P.E.R.C. NO. 84-149

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

EAST BRUNSWICK BOARD
OF EDUCATION,

Petitioner,

-and- Docket No. SN-84-12

EAST BRUNSWICK EDUCATION
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain arbitration of three grievances the East Brunswick Education Association filed against the East Brunswick Board of Education. The grievances allege that the Board violated its collective negotiations agreement with the Association when it withheld salary increments from two custodians and one secretary without just cause. The Commission, applying N.J.S.A. 34:13A-5.3 and applicable precedents from the Appellate Division of the Superior Court, holds that these grievances involve disciplinary disputes which are reviewable through binding arbitration because the instant employees enjoy no statutory protection against allegedly unjust increment withholdings and no alternate statutory appeal procedures for contesting such withholdings.

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Appearances:
For the Petitioner, Martin R. Pachman, P.A.
(William Wallen, on the Brief)

For the Respondent, Rothbard, Harris & Oxfeld, Esqs.
(Nancy Iris Oxfeld, of Counsel)

DECISION AND ORDER

On September 22, 1983, the East Brunswick Board of Education ("Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The Board seeks a restraint of binding arbitration of three grievances the East Brunswick Education Association ("Association") has filed against it. The grievances challenge the Board's decision to withhold salary increments during the 1983-1984 school year from two custodians and one secretary.

The parties have filed briefs and documents. The following facts appear.

The Association is the majority representative of the Board's teachers, custodians and maintenance personnel, secretaries, and certain other employees. The Board and the

Association have entered a collective negotiations agreement effective from July 1, 1982 through June 30, 1984. Article III A. contains a grievance procedure which culminates in binding arbitration of grievances alleging contractual violations. Article IV D. and E. provide:

> D. No employee shall be disciplined, reprimanded, reduced in rank or compensation without just cause.
>
> E. Whenever any employee is required to appear officially before the Board, or any committee thereof, concerning any matter which could adversely affect the continuation of that employee in his/her position or employment or the salary or any increments pertaining thereto, then he/she shall be given prior written notice of the reasons for such meeting or interview and shall be entitled to have a representative of the Association present to advise him/her and represent him/her during such meeting or interview. The employee shall inform the superintendent in writing prior to the meeting that he/she will have a representative of the Association present.

Article XIII K. provides:

> K. Nothing in this Agreement can be construed to mean that the Board has waived either the right to grant an extra increment or to withhold an increment.
>
> Any increment or part thereof, if such is withheld, shall not be required to be restored in subsequent years in whole or in part. No employee shall have an increment withheld without just cause.

On April 20, 1983, the Board voted to withhold the salary increments for 1983-84 of three employees: Debra Kist, Robert Elia, and Donald Speer. Kist is a tenured secretary; Elia was a non-tenured custodian who resigned effective October 28, 1983; and Speer is a custodian whose tenure status is in

dispute in proceedings before the Commissioner of Education. The Board charged Kist with "excessive absenteeism" and Elia and Speer with "overall inadequate performance of assigned custodial duties as defined in the job description."

On May 17 and 18, 1983, the Association filed grievances alleging that the increment withholdings reduced the employees' compensation without just cause and therefore violated Article IV D. The grievances requested restoration of the increments. The Board denied the grievances; the Association sought arbitration; and the instant petition ensued.

Commissioner of Education proceedings related to some of the grievances have been initiated. On June 6, 1983, Kist filed a petition with the Commissioner seeking restoration of her increment. At an October 4, 1983 pre-hearing conference, however, Administrative Law Judge Kathleen Duncan ordered, with the parties' agreement, that the matter be placed on the inactive list pending this Commission's determination of this case. In June, 1983, Speer filed a petition with the Commissioner claiming tenure entitlement and, apparently, that the Board had no statutory authority to withhold his increment; he did not, however, litigate the justness of the Board's decision to withhold his increment there. On May 4, 1984, Administrative Law Judge Stephen G. Weiss issued an initial decision: (1) upholding Speer's tenure claim; (2) finding that the Board did have authority under N.J.S.A. 18A:11-1 and 18A:16-1 to withhold his increment despite his tenure status; and (3) declining to consider the reasonableness of the Board's decision to withhold his increment. Speer v. East

Brunswick Bd. of Ed., OAL Docket No. EDU 4660-83 (May 4, 1984) ("Speer"). Elia did not file any petition with the Commissioner.

The Board contends that it had a non-negotiable and non-arbitrable managerial prerogative to withhold the salary increments from these employees. It cites, among other cases, Bernards Twp. Bd. of Ed. v. Bernards Twp. Ed. Ass'n, 79 N.J. 311 (1979) ("Bernards Township"). It also contends that the Commissioner of Education has exclusive jurisdiction to interpret the education laws and, in the alternative, that he has the predominant interest in determining whether the employees are entitled to challenge these increment withholdings.

