

#10-06 (OAL Decision not yet available online)

BARBARA SOTTILARO, :
PETITIONER, :
V. : COMMISSIONER OF EDUCATION
BOARD OF EDUCATION OF THE BOROUGH : DECISION
OF MIDDLESEX, MIDDLESEX COUNTY, :
RESPONDENT. :
_____ :

SYNOPSIS

Petitioner, a tenured Media Specialist employed by the Board, contends that respondent acted outside its area of authority in withholding her salary increment for the 2004-2005 school year. Respondent contends its action was reasonable and within its statutory authority, and based upon documented observations of petitioner's negative behaviors during the 2003-2004 school year.

The ALJ found, *inter alia*, that: the respondent has the managerial prerogative to withhold an increment for inefficiency or other good cause; the petitioner has the burden of proof to demonstrate that the Board's decision was arbitrary and capricious; the petitioner did not challenge the underlying facts of the incidents that occurred in the 2003-2004 school year, but argued that the Board's reliance upon these incidents as part of the basis for withholding her increment for the 2004-2005 school year was untimely and *ultra vires*; it was reasonable for the Board to give petitioner a chance to correct deficiencies noted in her June 2003 evaluation, and – failing to do so as evidenced by incidents reported during the 2003-2004 school year – to use this evaluation as a factor in deciding to withhold the increment. The ALJ concluded that the instant petition should be dismissed.

The Commissioner determined that summary decision is appropriately granted to the Board, as she concurs with the ALJ that the denial of petitioner's increment was not improper. In so deciding, the Commissioner notes that it is well-settled that actions concerning increment withholding may not be upset unless they can be demonstrated to be patently arbitrary, capricious, unlawful or induced by improper motive; that the burden of proof of such rests with the petitioner; that the Board did not exceed its discretionary authority; and that the petitioner did not meet her burden of establishing otherwise. Accordingly, the Initial Decision of the OAL is adopted as the final decision in this matter.

<p>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.</p>

OAL DKT. NO. EDU 8414-04
AGENCY DKT. NO. 269-8/04

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The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed. Petitioner's exceptions and the Board's reply thereto, were filed in accordance with *N.J.A.C.* 1:1-18.4.

Petitioner's exceptions essentially recast and reiterate her arguments advanced below which the Commissioner determines were fully considered and appropriately addressed by the Administrative Law Judge (ALJ) in his decision and, therefore, will not be revisited here.

Upon a careful and independent review of the record, the Commissioner determines that summary decision is appropriately granted to the Board, as she concurs with the findings and conclusion of the ALJ -- for the reasons stated in his decision -- that the Board's denial of petitioner's 2004-2005 increment was not improper.

It is well-settled that actions concerning increment withholding may not be upset unless they can be demonstrated to be patently arbitrary, capricious, unlawful or induced by improper motive. *Kopera v. West Orange Bd. of Educ.*, 60 *N.J. Super.* 288, 294 (App. Div. 1960) Further, the burden of proof that an action was so deficient rests with the

person challenging the decision. *Kopera* at 297. The Commissioner determines that, based on the record before her, the Board's decision to withhold petitioner's increment did not exceed the valid exercise of its discretionary authority and, moreover, that the petitioner has not met her burden of establishing otherwise.

Accordingly, for the reasons articulated therein and further explicated above, the Commissioner adopts the Initial Decision of the OAL as the final decision in this matter. Summary decision is hereby granted to the Board and the instant Petition of Appeal is dismissed.

IT IS SO ORDERED.*

ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 10, 2006

Date of Mailing: January 10, 2006

* This decision 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.*