

GERALD BATTLE *ET AL.* :

PETITIONERS, :

V. : COMMISSIONER OF EDUCATION

STATE-OPERATED SCHOOL DISTRICT : DECISION
OF THE CITY OF JERSEY CITY,
HUDSON COUNTY, :

RESPONDENT. :

SYNOPSIS

Twenty-one petitioning teachers alleged that the District's withholding of their increments for the 1997-98 school year was violative of education law. Fifteen petitioners withdrew their appeals; six petitioners remained.

The ALJ concluded that the District had reasonable basis to withhold their increments based on less than satisfactory performances and that petitioners failed to prove by a preponderance of the credible evidence that the District's action was arbitrary, capricious and unreasonable.

The Commissioner adopted the findings and determination in the Initial Decision as his own, noting that it is well-established that the scope of the Commissioner's review in increment withholding matters was not to substitute his judgment for that of those who made the evaluation, but to determine whether they had a reasonable basis for their conclusions. (*Kopera*) With this applicable legal standard in mind, the Commissioner's review persuaded him that the record here amply established that the District's action in withholding the increment of each of the petitioners was based on validly perceived deficiencies in his or her performance during the 1996-97 school year. Petition was dismissed.

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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 filed no exceptions to the Initial Decision.

Upon careful and independent review of the record, which it is noted did not include transcripts of the hearings below,¹ the Commissioner determines to affirm the Administrative Law Judge's (ALJ) recommended decision as he finds that the District's action in withholding the 1997-98 increments of each of the within petitioners was a valid exercise of its discretionary authority. In so determining, the Commissioner was mindful, as was aptly recognized by the ALJ, that it is well-established that the scope of the Commissioner's review in increment withholding matters is not to substitute his judgment for that of those who made the evaluation, but to determine whether they had a reasonable basis for their conclusions. (*Kopera v. West*

¹ It is further noted that the record transmitted to the Commissioner did not include petitioners' exhibits, listed in the Initial Decision as P-1 through P-6 and P-8 through P-17. OAL's attempts to locate these exhibits was unsuccessful. However, even according these particular exhibits every inference and weight for the propositions for which they were introduced, the Commissioner is persuaded, from his comprehensive review herein, that no alteration of his ultimate determination in this matter would result from review of the actual exhibits. The record also contained one additional exhibit which was not listed in the ALJ's Initial Decision, *i.e.*, R-6A – Original Roll Book.

Orange Bd. of Ed., 60 N.J. Super. 288 (App. Div. 1960)) As such, there are *only two* determinations to be made when reviewing the District's decision to withhold the increment of each of these teaching staff members, *i.e.*, 1) whether the underlying facts were as those who made the evaluations claimed, and 2) whether it was unreasonable for them to conclude as they did based upon those facts. Moreover, it is likewise well-established that the burden of proving unreasonableness lies with the petitioners. (*Kopera* at 296-297)

With this applicable legal standard in mind, the Commissioner's review persuades him that the record here amply establishes that the District's action in withholding the increment of each of the within petitioners was based on validly perceived deficiencies in his or her performance during the 1996-97 school year. Consequently, the Commissioner agrees with the ALJ that these petitioners have failed to sustain their burden of establishing, by a preponderance of the credible evidence, that the District's action was arbitrary, capricious, unreasonable, or an abuse of its discretion.

Accordingly, the recommended decision of the OAL is affirmed for the reasons well-stated therein and the within Petition of Appeal is hereby dismissed.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: November 13, 2000

Date of Mailing: November 13, 2000

² This decision, as the Commissioner's final determination, 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.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.