

MARGARET WICKS, :
 :
 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE : DECISION
 BOROUGH OF FARMINGDALE :
 MONMOUTH COUNTY, :
 :
 RESPONDENT. :

SYNOPSIS

Petitioner – a tenured teacher employed in respondent’s school district since 1990 – appealed the determination of the respondent Board to withhold her salary and adjustment increments for the 2013-2014 school year. This action was taken following an investigation of a June 2013 parental complaint that resulted in a letter of reprimand for unbecoming and unprofessional conduct. Petitioner had previously received a letter of reprimand in 2012 for engaging in inappropriate behavior toward another teacher in the presence of students. Petitioner contended that she received exemplary performance reviews for the 2012-2013 school year, and that the Board’s action was arbitrary, capricious, unreasonable, and contrary to legal precedent. The Board asserted that petitioner’s increments were appropriately withheld pursuant to *N.J.S.A.* 18A:29-14. The parties filed cross-motions for summary decision.

The ALJ found, *inter alia*, that: there are no genuine issues of material fact, and the matter is ripe for summary decision; the Board properly considered petitioner’s reprimands in determining to withhold her salary increment; the petitioner bears the burden of proving that the withholding of her increment was arbitrary, capricious or unreasonable; and petitioner’s increment was withheld based on a reprimand in 2011-2012 and another in 2012-2013, both for conduct that occurred in the classroom and was deemed to be unbecoming and unprofessional. The ALJ concluded that the Board’s actions were not arbitrary, capricious or unreasonable. Accordingly, the ALJ granted respondent’s motion for summary decision, denied petitioner’s cross-motion, and dismissed the petition.

Upon independent review and consideration, the Commissioner rejected the ALJ’s Initial Decision and remanded the matter to the OAL for a hearing on the merits. In so doing, the Commissioner noted that the petitioner’s motion for summary decision was strictly based on a legal issue and did not suggest that there were no material facts in dispute. In light of the relief sought in this case, the factual dispute regarding the alleged conduct that resulted in the increment withholding is not insubstantial in nature, but rather is a genuine issue of material fact that precludes the disposition of this matter by summary decision.

<p>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.</p>

June 9, 2016

OAL DKT. NO. EDU 1574-15
AGENCY DKT. NO. 11-1/15

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by the petitioner, Margaret Wicks, and the Farmingdale Board of Education’s (Board) reply thereto.

This matter involves a claim by the petitioner – a tenured teaching staff member – that the Board’s decision to withhold her increment for the 2013-14 school year was arbitrary, capricious and unreasonable. In granting summary decision to the Board, the Administrative Law Judge (ALJ) found that the petitioner did not present sufficient evidence in opposition to the Board’s motion to undermine the integrity of the Board’s investigation. Therefore, the ALJ found that the petitioner has not demonstrated that the Board’s decision to withhold her increment was arbitrary, capricious or unreasonable. Upon a comprehensive review of the record, and for the reasons that follow, the Commissioner remands the matter to the OAL for further proceedings.

Pursuant to *N.J.S.A. 18A:29-14*, a local board of education may withhold an employee’s salary increment for inefficiency or other good cause. *Probst v. Board of Education of the Borough of Haddonfield*, 127 N.J. 518 (1992). The recommendation and decision to

withhold an employee's increment is "a matter of essential managerial prerogative which has been delegated by the legislature to the board." *Bernards Twp. Bd. of Educ. v. Bernards Twp. Educ. Ass'n.*, 79 N.J. 311, 321 (1979). Moreover, a board of education's exercise of its discretionary powers "may not be upset unless patently arbitrary, without rational basis or induced by improper motives." *Kopera v. Board of Education of West Orange*, 60 N.J. Super. 288 (App Div 1960). Therefore, when a school employee challenges a salary increment withholding, the employee bears the burden of proof "of demonstrating that the decision was unreasonable, arbitrary, without rational basis or induced by improper motives." *Kopera, supra*, at 297. In evaluating whether the increment withholding is reasonable, the issues to be determined are: (1) whether the underlying facts were as those who made the evaluation claimed, and (2) whether it was unreasonable for them to conclude as they did upon those facts, bearing in mind their expertise. *Kopera, supra*, at 296-297.

Although it is well established that the petitioner bears the burden of demonstrating that the Board's decision was arbitrary, capricious or unreasonable, when there are facts in dispute the employee is entitled to a hearing on the merits in order to attempt to satisfy the burden. Under *Brill v. Guardian Life Insurance Co. of America*, 142 N.J. 520 (1995), when a motion for summary decision is filed, the judge is obligated to conduct a thorough review of the record with all of the evidence viewed in the light most favorable to the non-moving party to determine whether there exists a genuine issue of material fact. *Brill, supra*, 142 N.J. at 540. The documents that were attached to the petitioner's certification in opposition to the Board's motion for summary decision clearly illustrate that there are genuine issues of material fact. Specifically, the petitioner's certification included two rebuttal memos that the petitioner submitted to the Board outlining the factual disputes regarding the alleged conduct that led to the

petitioner's increment withholding.¹ The Commissioner is not persuaded by the Board's assertion that there are no material facts in dispute simply because nothing of probative value was recited in the so-called letters of rebuttal submitted by the petitioner. Therefore, in light of the relief sought in this case, the factual dispute regarding the alleged conduct resulting in the increment withholding is not of an insubstantial nature but rather is a genuine issue of material fact that precludes the disposition of this matter by summary decision.²

Accordingly the Initial Decision is rejected; and this matter is remanded to the OAL for a hearing on the merits.

IT IS SO ORDERED.³

COMMISSIONER OF EDUCATION

Date of Decision: June 9, 2016

Date of Mailing: June 9, 2016

¹ By a letter dated April 30, 2012, the petitioner disputed the Board's findings that were contained in a letter of reprimand concerning the petitioner's interaction with another staff member in the classroom. In another letter dated September 17, 2013, the petitioner disputed the Board's findings in connection with a complaint made by a parent that alleged inappropriate classroom behavior by the petitioner. The Board determined to withhold the petitioner's increment based on her failings and shortcomings as a teacher in consecutive school years.

² The Commissioner is mindful that the petitioner also filed a cross motion for summary decision with her opposition to the Board's motion. The cross motion by the petitioner was strictly based on a legal issue as to whether an increment can be withheld based on allegations relating to an incident that occurred prior to the immediately preceding school year. The cross motion for summary decision did not suggest that there were no material facts in dispute.

³ Pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*, Commissioner decisions are appealable to the Superior Court, Appellate Division in accordance with the applicable Appellate Division rules.