

DELANO LOPEZ, :
PETITIONER, : COMMISSIONER OF EDUCATION
V. : DECISION
BOARD OF EDUCATION OF :
THE CITY OF JERSEY CITY, :
HUDSON COUNTY, :
RESPONDENT. :

SYNOPSIS

Petitioner – a tenured physical education teacher employed in respondent’s school district since 2002 – appealed the determination of the respondent Board to withhold his 2010-2011 salary increment, alleging that the respondent denied him the increment to which he was entitled pursuant to the negotiated salary guide between the Jersey City Education Association and the Board. Petitioner argued that the Board’s decision to withhold his increment was arbitrary and capricious because the Board did not have information sufficient to permit an informed decision, and never allowed him the opportunity to demonstrate improvement. Respondent contended that petitioner’s 2010-2011 increment was withheld for good cause pursuant to *N.J.S.A.* 18A:29-14.

The ALJ found, *inter alia*, that: the petitioner bears the burden of proving that the withholding of his increment was arbitrary, capricious or unreasonable; petitioner’s increment was withheld based on several performance evaluations; credible testimony at hearing supported the respondent’s determination that petitioner’s classroom instruction during the year in question was lacking, particularly in pedagogical skills; and petitioner’s contention that his problems stemmed in part from a lack of curriculum materials was without merit. The ALJ concluded that the Board’s action in withholding petitioner’s 2010-2011 increment was reasonable given his classroom performance during the period in question. Accordingly, the petition was dismissed.

Upon independent review and consideration, the Commissioner concurred with the ALJ that the Board’s decision to withhold petitioner’s increment was not arbitrary, capricious and unreasonable; accordingly, the Commissioner adopted the Initial Decision 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.

OAL DKT. NO. EDU 12389-11
AGENCY DKT. NO. 293-9/11

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Before the Commissioner is a challenge to the respondent Board of Education’s decision to withhold petitioner’s increment for the 2011-2012 school year. Petitioner claims that the withholding of his increment was improper because respondent did not have sufficient information to make an informed decision about his performance, because he was not given an opportunity to make progress, and because the respondent did not follow up to see if his performance had improved. Upon review of the record and Initial Decision of the Office of Administrative Law, the Commissioner adopts the Initial Decision as the final decision in this case.

Petitioner’s supervisor, Jacalyn Kaszuba – who served as respondent’s district health education supervisor during the relevant time period – testified for respondent; petitioner testified on his own behalf. Reports of classroom observations of petitioner by Kaszuba, and by the principal and vice-principal of the school in which petitioner teaches, were entered into evidence, as well as written evaluations and other documents identifying the efforts of petitioner’s supervisors to help him with his teaching skills.

The referenced documents and Kaszuba's testimony indicate that multiple school administrators observed deficiencies, not in petitioner's knowledge of subject matter, but in his pedagogical skills. Those skills are crucial to the delivery to students of the knowledge a teacher is employed to impart. While three different supervisors met periodically with petitioner throughout the 2010-2011 school year and discussed the pedagogical issues with him, the same deficiencies continued through the end of the year.

The documents and testimony also make it clear that: respondent had sufficient information to draw conclusions about petitioner's performance in the 2010-2011 school year; petitioner received regular consultations, feedback and advice from various school administrators; and that it was petitioner who did not take the opportunity to improve. Thus, the Commissioner concludes that in the year in question, petitioner did not earn an increment – which has been defined as a “reward only [for] those who have contributed to the educational process thereby encouraging high standards of performance.” *Bd. Of Educ. v. Bernards Twp. Educ. Ass'n*, , 79 N.J. 311, 321 (1979). Accordingly, the Commissioner concurs with the ALJ's finding that petitioner failed to meet his burden to show that respondent acted arbitrarily or capriciously in withholding an increment, and adopts the Initial Decision as the final decision in this case. The petition is dismissed.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: January 15, 2014

Date of Mailing: January 16, 2014

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