

New Jersey Commissioner of Education

Final Decision

Shari Saks,

Petitioner,

v.

Board of Education of the Pinelands Regional School
District, Ocean County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed and considered. The parties did not file exceptions.

Upon review, the Commissioner concurs with the Administrative Law Judge (ALJ) that any issues concerning the Board's failure to provide petitioner notice within 10 days of its decision to withhold her salary increment should be addressed in the pending New Jersey Public Employee Relations Commission (PERC) proceeding. *Scotch Plains-Fanwood Bd. of Educ. v. Scotch Plains-Fanwood Educ. Ass'n*, 139 N.J. 141, 155 (1995).

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

IT IS SO ORDERED.¹



COMMISSIONER OF EDUCATION

Date of Decision: March 24, 2025

Date of Mailing: March 26, 2025

¹ This decision may be appealed to the Appellate Division of the Superior Court pursuant to N.J.S.A. 18A:6-9.1. Under N.J.Ct.R. 2:4-1(b), a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION-DISMISSAL

OAL DKT. NO. EDU 10148-22

AGENCY REF NO. 280-10/22

SHARI SAKS,

Petitioner,

v.

PINELANDS REGIONAL SCHOOL

DISTRICT BOARD OF EDUCATION,

OCEAN COUNTY

Respondent.

Edward A. Cridge, Esq., for petitioner (MELLK CRIDGE LLC, attorneys)

Kasi M. Gifford, Esq., for respondent (COOPER LEVENSON, P.A., attorneys)

Record Closed: December 31, 2024

Decided: February 13, 2025

BEFORE **ELAINE B. FRICK, ALJ**:

STATEMENT OF THE CASE

Respondent, Pinelands Regional School District Board of Education (Pinelands or the BOE) withheld petitioner, Shari Saks' (Saks) increment for the 2022-2023 school year. Petitioner appealed asserting the increment should not have been withheld. The parties

have filed summary decision motions. Petitioner asserts summary decision should be entered in her favor and the increment paid to her automatically because the BOE did not comply with the statutory requirement to provide her notice within ten days that it withheld her increment. The BOE contends that its failure to provide notice within ten days is not prejudicial to Saks and that it appropriately withheld Saks' increment due to her inappropriate actions.

PROCEDURAL HISTORY

This matter was transmitted to the Office of Administrative Law (OAL) on November 14, 2022, to be heard as a contested case. N.J.S.A. 52:14B-1 to 14B-15 and N.J.S.A. 52:14F-1 to 14F-13. The dispute was transmitted to the OAL as petitioner's challenge to the BOE's withholding of her increment for the 2022-2023 school year.

Multiple telephonic conferences were conducted with counsel for the parties. A hearing date was not scheduled, at the joint request of the parties, as they dealt with issues between them pending in other forums and deciding whether they would seek consolidation of any of those matters. The parties ultimately decided that there were no facts in dispute here, and advised that the matter could be dealt with by way of summary decision motion filing.

Summary decision motion and cross motion filings were submitted. A telephonic conference was conducted with counsel after the initial motion filings. The parties confirmed the BOE's substantive reasoning for withholding Sak's increment was not at issue in this forum. They advised that arguments made in their briefs as to the substantive reasoning for the withholding of the increment were merely done to preserve such arguments for their other proceedings. The parties were directed to submit supplemental briefing to confirm the legal issue they assert is to be determined by summary decision here. The supplemental briefs were submitted.

FACTUAL DISCUSSION AND FINDINGS

The parties agreed to a Joint Stipulation of Facts which I **FIND** as **FACTS** set forth verbatim from the parties' stipulations:

1. At all times relevant hereto, Ms. Saks has been a tenured teaching staff member employed by the Board.
2. At its meeting of July 18, 2022 (hereinafter the "July meeting") the Board voted to withhold Ms. Saks's employment and adjustment increments for the 2022-2023 School Year (hereinafter the "Subject Increments").
3. Two members of the Board, Ms. Lisa Betty, [and] Ms. Kim Hanadel were absent from the July Meeting, and did not participate in the vote to withhold the Subject Increments.
4. The Board did not notify Ms. Saks that it had voted to withhold the Subject Increments within ten days of the July Meeting. The Board did not notify Ms. Saks of the aforesaid increment withholding until on or about October 5, 2022, by way of correspondence of that date which she received from the Board's Superintendent.
5. The Board did provide Ms. Saks with a notice pursuant to *Rice v. Union County Regional High School Bd. of Ed.*, 155 N.J. Super. 64 (App. Div 1977), prior to the July meeting.
6. The withholding of Ms. Saks's increment was noted in the minutes of the July Meeting, by reference to her employee number.

(Exhibit A to petitioner's August 8, 2024, brief in support of motion for summary decision, punctuation and capitalization original.)

The parties confirmed as an update to their stipulations that on July 25, 2024, an arbitrator issued an award in the related tenure case. The arbitrator determined that Saks

would be terminated from her tenured teaching position with the BOE, effective July 25, 2024.

Despite the matter having been transmitted to the OAL as petitioner's challenge to the BOE's withholding of her increment for the 2022-2023, and the parties having asserted substantive arguments in their initial summary decision briefing, the parties confirmed in a subsequent telephonic conference that the substantive underlying facts are not to be disputed and determined in this forum. They agree that any factual dispute regarding the BOE's withholding of Saks' increment due to a disciplinary issue is properly before the Public Employment Relations Commission (PERC). Petitioner has a pending PERC appeal proceeding, which the parties advised they have held in abeyance to pursue a determination in this forum.

