

JOHN BARAN, :
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 PETITIONER, :
 :
 V. : COMMISSIONER OF EDUCATION
 :
 BOARD OF EDUCATION OF THE CITY : DECISION
 OF JERSEY CITY, HUDSON COUNTY, :
 :
 RESPONDENT. :
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SYNOPSIS

Petitioner – a tenured teacher employed in respondent’s school district – asserted that the respondent Board acted in an arbitrary, capricious and unreasonable manner when it withheld his salary increment for the 2013-2014 school year. The Board contended that petitioner’s increment was withheld for good cause – specifically for performance and attendance issues – pursuant to *N.J.S.A. 18A:29-14*.

The ALJ found, *inter alia*, that: petitioner was absent from work for twenty-three days during the year in question, exceeding his yearly absentee allotment by seven days; his absences required the retention of a substitute teacher and negatively impacted the education of his students on twenty-three days during the 2013-2014 school year; petitioner was evaluated during this period as “partially ineffective” in a number of areas, and “ineffective” in several others, including managing student behavior, communicating with students, and engaging students in learning, among others; petitioner failed to produce any evidence that he provided meritorious service that entitled him to an increment; petitioner also failed to show that the Board’s decision to withhold his increment was arbitrary, capricious or unreasonable; a salary increment is a reward for meritorious service, not an entitlement; pursuant to *N.J.S.A. 18A:29-14*, a board of education may withhold an employment increment in any year for inefficiency or other good cause, and a decision to do so is a matter of management prerogative and entitled to a presumption of correctness; the petitioner herein failed to carry his burden of proving that the withholding of his increment was arbitrary, capricious or unreasonable, while the Board presented sufficient, credible and convincing evidence that petitioner’s attendance and performance were unsatisfactory during the 2013-2014 school year. The ALJ concluded that the Board’s actions were not arbitrary, capricious or unreasonable; accordingly, petitioner is not entitled to restoration of his salary increment.

Upon comprehensive review, the Commissioner concurred with the ALJ’s findings and conclusion, and adopted the Initial Decision as the final decision in this matter. In so doing, the Commissioner rejected the petitioner’s exceptions, emphasizing that increment withholdings and tenure matters are separate proceedings with individual requirements; accordingly, the statutes and regulations governing tenure charges do not apply in the context of the withholding of a salary increment. The petition was dismissed.

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.

OAL DKT. NO. EDU 14772-14
AGENCY DKT. NO. 319-10/14

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed, as have the exceptions filed pursuant to *N.J.A.C. 1:1-18.4* by the petitioner. The Board’s reply was not timely filed in accordance with *N.J.A.C. 1:1-18.4* and was therefore not considered by the Commissioner.

In his exceptions, petitioner argues that the Administrative Law Judge (ALJ) failed to consider a March 5, 2015 letter that informed the District’s staff that during the 2013-2014 school year, teacher evaluations, teacher summative and SGO scores were not properly completed in accordance with AchieveNJ, and that all teachers would therefore be classified as “teacher not evaluated” for that school year. (Exhibit P-1) Accordingly, petitioner contends that the evaluation conducted by David Radulich – which the ALJ relied upon – was improper, as the Board had previously determined that the evaluations conducted during the 2013-2014 school year would not count. Petitioner maintains that the ALJ failed to abide by *N.J.S.A. 18A:6-118*, the Teacher Effectiveness and Accountability for the Children of New Jersey (TEACHNJ) Act. Specifically, petitioner argues that the Board failed to observe him multiple times during the

2013-2014 school year, nor did it provide him with an opportunity to improve his effectiveness as required by *N.J.S.A.* 18A:6-123(7) and (9).

Additionally, petitioner contends that the ALJ speculated as to why petitioner's increment was withheld because there was no testimony as to the reason. Petitioner also points out that there was no testimony that his absences were excessive, and that all of his absences were approved by the District and used his own sick leave. Petitioner further argues that the ALJ failed to recognize *N.J.A.C.* 6A:10-1.1 *et seq.*, which guides Boards in establishing evaluation rubrics for evaluating the effectiveness of teachers. Petitioner maintains that only one short observation by his supervisor, and the subsequent lack of follow up on perceived shortcomings, fails to satisfy the intent of the regulation. Accordingly – citing a string of cases that were presented to and addressed by the ALJ – petitioner emphasizes that the Board acted arbitrarily in withholding petitioner's increment.

Upon a comprehensive review of the record in this matter, the Commissioner concurs with the ALJ – for the reasons thoroughly expressed in the Initial Decision – that the Board's decision to withhold the petitioner's increment for the 2013-2014 school year was not arbitrary, capricious and unreasonable. The Commissioner is also in accord with the ALJ that the Board presented sufficient, credible and convincing evidence that petitioner's absences were excessive and his performance was unsatisfactory during the 2013-2014 school year.

The Commissioner is not persuaded by petitioner's exceptions. An increment withholding and tenure matters are separate proceedings with individual requirements, and accordingly, the statutes and regulations governing tenure charges do not apply in this context. Pursuant to *N.J.S.A.* 18A:29-14, boards of education have the authority to withhold an employee's increment for "inefficiency or other good cause." Although the statute uses the word

“inefficiency,” it does not require compliance with the requirements for filing tenure charges of inefficiency. See *Margaret Sidberry v. Board of Education of the City of Trenton, Mercer County*, OAL Docket No. EDU 06610-09, Initial Decision, dated September 24, 2010 (noting that “[t]he decision to withhold an increment does not require a showing of shortcomings sufficient to justify dismissal under the Tenure Act” (citing *Kopera v. West Orange Board of Education*, 1960-61 *S.L.D.* at 62)). As such, the statutes and regulations cited by petitioner are irrelevant to this matter, as is the March 5, 2015 letter that petitioner relies upon.

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

IT IS SO ORDERED.*

COMMISSIONER OF EDUCATION

Date of Decision: June 30, 2016

Date of Mailing: June 30, 2016

* 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)