

#359-12 (OAL Decision: Not yet available online)

ALBERT CAMPBELL, :

PETITIONER, : COMMISSIONER OF EDUCATION

V. : DECISION

BOARD OF EDUCATION OF THE CITY :
OF CAMDEN, CAMDEN COUNTY, :

RESPONDENT. :

SYNOPSIS

Petitioner – who has been employed in respondent’s district since 1977, most recently as an elementary vice principal – appealed the determination of the respondent Board to withhold his 2011-2012 salary increment, claiming that he had not received prior written notice of this action, nor the reasons therefore as required under *N.J.S.A.* 18A:29-14. The Board contended, *inter alia*, that petitioner’s appeal – which was filed on October 31, 2011 – was untimely pursuant to *N.J.A.C.* 6A:3-1.3, as he had been notified by letter dated May 19, 2011 of the Board’s decision to withhold his increment. The Board filed a motion for summary decision, to which petitioner failed to respond.

The ALJ found, *inter alia*, that: counsel for petitioner notified the OAL that his client had failed to communicate with him regarding an answer to the Board’s motion to dismiss, and indicated that the petition might be withdrawn; because such withdrawal was not forthcoming, the matter was decided on the papers; the uncontested documents presented with the motion to dismiss show, *inter alia*, that the Board notified petitioner in writing on May 19, 2011 that his increment would be withheld for the coming year; further, by letter dated July 8, 2011, petitioner was notified that the reason for the increment withholding was his “unsatisfactory performance as Vice Principal” as detailed in “multiple memorandums from the principal at Davis Elementary School between October 2010 and June 2011”; and the Board heard argument from petitioner at a “Donaldson Hearing” as to why his increment should not be withheld, but declined to change its determination to withhold the increment. The ALJ concluded that petitioner was fully aware that his increment was to be withheld by the end of May 2011 yet failed to file his appeal until the end of October 2011, well beyond the 90 day limit for the filing of a petition. Accordingly, the ALJ dismissed the petition as untimely.

Upon independent review and consideration – and noting that the file includes a July 30, 2012 letter from petitioner’s counsel purporting to withdraw the petition subsequent to the issuance of the decision of the OAL on July 27, 2012 – the Commissioner concurred with the ALJ’s findings and conclusions in this matter. Accordingly, the Commissioner adopted the Initial Decision of the OAL 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 30, 2012

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This controversy was initiated on October 31, 2011 as a challenge to respondent’s decision to withhold petitioner’s increment for the 2011-2012 school year. On March 22, 2012 – after the matter had been transmitted to the Office of Administrative Law (OAL) for fact-finding – respondent moved for summary decision alleging, *inter alia*, that petitioner had failed to institute the case within the time period allowed by *N.J.A.C.* 6A:3-1.3(i) and that, consequently, the Commissioner lacked jurisdiction to adjudicate the matter. Petitioner never responded to the motion.

On July 27, 2012 an Initial Decision was issued in the OAL, wherein the Administrative Law Judge (ALJ) found that petitioner had not timely instituted his challenge to the increment withholding action by respondent. The ALJ accordingly recommended dismissal of the petition.

Upon review of the record and Initial Decision, the Commissioner concurs with the ALJ’s determination that the petition was untimely filed. For this reason, and in light of petitioner’s “withdrawal” from the case by way of a letter dated July 30, 2012 from his counsel,

the Commissioner adopts the Initial Decision as the final decision in this case. The petition is dismissed with prejudice.

IT IS SO ORDERED.¹

COMMISSIONER OF EDUCATION

Date of Decision: August 30, 2012

Date of Mailing: August 30, 2012

¹ Pursuant to *P.L. 2008, c. 36 (N.J.S.A. 18A:6-9.1)*, Commissioner decisions are appealable to the Appellate Division of the Superior Court.