

NORTIZA ANDINO, LEE BEAUFORT,	:	
VIRGINIA DUNNAWAY, ROSEMARIE	:	
GIORDANO, DOROTHY HOWARD,	:	
MICHELLE LAMONICA, CECILE MARTIN,	:	
LIONEL MILLER, MARIS MORAN, ROSA	:	
SELLERS, CHRISTINA STONEY, MARY	:	
WASSEFF, ERMAINISE WHITE, AND JOAN	:	
YOUNGER,	:	
	:	
PETITIONERS,	:	
	:	
V.	:	COMMISSIONER OF EDUCATION
	:	
STATE-OPERATED SCHOOL DISTRICT OF	:	DECISION
THE CITY OF JERSEY CITY, HUDSON	:	
COUNTY,	:	
	:	
RESPONDENT.	:	

SYNOPSIS

Petitioners, 14 tenured teaching staff members, contended the District improperly withheld their 1995-96 salary and adjustment increments for allegedly poor performance. Six petitioners withdrew or severed their appeals.

ALJ determined that petitioners, except for Petitioner Stoney, failed to show by a preponderance of credible evidence that the District's decision to withhold was unreasonable. ALJ found that petitioners had been evaluated and told about needed improvements but performances were still poor. As to Petitioner Stoney, the ALJ concluded that the District improperly withheld her salary and adjustment increment as she was evaluated under techniques that were unfamiliar to her since she was recently reassigned and she had not attended the workshop on new techniques. Thus, the ALJ affirmed the withholding of the increments of all petitioners except Petitioner Stoney whose appeal was granted.

Commissioner adopted in part and reversed in part the initial decision. Commissioner concurred with the ALJ that the District's action of withholding the 1995-96 increments of petitioners for unsatisfactory performance was a valid exercise of that body's discretionary authority and was based on validly perceived deficiencies in their performances during the 1994-95 school year. Commissioner, however, reversed that portion of the initial decision which found the withholding of Petitioner Stoney's increment to be unreasonable. Commissioner found such conclusion unsupported by the record. When evaluated under the *Kopera* standard, the District's action of withholding was amply supported by the record – Petitioner Stoney's performance as a third grade teacher displayed the same genre of deficiencies observed by the evaluator of her performance as a first grade teacher. Thus, Commissioner reversed that portion of the initial decision granting Petitioner Stoney's appeal. Entire Petition of Appeal was dismissed.

SEPTEMBER 4, 1998

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The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. Exceptions of the District were timely filed pursuant to *N.J.A.C. 1:1-18.4*.

The District excepts solely to that portion of the Administrative Law Judge’s (ALJ) decision which recommends reversal of the increment withholding of Christina Stoney. (District’s Exceptions at p. 2) In this one instance, it asserts, the ALJ inexplicably departed from the well-established standard of review of a local district’s determination to withhold the increment of a teaching staff member set forth in *Kopera v. West Orange Board of Education*, 60 *N.J. Super.* 288 (App. Div. 1960), wherein the court held that “the scope of the Commissioner’s review is ‘not to substitute his judgment for that of those who made the evaluation but to determine whether they had a reasonable basis for their conclusions.’ *Id.* at 296.” (*Id.*) The

District argues that, pursuant to *Kopera, supra*, there are only two issues which must be resolved in matters of this type, “namely, ‘(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...’ *Id.* at 296-297.” (District’s Exceptions at p. 2) Herein, the District proffers, notwithstanding that the ALJ found that the facts and observed deficiencies in petitioner’s performance were, in actuality, as reported by the evaluators, she thereupon went on to conclude that it was unreasonable for the District to withhold Ms. Stoney’s increment “because her second formal evaluation was conducted by Supervisor Ricci in March 1995 shortly after Ms. Stoney had been reassigned from the third grade to the first grade and was based on ‘new techniques’ with which Ms. Stoney was unfamiliar (Initial Decision, p. 15).” (District’s Exceptions at pp. 3-4) The District advances that the ALJ did not specify the “new techniques” which were supposedly utilized in Ms. Stoney’s second teaching performance evaluation and, “[i]n truth, there were no such ‘new techniques.’” (*Id.* at p. 4) It contends that petitioner, herself, in her April 5, 1995 memorandum regarding the evaluation which had been conducted on March 16, 1995, although advancing that she had not attended the workshop conducted for first grade teachers by Ms. Ricci in January 1995, made no claim of having been evaluated on any “new techniques” discussed at such workshop. (*Id.* at pp. 4-5)

