

WILLIAM NEWSOME, :
 :
 PETITIONER, : COMMISSIONER OF EDUCATION
 :
 V. : DECISION
 :
 BOARD OF EDUCATION OF THE :
 BOROUGH OF DUMONT, BERGEN :
 COUNTY, :
 :
 RESPONDENT. :

SYNOPSIS

Petitioner – a tenured health and physical education teacher employed by the district for more than twenty-nine years – appealed the district’s withholding of his salary increment for the 2006-07 school years as arbitrary, capricious and unreasonable. The respondent contends that the increment withholding was based upon petitioner’s need to improve his instructional management and use of disciplinary procedures following a number of incidents in which petitioner used inappropriate language, derogatory names, and demeaning disciplinary techniques with his students.

The ALJ found, *inter alia*, that: during the 2005-06 school year, petitioner had engaged in a form of discipline that required students to sit on a chair inside a storage closet; during the same time period, petitioner used demeaning and derogatory names toward students being disciplined; and petitioner had previously been warned about similar behavior and had received a three day suspension with pay in 2002. The ALJ concluded that petitioner had not met his burden of proving that the respondent’s action to withhold his increment was arbitrary, capricious, unlawful, or induced by improper motive. The ALJ recommended dismissal of the petition with prejudice.

Upon a full and independent review of the record, the Commissioner agreed with the ALJ, for the reasons expressed in her decision, that the withholding of petitioner’s increment was a reasonable exercise of the Board’s lawful discretionary authority. Accordingly, the Initial Decision was adopted as the final decision in this matter.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

January 4, 2008

OAL DKT. NO. EDU 11390-06
AGENCY DKT. NO. 382-10/06

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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 review, the Commissioner – having no basis, pursuant to *N.J.S.A. 52:14B-10(c)*, to question the credibility determinations of the Administrative Law Judge or the findings of fact based upon them – concurs that the Board of Education’s withholding of the petitioner’s 2006-07 increment was a reasonable exercise of the Board’s lawful discretionary authority.

Accordingly, for the reasons expressed therein, the Initial Decision of the OAL is adopted as the final decision in this matter, and the petition of appeal is dismissed.

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: January 4, 2008

Date of Mailing: January 4, 2008

* This decision 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. 6A:4-1.1 et seq.*