The parties clarified in their supplemental briefing that they believe this matter is a discrete procedural issue regarding educational law and its application. They agree that the BOE withheld petitioner's increment based upon a disciplinary issue. They assert the determination to be made here is an educational law dispute as to whether the BOE violated N.J.S.A. 18A:29-14 by failing to give Saks timely notice of the withholding of her salary increment and if so, would the remedy for that statutory violation be automatic payment of Saks' increment.

LEGAL ANALYSIS AND CONCLUSION

In an administrative law matter, a "party may move for summary decision upon all or any of the substantive issues in a contested case." N.J.A.C. 1:1-12.5(a). The motion "shall be served with briefs and with or without supporting affidavits." N.J.A.C. 1:1-12.5(b). The judge may grant the motion if the documents and information filed, together with any submitted affidavits, "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." Ibid. The non-moving party will prevail if they "set forth specific facts showing that there is a genuine issue which can only be determined in an evidentiary proceeding." Ibid.

A BOE may withhold a teacher's increment and is required to give written notice

of such action against the teacher within ten days of the BOE's decision. N.J.S.A. 18A:29-14. The controlling statute provides:

Any board of education may withhold, for inefficiency or other good cause, the employment increment, or the adjustment increment, or both, of any member in any year by a recorded roll call majority vote of the full membership of the board of education. It shall be the duty of the board of education, within 10 days, to give written notice of such action, together with the reasons therefor, to the member concerned. The member may appeal from such action to the commissioner under rules prescribed by him. The commissioner shall consider such appeal and shall either affirm the action of the board of education or direct that the increment or increments be paid. The commissioner may designate an assistant commissioner of education to act for him in his place and with his powers on such appeals. It shall not be mandatory upon the board of education to pay any such denied increment in any future year as an adjustment increment.

N.J.S.A. 18A:29-14.

The Employer-Employee Public Relations Act provides that "Disputes involving the withholding of an employee's increment by an employer for predominately disciplinary reasons shall be subject to the grievance procedures established pursuant to law and shall be subject to the provisions of section 8 of this act." N.J.S.A. 34:13A-26. The parties agree here that the dispute involving the withholding of Saks' increment is for disciplinary reasons. See N.J.S.A. 34:13A-27.

The parties are asserting the matter before the OAL here is an educational law dispute, as to whether the BOE's failure to comply with the ten-day notice procedural requirement of N.J.S.A. 18A:29-14, should result in automatic reinstatement of the increment to Saks.

An appeal concerning increment withholdings for predominantly disciplinary reasons is subject to arbitration under N.J.S.A. 34:13A-26. If the PERC commissioner determines that the reason for increment withholding relates to the staff member's job performance, that employee's appeal is directed to be made to the Commissioner of Education under N.J.S.A. 34:13A-27(d). See Edison Twp. Board of Education v. Edison

Twp. Principals & Supervisors Association, 304 N.J. Super. 459 (App. Div. 1997). Hence, it is well settled that if the increment is withheld for performance issues, the DOE has jurisdiction. If the increment is withheld for disciplinary issues, PERC has jurisdiction.

The parties have now indicated they agree that the BOE withheld Saks' increment due to disciplinary reasons. The BOE admittedly did not comply with providing notice to Saks within ten days. The parties agree that the substantive arguments as to whether the withholding of the increment was appropriate would be an issue determined through PERC. A PERC appeal was filed, and the parties agreed to hold that proceeding in abeyance while pursuing this procedural issue.

The parties are correct that PERC has jurisdiction under the Employer-Employee Act of a dispute when an increment is withheld for disciplinary purposes. The DOE does not have jurisdiction of an increment withholding due to disciplinary matters. Hence, whether it is a procedural or substantive issue regarding the withholding of the increment based upon disciplinary issues, PERC has jurisdiction.

The parties' procedural arguments and substantive arguments shall be presented through the PERC process, in that forum where Saks' appeal is pending. Thus, the determination whether the BOE's failure to provide ten-day notice of intent to withhold Saks' increment for disciplinary reasons results in automatic payment of the increment to Saks is properly addressed through PERC, the agency with jurisdiction.

I **CONCLUDE** that the DOE lacks jurisdiction for this asserted procedural dispute and this matter shall thus be **DISMISSED**.

ORDER

It is **ORDERED** that each parties' request for summary decision in their favor is **DENIED** as this matter is **DISMISSED** for lack of jurisdiction.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

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**. Exceptions may be filed by email to ControversiesDisputesFilings@doe.nj.gov or by mail to **Office of Controversies and Disputes, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**. A copy of any exceptions must be sent to the judge and to the other parties.



February 13, 2025
DATE

ELAINE B. FRICK, ALJ

Date Received at Agency:

Date Mailed to Parties:

EBF/gd

APPENDIX

- August 8, 2024, Notice of Motion for Summary Decision by petitioner Saks
- October 7, 2024, Notice of Cross Motion for Summary Decision by respondent Pinelands
- October 16, 2024, Opposition to Cross Motion reply by Saks
- December 6, 2024, Supplemental brief by Saks
- December 20, 2024, Supplemental brief by Pinelands