

JAMES SAKOFSKY, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE CITY : DECISION
OF EAST ORANGE, ESSEX COUNTY, :
RESPONDENT. :
:

SYNOPSIS

Petitioner, tenured music teacher, alleged the Board wrongfully withheld his increment for the 1996-97 school year for unsatisfactory performance. Board noted the principal recommended termination but the Board imposed the less severe penalty of withholding

Having considered contradictory testimony and having found petitioner's testimony to lack credibility, the ALJ concluded that petitioner did not sustain his burden of proof by a preponderance of competent evidence that the Board's action was improper. Petition was dismissed.

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

March 6, 1998

OAL DKT. NO. EDU 11550-96
AGENCY DKT. NO. 326-8/96

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The record of this matter and the initial decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner's exceptions, and the Board's replies thereto, which essentially recast and reiterate arguments advanced before the Administrative Law Judge (ALJ), were timely filed in accordance with *N.J.A.C.* 1:1-18.4 and were considered by the Commissioner in rendering the within decision.

Upon a careful and independent review, the Commissioner concurs with the findings and conclusions of the ALJ that the Board's withholding of petitioner's increment was not improper for the reasons expressed therein.

It is well-settled that board decisions to withhold increments may not be upset unless they can be demonstrated to be patently arbitrary, capricious, unlawful or induced by improper motive. *Kopera v. West Orange Bd. of Educ.*, 60 *N.J. Super.* 288, 294 (App. Div. 1960). The burden of proof that an action was so deficient rests with the person challenging the decision. *Kopera* at 297. The Commissioner concurs that, based on the record before him, the Board's decision to withhold petitioner's increment did not exceed the reasonable use of its discretionary authority, and moreover, that the petitioner has not met his burden of establishing otherwise.

Accordingly, for the reasons articulated therein and further explicated above, the Commissioner adopts the initial decision of the OAL and dismisses the instant Petition of Appeal.*

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

March 6, 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.