Even more instructive here, the District argues, and fully evident in the Initial Decision itself (see pages 13-14), is that there is no appreciable difference in the “types of deficiencies observed” in the first formal evaluation conducted on Ms. Stoney on October 26, 1994, when she was a third grade teacher, and that conducted on March 16, 1995, when she was teaching first grade. (District’s Exceptions at p. 6) It provides a side-by-side comparison of the deficiencies found in both observations, and states that such a comparison clearly demonstrates that there was “nothing new” with respect to the “criteria or the techniques considered by the evaluators,” nor was there anything “new or novel” about the deficiencies

observed. (*Id.*) The District argues that Ms. Stoney's "change in elementary grade -- from third to first grade -- should not affect the basic elements rightfully expected of any teacher, such as, planning a lesson with an objective, organizing activities to match the objective of the lesson, and motivating and engaging students in the classroom activities." (*Id.*)

In conclusion, the District urges that, in light of the fact that the ALJ clearly exceeded the applicable standard of review in overturning the District's withholding of Ms. Stoney's increment, the Commissioner reverse this portion of the initial decision. (*Id.* at pp. 6-7)

Upon his independent and careful review of the record, the Commissioner determines to affirm in part and to reverse in part the ALJ's recommended decision. Initially, the Commissioner concurs with the ALJ that the District's action of withholding the 1995-96 increments of Noritza Andino, Virginia Dunnaway, Rosemarie Giordano, Rosa Sellers, Mary Wasseff, Ermainise White and Joan Younger for unsatisfactory performance was a valid exercise of that body's discretionary authority. In this regard, it must be reemphasized that the decision of the District is entitled to a presumption of correctness and will not be overturned unless petitioners make an affirmative showing, by a preponderance of credible evidence, that such action was arbitrary, capricious or unreasonable. Herein, the Commissioner concludes that the record amply establishes that the District's actions in withholding these petitioners' increments was based on validly perceived deficiencies in their performance during the 1994-95 school year.¹

The Commissioner next determines to reverse that portion of the initial decision which found that the District's withholding of Christina Stoney's increment was unreasonable, as

¹ It is noted that the ALJ's recitation of the underlying facts surrounding each of these individuals indicates that the District withheld increments for the 1994-95 school year. By way of clarification, the Commissioner observes that the increments of these individuals were withheld for the 1995-96 school year based upon their performance during the 1994-95 school year.

he finds such conclusion unsupported by the record. Rather, it is undeniable that, on two separate occasions during the school year, petitioner's performance was found to be below that considered acceptable for an elementary teacher in the District. Moreover, as was argued by the District, and evident in the initial decision, (see initial decision at pages 13-14) the deficiencies observed by Assistant Principal Frierson-Howard in her October 26, 1994 evaluation of Ms. Stoney's performance as a third grade teacher were essentially the same genre of deficiencies observed by Supervisor Ricci in her evaluation of Ms. Stoney's performance as a first grade teacher conducted on March 16, 1995, and go to the very core of her job as a teacher, irrespective of the grade she is responsible for instructing. The Commissioner further concurs with the District's exception argument that the record contains neither an allegation by petitioner nor any other support for the ALJ's contention that Ms. Stoney's March 16, 1995 evaluation was based on criteria, standards, or "new techniques" of which she was unaware. As such, when evaluated under the appropriate standard of review, *Kopera, supra*, the District's action of withholding Ms. Stoney's 1995-96 increment for poor performance during the 1994-95 school year is amply supported by the within record and, therefore, cannot be termed unreasonable.

Accordingly, the initial decision of the OAL is adopted in part and reversed in part, for the reasons set forth above, and the Petition of Appeal in this matter is hereby dismissed.²

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

SEPTEMBER 4, 1998

² 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.