

82-01

HELEN MININSON, :
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 PETITIONER, :
 :
 : COMMISSIONER OF EDUCATION
 V. :
 : DECISION
 :
 BOARD OF EDUCATION OF THE :
 CITY OF EAST ORANGE, ESSEX :
 COUNTY, :
 :
 RESPONDENT. :
 :
 _____ :

SYNOPSIS

Petitioning teacher challenged the withholding of her increment for the 1999-2000 school year.

The ALJ determined that petitioner had not established that the Board's withholding of her increment was the result of disparate treatment or improper motives but, rather, the ALJ found that such withholding was a result of validly perceived deficiencies in her performance. As such, the Board's action in this regard could not be overturned.

The Commissioner affirmed the decision of the ALJ.

March 7, 2001

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner sought and was granted an extension of time within which to file exceptions to the Administrative Law Judge’s (ALJ) decision. Such exceptions and the Board’s reply thereto were timely filed.

Upon careful and independent review of the record, the Commissioner, finding petitioner’s exceptions essentially reiterative of her arguments advanced below, which were fully addressed and considered by the ALJ in her decision,¹ affirms the recommended decision, as the Commissioner agrees that, under the circumstances presented here, the Board’s action in withholding petitioner’s increment for the 1999-2000 school year was a valid exercise of its discretionary authority. In so determining, the Commissioner is mindful, as recognized by the

¹ To the extent petitioner challenges the facts determined by the ALJ based on the testimony of the witnesses and the credence ascribed to such testimony, the Commissioner notes that the record before him does not include transcripts of the hearing conducted at the OAL. Challenges to factual findings predicated upon credibility determinations made by an administrative law judge require the party to supply the agency head with the relevant and necessary portion of the transcript. *See In re Morrison*, 216 N.J. Super. 143, 158-59 (App. Div. 1987). Additionally, it is well-established that due regard should be given to the person who heard the live testimony and assessed the witnesses’ behavior at the hearing. *See Close v. Kordulak Bros.*, 44 N.J. 589, 599 (1965).

ALJ, that it is well-established that a Board's imposition of an increment withholding may not be upset unless such action is demonstrated to be patently arbitrary, capricious, unlawful or induced by improper motive. *See Kopera v. West Orange Bd. of Ed.*, 60 N.J. Super. 288 (App. Div. 1960)). Moreover, the burden of proving unreasonableness lies with the petitioner. (*Id.* at 297)

The Commissioner's review compels him to concur with the ALJ that the Board's action withholding petitioner's increment, after she received several less than satisfactory evaluations during the 1998-99 school year, did not exceed the reasonable use of its broad discretionary authority. Moreover, the Commissioner further agrees that petitioner has not met her burden of establishing otherwise. Consequently, the Commissioner may not substitute his judgment for that of the Board.

Accordingly, the recommended decision of the OAL is affirmed for the reasons therein and the instant Petition of Appeal is hereby dismissed.

IT IS SO ORDERED.²

ACTING COMMISSIONER OF EDUCATION

Date of Decision: March 7, 2001

Date of Mailing: March 8, 2001

² This decision, as the Commissioner's final determination, 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.*, within 30 days of its filing. Commissioner decisions are deemed filed three days after the date of mailing to the parties.

