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| ROBERT VITACCO, | : | |
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| PETITIONER, | : | |
| | : | |
| V. | : | COMMISSIONER OF EDUCATION |
| | : | |
| BOARD OF EDUCATION OF THE | : | DECISION |
| BOROUGH OF LINCOLN PARK, | : | |
| MORRIS COUNTY, | : | |
| | : | |
| RESPONDENT. | : | |
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SYNOPSIS

In consolidated matter, petitioning tenured superintendent of schools challenged the Board's withholding of his increment for the 1994-95 school year. Petitioner contended that the withholding was arbitrary, capricious and unreasonable, violated *N.J.S.A. 18A:17-19* prohibiting a board of education from reducing the salary of a superintendent during his term of office, and was illegal in that *N.J.S.A. 18A:29-14* only pertains to non-supervisory teaching staff.

ALJ determined that on the present facts, it was premature to decide the question of whether the failure to receive an increase of salary constituted a reduction since the amount in controversy was neither base salary nor a salary increment but, rather, a reimbursement of expenses defined by his contract. (There is currently pending in the courts a separate matter wherein Vitacco is seeking to enforce his rights under this agreement.) ALJ noted that the Commissioner's jurisdiction does not extend to a purely contractual dispute. ALJ ordered consolidated matter dismissed for lack of jurisdiction.

Commissioner concurred with the ALJ that the subject matter of the within consolidated case was not an increment withholding dispute arising under school laws but is, rather, purely a contractual dispute, not under the jurisdictional purview of the Commissioner of Education. Consolidated matter was dismissed.

JULY 17, 1998

OAL DKT. NOS. EDU 7549-94 and EDU 9538-94 (CONSOLIDATED)
AGENCY DKT. NOS. 177-6/94 and 326-8/94

ROBERT VITACCO, :
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 PETITIONER, :
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 V. : COMMISSIONER OF EDUCATION
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The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. No exceptions were filed by the parties.

Upon his independent and thorough review, the Commissioner affirms the decision of the Administrative Law Judge in that he concurs that the subject matter of the within consolidated case is not an increment withholding dispute arising under school laws but is, rather, purely a contractual dispute, an area which does not fall under the jurisdictional purview of the Commissioner of Education.

Accordingly, the initial decision of the OAL is adopted for the reasons clearly stated therein, and the instant consolidated matter is dismissed for lack of subject matter jurisdiction.*

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

JULY 17, 1998

* This decision, as the Commissioner's final determination in the instant matter, 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. 6:2-1.1 et seq.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.