

PHYLLIS HAMMER, MARIE HOWE ,	:	
HAZEL JOHNSON, LINDA KLEINMAN,	:	
ROSEANNE PSOMAS, CAROLE SHANLEY,	:	
RICHARD SIMAKOWICZ,	:	
XIOMARA SOTOLONGO, ADA TOLEDO,	:	
ALIDA TROCHE, AND EILEEN WURST,	:	
	:	
PETITIONERS,		COMMISSIONER OF EDUCATION
V.	:	
		DECISION
BOARD OF EDUCATION OF THE CITY OF	:	
PASSAIC, PASSAIC COUNTY,	:	
	:	
RESPONDENT.	:	

SYNOPSIS

Petitioners, tenured teachers and attendance officers, challenged Board’s decision to freeze their salaries in order to recoup monies allegedly overpaid to them. Petitioners contended such action constituted a withholding of their increments.

Citing *Cerato*, the ALJ concluded that petitioners were not deprived of any rights under the Tenure Employees Hearing Law (*N.J.S.A.* 18A:28-5 and 18A:6-10) by freezing their salaries until the overpayments were recouped. Petition was dismissed.

Commissioner adopted findings and determination in initial decision as his own. Summary decision was entered in favor of the Board.

JULY 15, 1997

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The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. Timely exceptions were filed by petitioners in conformance with *N.J.A.C.* 1:1-18.4. No replies were filed by the Respondent Board of Education.

Petitioners' exceptions rely on arguments expressed before the Administrative Law Judge (ALJ) at hearing, arguing that the Board should not be allowed to freeze the salaries of petitioners until such time as it recoups the overpayments it made to petitioners. Petitioners except to the ALJ's reliance on the decision entered in *Cerato, supra*, averring it is completely distinguishable from the present situation in that therein petitioner had salary increments withheld for unbecoming conduct, pursuant to *N.J.S.A.* 18A:29-14. The present petitioners contend that they did not silently accept the Board's overpayment but attempted to correct the mistake and should not be penalized. Further, petitioners note there is no evidence to substantiate that they did anything which would warrant having their increments withheld for inefficiency or other good cause pursuant to *N.J.S.A.* 18A:29-14. Thus, petitioners urge the Commissioner to find that *Cerato* does not dictate that a similar decision be reached in this matter.

Upon a careful and independent review, the Commissioner concurs with the findings and conclusions of the ALJ that respondent is entitled to summary judgment. There is

ample support in case law to sustain the finding that where a board has erroneously overpaid a tenured staff member, it may recoup such overpayments by freezing that staff member's salary without charging such staff member with inefficiency or other just cause, or acting to withhold an increments pursuant to *N.J.S.A.* 18A:29-14. Therefore, the Commissioner finds that the ALJ correctly characterized the intent of *Cerato, supra*, and related case law, in determining that the Board acted appropriately herein. See also *Markot v. East Brunswick Board of Education*, 1989 S.L.D. 3043, aff'd New Jersey Superior Court, Appellate Division, December 23, 1990, A-345-89-T5.

Accordingly, for the reasons expressed therein, the Commissioner affirms the initial decision of the OAL, hereby entering summary judgment in favor of the Board and dismissing the Petition of Appeal.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

JULY 15, 1997