

#106-13 (OAL Decision: Not yet available online)

RONALD SHULER, :

PETITIONER, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE : DECISION

TOWNSHIP OF HILLSIDE, :

UNION COUNTY, :

RESPONDENT. :

SYNOPSIS

Petitioner – a security guard in respondent’s school district for more than fifteen years – appealed the determination of the respondent Board to withhold his 2011-2012 salary increment, alleging that the withholding was based on respondent’s inaccurate Evaluation Addendum that combined performance evaluations for the 2009-2010 school year and prior years without removing inconsistent information. The Board contended that the increment withholding was justified.

The ALJ found, *inter alia*, that: petitioner’s end of year evaluation, completed in May 2011, was prepared by the school principal rather than the director of security – who had been petitioner’s supervisor – because the supervisor had left the district’s employment; the principal prepared the evaluation by cutting and pasting information from prior evaluations and using letters containing issues that arose as far back as 2008; respondent acknowledged that some of the information and findings in the May 2011 evaluation were inconsistent and should have been removed prior to issuing the evaluation; petitioner has met the burden of proving that the withholding of his salary increment for 2011-2012 was based on respondent’s inconsistent, confusing, and inaccurate evaluation forms that combined performance evaluations for the 2009-2010 school year and prior years, but did not include an addendum for the 2010-2011 school year or provide information on petitioner’s work performance during the 2010-2011 evaluation period. The ALJ concluded that the Board’s action in withholding the increment was arbitrary, capricious and unreasonable, and ordered the respondent to provide petitioner with his 2011-2012 salary increment.

Upon independent review and consideration, the Commissioner concurred with the ALJ that the Board’s decision to withhold petitioner’s increment was arbitrary, capricious and unreasonable; accordingly, the Commissioner adopted the Initial Decision 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.

March 19, 2013

OAL DKT. NO. EDU 13113-11
AGENCY DKT. NO. 253-9/11

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The record of this matter and the Initial Decision of the Office of Administrative Law have been reviewed. The parties did not file exceptions to the Initial Decision.¹

Upon a comprehensive review of the record in this matter, the Commissioner concurs with the Administrative Law Judge that the Board's decision to withhold the petitioner's increment for the 2011-2012 school year was arbitrary, capricious and unreasonable. Accordingly the Initial Decision is adopted as the final decision in this matter. The Board is hereby ordered to provide the petitioner with his 2011-2012 salary increment.

IT IS SO ORDERED.²

COMMISSIONER OF EDUCATION

Date of Decision: March 19, 2013

Date of Mailing: March 20, 2013

¹ The record contains no transcripts from the hearing conducted at the OAL on March 16, 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*)