

**New Jersey Commissioner of Education**

**Decision**

Guadalupe Ferreiro,

Petitioner,

v.

Board of Education of the City of Elizabeth,  
Union County,

Respondent.

**Synopsis**

Petitioner – a tenured social worker employed in the respondent Board’s school district – alleged that the Board violated her rights under *N.J.S.A.* 18A:6-10 when it docked her salary in the amount of \$1,033.38 as discipline for excessive tardiness. The Board contended that its actions were lawful and must be upheld, as the docking for tardiness falls within the category of minor discipline which was agreed upon in the Collective Bargaining Agreement (CBA) with the Elizabeth Education Association (Association). The parties filed cross motions for summary decision.

The ALJ found, *inter alia*, that: there are no material facts at issue here, and the matter is ripe for summary decision; petitioner has been employed by the Board for 20 years, and is tenured; the salary deduction at issue here came after petitioner was marked tardy on thirteen occasions during September and October 2018; the Board contended that petitioner’s tardiness has been an ongoing issue, and she was also chronically tardy during 2017-2018 school year; no tenure charges were filed against petitioner; the Board is party to a CBA with the Association, which includes a clause that defines the penalty for chronic tardiness; the penalty structure agreed upon in the CBA is also spelled out in a Board policy entitled “Staff Attendance Improvement Plan”; petitioner’s claim springs from *N.J.S.A.* 18A:6-10, which provides that a tenured employee may not be “dismissed or reduced in compensation” unless tenure charges are brought against her; however, the deduction in petitioner’s salary here does not violate her tenure rights under *N.J.S.A.* 18A:6-10 because *N.J.S.A.* 34:13A-24 allows school boards to impose minor discipline when it is duly negotiated with the collective bargaining unit. The ALJ concluded that the docking of petitioner’s pay for tardiness is a fine that amounts to minor discipline, and the Board’s action was consistent with the law. The Board’s motion for summary decision was granted and the petition was dismissed.

Upon review, the Commissioner concurred with the findings and conclusion of the ALJ. Accordingly, the Initial Decision of the OAL was adopted as the final decision in this matter, and 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 22, 2019

**New Jersey Commissioner of Education**  
**Final Decision**

Guadalupe Ferreiro,

Petitioner,

v.

Board of Education of the City of Elizabeth,  
Union County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed by the petitioner pursuant to *N.J.A.C. 1:1-18.4*. The Board did not file a reply.<sup>1</sup>

In this matter, the petitioner alleges that the Board violated her tenure rights when it docked her salary in the amount of \$1,033.38 due to tardiness on thirteen occasions in September and October 2018. According to the Collective Bargaining Agreement (CBA) between the Board and the Elizabeth Education Association (Association), the Board will deduct 25 percent of the daily salary after the accumulation of five tardy marks in a given school year, and each tardy thereafter will result in a deduction of 25 percent of the daily salary. The Administrative Law Judge (ALJ) found that the deduction in salary does not violate the petitioner's tenure rights under *N.J.S.A. 18A:6-10* because *N.J.S.A. 34:13A-24* allows boards to impose minor discipline when it is duly negotiated with the collective bargaining unit.

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<sup>1</sup> The supplemental exceptions filed by petitioner were not timely pursuant to *N.J.A.C. 1:1-18.4*, and were therefore not considered by the Commissioner.

Specifically, *N.J.S.A.* 34:13A-24(c) provides that “[f]ines and suspensions for minor discipline shall not constitute a reduction in compensation pursuant to the provisions of *N.J.S.* 18A:6-10.” As such, the ALJ concluded that the docking of the petitioner’s pay for tardiness is a fine that amounts to minor discipline.

In her exceptions, the petitioner argues that a 25 percent reduction in the daily salary for excessive tardiness constitutes major discipline, rather than minor discipline. The petitioner relies on *N.J.A.C.* 4A:2-3.1, which defines minor discipline in the New Jersey Civil Service context as “a formal written reprimand or a suspension of five working days or less.” The petitioner maintains that the ability to withhold 25 percent of an employee’s salary can exceed a 5-day suspension. Accordingly, the petitioner argues that the provision in the CBA that allows for the docking of pay for tardiness is unenforceable because it permits the Board to impose major discipline. The petitioner argues, however, that she is not asking the Commissioner to invalidate a CBA provision – which the ALJ found is not within the Commissioner’s jurisdiction – but is instead seeking to uphold the petitioner’s tenure rights and reimburse her for the \$1,033.38 docked from her pay.

