

THOMAS GEMENTGIS, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
STATE-OPERATED SCHOOL DISTRICT OF : DECISION
THE CITY OF NEWARK, ESSEX COUNTY, :
RESPONDENT. :
_____ :

SYNOPSIS

Petitioner – a tenured science teacher employed by the district – appealed the district’s withholding of his salary increment for the 2005-06 school years as arbitrary, capricious and unreasonable. The respondent contends that the increment withholding was based upon petitioner’s need to improve his performance, particularly in the area of maintaining student discipline.

The ALJ found, *inter alia*, that: during the 2004-05 school year, petitioner was formally evaluated throughout the school year and additionally was observed on other random days, and in each instance received criticism regarding his classroom discipline and other areas in need of improvement; petitioner’s final review of the year rated him unsatisfactory and served as the basis for the increment withholding; and petitioner did not avail himself of an in-service program which assisted teachers in classroom discipline. The ALJ concluded that respondent appropriately withheld petitioner’s salary increment; petitioner did not meet his burden of proving that the respondent’s action was arbitrary or capricious. The ALJ recommended dismissal of the petition with prejudice.

Upon a full and independent review of the record, the Commissioner agreed with the ALJ, for the reasons expressed in his decision, that the withholding of petitioner’s increment was a reasonable exercise of the Board’s lawful discretionary authority. Accordingly, the Initial Decision was adopted as the final decision in this matter.

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.

March 5, 2008

OAL DKT. NO. EDU 1117-06
AGENCY DKT. NO. 304-11/05

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed.¹ The parties filed no exceptions to the Initial Decision.

Upon such review, the Commissioner agrees with the Administrative Law Judge – for the reasons comprehensively detailed in his decision – that petitioner has failed to sustain his burden of establishing that the District’s withholding of his increment for the 2005-2006² school year was arbitrary, capricious or unreasonable.

Accordingly, the recommended decision of the OAL is adopted and the instant Petition of Appeal is hereby dismissed.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: March 5, 2008

Date of Mailing: March 5, 2008

¹ It is noted that the record includes transcripts of the hearing conducted at the OAL on January 23, December 10 and December 11, 2007.

² The Initial Decision mistakenly refers to this matter as an appeal of the withholding of petitioner’s 2004-2005 increment.

³ 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.*

