

RICHARD TIBERIO,	:	
	:	
PETITIONER,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
BOARD OF EDUCATION OF THE	:	DECISION
BOROUGH OF TOTOWA, PASSAIC	:	
COUNTY,	:	
	:	
RESPONDENT.	:	
	:	
_____	:	

SYNOPSIS

Petitioner, tenured elementary school teacher, contended the Board's withholding of his salary increment for alleged unsatisfactory performance for school year 1996-97 was arbitrary, capricious and unreasonable.

ALJ found that although petitioner was given directives on setting up goals and objectives, his performance showed no significant improvement. Thus, the ALJ found that petitioner's unsatisfactory performance was reasonable basis for the Board to withhold his increment. Moreover, petitioner failed to meet his burden of proof, by a preponderance of credible evidence, that the Board's action was arbitrary, capricious and unreasonable.

Citing *Kopera*, the Commissioner adopted the findings and determination in the initial decision as his own.

AUGUST 15, 1997

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The record of this matter and the initial decision of the Office of Administrative Law have been reviewed. No exceptions were filed by the parties.

Upon careful and independent review, the Commissioner determines to affirm the initial decision of the Administrative Law Judge (ALJ). As the District properly instructs, it is petitioner's burden to prove, by a preponderance of credible evidence, that the District's decision to withhold his increment was unreasonable, based on the facts. *Kopera, supra*. He has failed to do so.

Accordingly, the initial decision of the ALJ is adopted for the reasons expressed therein. The within Petition of Appeal is hereby dismissed.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

AUGUST 15, 1997