Upon review, the Commissioner agrees with the ALJ, for the reasons thoroughly set forth in the Initial Decision, that the Board’s action in docking the petitioner’s salary was consistent with the law. The Commissioner does not find the petitioner’s exceptions to be persuasive. *N.J.S.A.* 34:13A-24, which allows for boards to negotiate minor discipline, clarifies that “[f]ines and suspensions for minor discipline shall not constitute a reduction in compensation pursuant to the provisions of *N.J.S.* 18A:6-10.” Furthermore, *N.J.S.A.* 34:13A-22 defines minor discipline as including “various forms of fines and suspensions, but does not include tenure charges . . . or the withholding of increments . . . letters of reprimand, or

suspensions with pay[.]” The Commissioner agrees with the ALJ that the docking of the petitioner’s pay is the type of minor discipline contemplated by *N.J.S.A.* 34:13A-24, and in this circumstance, the minor discipline was negotiated and agreed upon by the Board and the Association, which represents the majority of teaching staff members in the district. As such, the docking of the petitioner’s pay for excessive tardiness is not a violation of her tenure rights under *N.J.S.A.* 18A:6-10.

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

IT IS SO ORDERED.<sup>2</sup>

COMMISSIONER OF EDUCATION

Date of Decision: July 22, 2019  
Date of Mailing: July 22, 2019

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<sup>2</sup> This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L.* 2008, *c.* 36 (*N.J.S.A.* 18A:6-9.1).



**State of New Jersey**  
OFFICE OF ADMINISTRATIVE LAW

**INITIAL DECISION**

**SUMMARY DECISION**

OAL DKT. NO. EDU 03865-19

AGENCY DKT. NO. 9-1/19

**GUADALUPE FERREIRO,**

Petitioner,

v.

**BOARD OF EDUCATION OF THE CITY  
OF ELIZABETH, UNION COUNTY,**

Respondent.

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**Nicholas Poberezhsky, Esq.,** for petitioner (Caruso Smith Picini, attorneys)

**Heather Ford-Savage, Esq.,** for respondent

Record Closed: June 7, 2019

Decided: June 11, 2019

BEFORE **ELLEN S. BASS, ALJ:**

**STATEMENT OF THE CASE**

Petitioner, Guadalupe Ferreiro, a tenured social worker employed by respondent, the Elizabeth Board of Education (the Board), alleges that the Board violated her rights under N.J.S.A. 18A:6-10, when it docked her salary in the amount of \$1,033.38 due to tardiness. The Board replies that its actions should be upheld, as this is minor discipline

agreed upon in the Collective Bargaining Agreement with the Teachers' Association, and expressly authorized by N.J.S.A. 34:13A-24.

### **PROCEDURAL HISTORY**

Ferreiro filed her petition of appeal with the Commissioner of Education (the Commissioner) on January 14, 2019. An answer was filed by the Board on February 25, 2019, and the matter was transmitted to the Office of Administrative Law (OAL) on March 19, 2019. I conferred with counsel via telephone, and it was agreed that this dispute could be resolved via Cross-Motions for Summary Decision, as the pleadings presented a purely legal issue. Motions were filed by the parties on or about May 31, 2019, and simultaneous replies were filed on June 7, 2019, at which time the record closed.

### **FINDINGS OF FACT**

The salient facts are not in dispute, and I **FIND** as follows:

Ferreiro has been employed by the Board as a social worker for approximately twenty years, and is employed under tenure. During two pay periods in October 2018, her salary payment was reduced due to tardiness. In total, her gross salary was docked in the amount of \$1,033.38. In an email to her building principal dated October 14, 2018, Ferreiro acknowledged that she had been tardy in the past, and that her principal had alerted her that effective with the 2018-2019 school year, the Board would be strictly enforcing its attendance policies for staff. And on September 4, 2018, Ferreiro had signed a document entitled "2018-2019 Statement of Assurance," in which she acknowledged receiving and reading a list of policies, to include the attendance policy.

No tenure charges have been filed against Ferreiro. The salary deduction came after Ferreiro was marked tardy on thirteen occasions during the months of September and October 2018. The Board relates that Ferreiro's tardiness has been an ongoing issue, and notes that during the 2017-2018 school year, Ferreiro was also chronically tardy. Ferreiro disagrees that she has been tardy quite this often. But she concedes

that this disagreement is not material as the issue presented is not the egregiousness of her lateness, but rather, the scope of the Board's authority to dock the pay of a tenured employee.

The Board is a party to a Collective Bargaining Agreement with the Elizabeth Education Association. At page 82, the agreement provides that

- A. The accumulation of five (5) tardy marks to an assigned duty within a given school year will result in a deduction from pay of twenty-five percent (25%) of the daily salary computed at 1/200 for ten (10) month employees; 1/220 for eleven (11) month employees; 1/240 for twelve (12) month employees of the employee's annual salary.
- B. After the first accumulation of five (5) tardy marks in a given school year, each tardy will result in a deduction from pay of twenty-five percent (25%) of the daily salary computed at 1/200 for ten (10) month employees; 1/220 for eleven (11) month employees; 1/240 for twelve (12) month employees of the employee's annual salary.

[Board Exhibit G; Petitioner's Exhibit C]

The penalty structure agreed upon in the collective bargaining agreement is spelled out as well in Board Policy 4151/4251, entitled "Staff Attendance Improvement Plan."

