

#324-12 (OAL Decision: Not yet available online)

ANITRA MARTIN, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF JERSEY CITY, : DECISION

HUDSON COUNTY, :

RESPONDENT. :

SYNOPSIS

Petitioner – an early childhood education teacher employed in respondent’s school district since 1990 – appealed the determination of the respondent Board to withhold her 2010-2011 salary increment, alleging that the Board’s actions were arbitrary, capricious and unreasonable. The Board contended that the increment withholding was justified based upon deficiencies in petitioner’s teaching performance as documented in all of her evaluations throughout the previous school year.

The ALJ found, *inter alia*, that: petitioner was observed and evaluated three times during the 2009-2010 school year; all three evaluations concluded that petitioner’s performance was below standard, unsatisfactory, and needed improvement; petitioner never submitted a written rebuttal stating why she should not have received an unsatisfactory evaluation, and never asked for or accepted assistance from staff or colleagues, although it was offered; and that the Board acted reasonably in withholding the petitioner’s increment due to unsatisfactory performance during the 2009-2012 school year. The ALJ concluded that the petitioner failed to show that the increment withholding was unreasonable and accordingly affirmed the Board’s decision to withhold petitioner’s increment; the petition was dismissed.

Upon independent review and consideration, the Commissioner concurred with the ALJ that the petitioner failed to sustain her burden of establishing that the Board’s action was arbitrary, capricious unreasonable, or an abuse of its discretion. Accordingly, the Initial Decision of the OAL 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.

August 9, 2012

OAL DKT. NO. EDU 10893-10
AGENCY DKT. NO. 557-9/10

ANITRA MARTIN, :
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 PETITIONER, :
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 V. : COMMISSIONER OF EDUCATION
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 BOARD OF EDUCATION OF JERSEY CITY, : DECISION
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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. The parties did not file exceptions to the Initial Decision.

Upon careful consideration, the Commissioner¹ determines to adopt the ALJ's recommended decision as he finds that the Board's action in withholding the petitioner's 2010-2011 increment was a valid exercise of its discretionary authority. In so determining, the Commissioner was mindful that it is well-established that the scope of the Commissioner's review in increment withholding matters 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. (*Kopera v. West Orange Bd. of Ed.*, 60 *N.J. Super.* 288 (App. Div. 1960). As such, there are *only two* determinations to be made when reviewing the Board's decision to withhold the increment of a teaching staff member, *i.e.*, 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 based

¹ This matter has been delegated to the Deputy Commissioner pursuant to *N.J.S.A.* 18A:4-33.

on those facts. Moreover, it is likewise well-established that the burden of proving unreasonableness lies with the petitioner. (*Kopera* at 296-297)

With this applicable legal standard in mind, the Commissioner's review persuades him that the record here amply establishes that the Board's action in withholding petitioner's increment was based on validly perceived deficiencies in her performance during the 2009-2010 school year. Consequently, the Commissioner agrees with the ALJ that petitioner has failed to sustain her burden of establishing, by a preponderance of the credible evidence, that the Board's action was arbitrary, capricious, unreasonable, or an abuse of its discretion.

Accordingly, the recommended decision of the OAL is adopted as the final decision in this matter and the instant petition of appeal is hereby dismissed.

IT IS SO ORDERED.²

DEPUTY COMMISSIONER OF EDUCATION

Date of Decision: August 9, 2012

Date of Mailing: August 10, 2012

² This decision may be appealed to the Appellate Division of the Superior Court pursuant to *P.L.* 2008, *c.* 36 (*N.J.S.A.* 18A:6-9.1).