

WAYNE CALANDRIELLO, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE SOUTH : DECISION
 ORANGE-MAPLEWOOD SCHOOL DISTRICT, :
 ESSEX COUNTY, :
 :
 RESPONDENT. :

SYNOPSIS

Petitioner contended that the respondent Board improperly withheld a salary increment which should have been restored to him following the satisfaction of his penalty for having been found guilty of unbecoming conduct subsequent to the filing of tenure charges in 2011. In July 2012, the Commissioner determined that the appropriate penalty for petitioner’s unbecoming conduct was the loss of his increment for one year, forfeiture of the 120 days of salary withheld pursuant to *N.J.S.A. 18A:6-14*, and an additional four-month suspension without pay – which commenced at the beginning of the 2012-2013 school year. Petitioner returned to his position on or about January 2, 2013, at which time he received his full salary, less the increment withheld pursuant to the Commissioner’s decision. Petitioner asserted that his salary increment should have been restored beginning January 1, 2014. Citing *North Plainfield Education Association v. Board of Education of the Borough of North Plainfield*, 96 N.J. 587 (1984), the respondent Board maintained that the increment withholding must be treated in the same manner as any other increment withholding, lagging one step behind his regular step. The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts in dispute, and the matter is ripe for summary decision; as part of petitioner’s penalty for unbecoming conduct, the Commissioner ordered the loss of his increment for one year, which began January 2, 2013; the one-year period expired on or about January 2, 2014, at which time the petitioner was entitled to the increment that he would have received beginning January 2, 2013; the Commissioner did not determine that upon completion of one year of withholding, petitioner’s increment would be reinstated as if the lost year had not occurred. The ALJ concluded that the petitioner is entitled to receive any increment that he would have received on January 2, 2013 commencing January 15, 2014, and – going forward – will advance one step behind his regular step.

Upon independent review, the Commissioner concurred with the ALJ’s findings and conclusions, and adopted the Initial Decision of the OAL as the final decision in this matter. In so deciding, the Commissioner noted that the fact that petitioner will remain a step behind his peers is not – as petitioner contends – an additional penalty, but rather the continuing effect of the increment withholding previously ordered by the Commissioner. 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.

July 17, 2014

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties' exceptions and reply exceptions – filed in accordance with the requirements of *N.J.A.C.* 1:1-18.4 – were fully considered by the Commissioner in reaching his determination herein.

This case proceeded in the OAL by way of summary decision, as the facts are not in dispute. Petitioner is a tenured teaching staff member in respondent's school district. In 2011, respondent brought tenure charges against petitioner, alleging unbecoming conduct and other just cause. In a decision dated July 30, 2012, the Commissioner determined that petitioner was guilty of unbecoming conduct and that the appropriate penalty was loss of his increment for one year, the forfeiture of the 120 days of salary withheld pursuant to *N.J.S.A.* 18A:6-14, plus an additional four-month suspension without pay. *In the Matter of the Tenure Hearing of Wayne Calandriello, School District of the Township of South Orange-Maplewood, Essex County, Commissioner Decision No. 297-12, Agency Dkt. No. 321-10/11.*

In a letter decision dated September 26, 2012, the Commissioner clarified that the four-month suspension was to commence at the beginning of the 2012-2013 school year. Accordingly, petitioner did not return to his position until on or about January 2, 2013, at which time

he received his full salary, less the increment withheld pursuant to the Commissioner's decision. The following year, on or about January 15, 2014, petitioner received his paycheck for the period beginning January 1, 2014 and noticed that the salary increment had not been reinstated.

In the instant matter, petitioner challenges the continued withholding of his increment. Petitioner emphasizes that the Commissioner ordered the withholding of his increment for a finite period of one year. Petitioner contends that, upon expiration of that year, he was entitled to reinstatement of the increment. Petitioner further contends that the continued withholding effectively imposes a penalty upon him separate from and beyond that which the Commissioner determined appropriate at the end of the tenure charge proceeding.

Respondent maintains that the increment withholding ordered by the Commissioner must be treated in the same manner as any other increment withholding, as directed by the New Jersey Supreme Court in *North Plainfield Education Association v. Board of Education of the Borough of North Plainfield*, 96 N.J. 587 (1984). More specifically, respondent maintains that petitioner's increment must lag one year – “one step behind his regular step.” *Id.* at 595.

In the Initial Decision, the Administrative Law Judge (ALJ) concluded that petitioner was not entitled to reinstatement of the withheld increment. Rather, the ALJ determined that, upon expiration of the one year period, petitioner was entitled to the increment that he would have received in January 2013 and that, prospectively, petitioner would advance one step behind his regular step.

The parties' submissions on exception essentially replicate the briefs submitted to the ALJ in support of their respective cross-motions for summary decision below. The Commissioner finds that the arguments advanced therein were fully considered and addressed by the ALJ in her Initial Decision. Accordingly, they will not be revisited in depth here.

Upon his full review, the Commissioner concurs with the ALJ's determinations. Pursuant to the Commissioner's decision in the tenure matter, beginning in January 2013, petitioner forfeited any advancement on the salary guide for a period of one year. Upon expiration of that year,

in January 2014, petitioner became eligible to receive the salary increment that he would have received in January 2013.¹ As with any other increment withholding, petitioner should prospectively advance regularly on the salary guide – one step behind his regular step – absent other legal actions taken by the Board. That he will remain a step behind his peers is not, as petitioner contends, an additional penalty, but rather the continuing effect of the increment withholding previously ordered by the Commissioner. *North Plainfield, supra*, at 595.

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.²

ACTING COMMISSIONER OF EDUCATION

Date of Decision: July 17, 2014

Date of Mailing: July 17, 2014

¹ Petitioner is a member of the South Orange Maplewood Education Association (SOMEA). The Commissioner notes that respondent and SOMEA have yet to settle upon a new collective bargaining agreement, which expired on June 30, 2013. According to the parties, SOMEA members remain frozen at their current step until a new agreement is reached, at which time members will move on the guide in accordance with the agreed-upon guide adjustments. Accordingly, the Commissioner acknowledges that some of the adjustments contemplated herein will not be effectuated until a new collective bargaining agreement is in place.

² This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L. 2008, c. 36*.