### **ANALYSIS AND CONCLUSIONS OF LAW**

N.J.A.C. 1:1-12.5(b) provides that summary decision should be rendered "if the papers and discovery which have been filed, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to prevail as a matter of law." Our regulation mirrors R. 4:46-2(c), which provides that "[t]he judgment or order sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact

challenged and that the moving party is entitled to a judgment or order as a matter of law.”

A determination whether a genuine issue of material fact exists that precludes summary decision requires the judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational fact finder to resolve the alleged disputed issue in favor of the non-moving party. Our courts have long held that “if the opposing party . . . offers . . . only facts which are immaterial or of an insubstantial nature, a mere scintilla, ‘Fanciful, frivolous, gauzy or merely suspicious,’ he will not be heard to complain if the court grants summary judgment.” Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 529 (1995) (citing Judson v. Peoples Bank & Trust Co., 17 N.J. 67, 75 (1954)).

The “judge’s function is not himself [or herself] to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.” Brill, 142 N.J. at 540 (citing Anderson v. Liberty Lobby, 477 U.S. 242, 249 (1986)). When the evidence “is so one-sided that one party must prevail as a matter of law,” the trial court should not hesitate to grant summary judgment. Liberty Lobby, 477 U.S. at 252. I **CONCLUDE** that this matter is ripe for summary decision, and that the Board is entitled to judgement as matter of law.

Ferreiro’s claim to relief springs from N.J.S.A. 18A:6-10, which provides that as a tenured employee, she may not be “dismissed or reduced in compensation” except “for inefficiency, incapacity, unbecoming conduct, or other just cause, and then only after a hearing held...by the commissioner, or a person appointed by him to act in his behalf...” Since no tenure charges have been filed against her, she urges that the Board has violated her rights.

But N.J.S.A. 18A:6-10 must be read in conjunction with N.J.S.A. 34:13A-24, which provides as follows:

- a. Notwithstanding any other law to the contrary, and if negotiated with the majority representative of the employees in the



appropriate collective bargaining unit, an employer shall have the authority to impose minor discipline on employees. Nothing contained herein shall limit the authority of the employer to impose, in the absence of a negotiated agreement regarding minor discipline, any disciplinary sanction which is authorized and not prohibited by law.

- b. The scope of such negotiations shall include a schedule setting forth the acts and omissions for which minor discipline may be imposed, and also the penalty to be imposed for any act or omission warranting imposition of minor discipline.
- c. Fines and suspensions for minor discipline shall not constitute a reduction in compensation pursuant to the provisions of N.J.S. 18A:6-10.

[Emphasis supplied]

N.J.S.A. 34:13A-22 defines “minor discipline” thusly:

“Minor discipline” includes, but is not limited to, various forms of fines and suspensions, but does not include tenure charges filed pursuant to the provisions of subsubarticle 2 of subarticle B of Article 2 of chapter 6 of Subtitle 3 of Title 18A of the New Jersey Statutes, N.J.S. 18A:6-10 et seq., or the withholding of increments pursuant to N.J.S. 18A:29-14, letters of reprimand, or suspensions with pay pursuant to section 1 of P.L. 1971, c. 435 (C.18A:6-8.3) and N.J.S. 18A:25-6.

It is clear that in the public-school setting, duly negotiated minor discipline, even if such discipline results in a reduction of salary, does not violate N.J.S.A. 18A: 6-10.

I **CONCLUDE** that the docking of petitioner’s pay is precisely the type of minor discipline contemplated by N.J.S.A. 34:13A-24, as it is a fine, but neither tenure charges nor an increment withholding, letter of reprimand or suspension with pay. The schedule for such discipline was negotiated and agreed upon between the Board and the majority representative for teaching staff members in Elizabeth, and thus does not constitute a reduction in benefits or compensation in violation of the school laws.<sup>3</sup> N.J.S.A. 34:13A-

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<sup>3</sup> The school law issue is the only one cognizable before the Commissioner. I do not have jurisdiction to invalidate the Collective Bargaining Agreement, as petitioner urges in her submission. Petitioner’s

24(c). I **CONCLUDE** that the action of the Board in docking Ferreiro’s salary is consistent with law.

**ORDER**

Based on the foregoing, it is **ORDERED** that the Board’s Cross-Motion for Summary Decision is **GRANTED**, and the petition of appeal is **DISMISSED**.

This recommended decision may be adopted, modified or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, P.O. Box 500, Trenton, New Jersey 08625-0500**, marked “Attention: Exceptions.” A copy of any exceptions must be sent to the judge and to the other parties.

June 11, 2019



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DATE

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**ELLEN S. BASS, ALJ**

Date Received at Agency:

June 11, 2019

Date Mailed to Parties:

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sej

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submission likewise appears to urge that N.J.S.A. 34:13A-24 is impermissibly vague, and as a result, invalid. I likewise lack jurisdiction to invalidate statutes.