employee's claim of sick time and excusing the employee's absence. The ALJ determined that even though petitioner was asked about the one-day absence, he chose not to respond and left the absence unexcused. The ALJ found that the Board acted appropriately in withholding one day's salary as it was authorized to do under *N.J.S.A.* 18A:30-1 *et seq.* and Article X, Section 10.3 of the negotiated Agreement between the Board and its Administrative Association. Moreover, the ALJ found that the issue of payment or non-payment of salary for occasional absences due to illness is not subject to the provisions of *N.J.S.A.* 18A:28-5 and 18A:6-10. Petition was dismissed.

The Commissioner concurred with the ALJ's conclusion that petitioner failed to demonstrate that the Board's action in docking him a day's pay pursuant to *N.J.S.A.* 18A:30-1 *et seq.* was prohibited by the tenure statutes. The Commissioner did not reach to the ALJ's discussion with respect to whether the Board's action was authorized pursuant to the negotiated Agreement. In addition, the Commissioner noted the sole issue was whether the Board's action in docking petitioner for one day reduced his salary in violation of his tenure rights; timeliness of the petition was not an issue.

<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>
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March 18, 2004

OAL DKT. NO. EDU 4212-01S  
AGENCY DKT. 158-6/01

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The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. Petitioner's exceptions and the Board's reply thereto are duly noted as submitted in accordance with *N.J.A.C.* 1:1-18.4, and were considered by the Commissioner in reaching his decision.

Upon careful and independent review of the record in this matter, and assuming, *arguendo*, that this matter was timely filed,<sup>1</sup> the Commissioner concurs with the Administrative Law Judge's (ALJ) conclusion that petitioner has failed to demonstrate that the Board's action in docking him a day's pay on January 2, 2001 pursuant to *N.J.S.A.* 18A:30-1 *et seq.* was prohibited by the tenure statutes.

In so doing, the Commissioner does not reach to the ALJ's discussion with respect to whether the Board's action was authorized pursuant to the negotiated agreement between it and the Riverside Administrative Association. Notwithstanding petitioner's attempts in his exception arguments to expand the scope of the issues before him, the Commissioner notes that the *sole* issue raised in the Petition of Appeal was whether the Board's action in docking

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<sup>1</sup> Although the Prehearing Order issued on September 25, 2001 by ALJ Tylutki identifies timeliness of the petition as one of the issues herein, (Prehearing Order at 1), it does not appear to have been addressed in subsequent proceedings.

petitioner for one day reduced his salary in violation of his tenure rights. (Petition of Appeal at 2) As a result, the Prehearing Order issued on September 25, 2001 identifies the issues in this matter as

1. Whether the docking of the one day salary is in violation of the tenure statute.
2. Whether the petition was filed timely. (Prehearing Order at 1).<sup>2</sup>

Indeed, subsequent to the issuance of the Prehearing Order, petitioner informed ALJ Tylutki by letter dated October 10, 2001 that he had filed “several grievances” against the Board, scheduled to be heard on October 17, 2001. One of the grievances alleged that the action taken by the Board in docking his single day’s pay was a violation of his collective bargaining agreement. (Schwartz Letter, October 10, 2001 at 2) Petitioner therein recognized that “the contract issue being presented to the Arbitration is separate and distinct from those issues before the Commissioner, and because of the different jurisdictional consideration, no choice of remedy is necessary.” (*Ibid.*)

Accordingly, the Initial Decision is adopted as set forth above. The Petition of Appeal is dismissed.

IT IS SO ORDERED.<sup>3</sup>

COMMISSIONER OF EDUCATION

Date of Decision: March 18, 2004

Date of Mailing: March 19, 2004

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<sup>2</sup> There is nothing in the record to indicate that the Prehearing Order was later modified. Indeed, by letter order dated May 6, 2003, ALJ Dubin addresses the parties and states, in pertinent part, “This matter concerns petitioner’s allegation that respondent unilaterally reduced his compensation by \$788.07 on the grounds that he had not provided the superintendent with a physician’s note for a day he had been absent from work. Petitioner contends that the reduction in compensation was violative of N.J.A.C. [sic] 18A:28-5 in that he had a sufficient number of sick days to cover the absence in question.” (ALJ Dubin’s Letter Order of May 6, 2003 at 1)

<sup>3</sup> 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.*