The Association contends that the Board withheld increments from these employees as a means of disciplining them. It further asserts that under N.J.S.A. 34:13A-5.3, binding arbitration is an available means of reviewing these disciplinary determinations because none of the employees here has a statutory right to appeal to the Commissioner of Education to contest the withholding. On this last point, the Board responds by contending that N.J.S.A. 18A:29-14 provides such a statutory right of appeal to these employees.

At the outset of our analysis, we stress the narrow boundaries of our scope of negotiations jurisdiction. In Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978), the Supreme Court, quoting from In re Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55, 57 (1975), stated:

> The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations. Whether that subject is within the arbitration clause of the agreement,

> whether the facts are as alleged by the grievant, whether the contract provides a defense for the employer's alleged action, or even whether there is a valid arbitration clause in the agreement, or any other question which might be raised is not to be determined by the Commission in a scope proceeding. Those are questions appropriate for determination by an arbitrator and/or the courts.

Thus, in the instant case, we do not consider the merits of the Association's contractual claims or the Board's contractual defenses. Instead, we focus on the abstract question of the arbitrability of the Association's claim that the Board did not have just cause to withhold these employees' increments.

Based on our review of section 5.3, the legislative history concerning its amendment, and the Appellate Division decisions authoritatively interpreting it, we hold the instant grievances are arbitrable. In synopsis form, we find that section 5.3 makes disciplinary determinations subject to binding arbitration (if the parties so agree) if the disciplined employee has no statutory protection or statutory appeal procedure concerning that determination; that the Legislature, as evidenced by the legislative history, intended increment withholdings to be considered as a form of discipline; that non-teaching staff members, unlike teaching staff members, have no statutory entitlement to receive increments and no statutory protection against withholdings without good cause; that non-teaching staff members, unlike teaching staff members, have no statutory appeal procedure for contesting whether good cause for an increment withholding existed; and

may the instant increment withholdings be considered a form of discipline under N.J.S.A. 34:13A-5.3? And second, if the first question is answered affirmatively, is there an alternate statutory appeal procedure or source of statutory protection which would preclude binding arbitration of the instant withholdings under section 5.3?

The legislative history offers some immediate guidance on the first question. The Sponsor's Statement to Assembly Bill No. 706 -- which was later revised, enacted, and codified in N.J.S.A. 34:13A-5.3 -- provided, in part:

> The proposed legislation does not challenge the exclusive power of the employer to initiate discipline or discharge a public employee for misconduct, incompetency or inefficiency so as to maintain an adequate and effective work force. It merely assures organized public employees that procedures to review such important considerations as the fairness of disciplinary actions can be available to them through negotiations, and may be examined by an independent third party, if the parties so agree in their contract.
>
> This bill is not intended to deny any individual employee the right to elect to pursue a complaint over allegedly unjust discipline or discharge through procedures available under existing legislation, such as those procedures through which classified civil service employees may appeal disciplinary actions, denial of increments, etc. Nor is this bill intended to alter the existing procedures through which discharges or reductions in salary are sought against tenured personnel under N.J.S.A. 18A:6-10 et seq. or through which tenured or nontenured employees may appeal a denial of increments. It is intended to authorize the negotiation of binding arbitration merely as an alternative forum for the resolution of such disputes. Under the bill, the election of one forum will, however, preclude the employee from relitigating the grievance or disciplinary appeal through an alternative procedure. (Emphasis supplied).

that N.J.S.A. 18A:6-9, as the Appellate Division has twice held, does not preclude binding arbitration of disciplinary determinations.

N.J.S.A. 34:13A-5.3 now provides, in pertinent part:

> In addition, the majority representative and designated representative of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievance, disciplinary disputes, and other terms and conditions of employment. Nothing herein shall be construed as permitting negotiation of the standards or criteria for employee performance.
>
> * * *
>
> Public employers shall negotiate written policies setting forth grievance and disciplinary review procedures by means of which their employees or representatives of employees may appeal the interpretation, application or violation of policies, agreements, and administrative decisions, including disciplinary determinations, affecting them, that such grievance and disciplinary review procedures shall be included in any agreement entered into between the public employer and the representative organization. Such grievance and disciplinary review procedures may provide for binding arbitration as a means for resolving disputes. The procedures agreed to by the parties may not replace or be inconsistent with any alternate statutory appeal procedure nor may they provide for binding arbitration of disputes involving the discipline of employees with statutory protection under tenure or civil service laws. Grievances and disciplinary review procedures established by agreement between the public employer and the representative organization shall be utilized for any dispute covered by the terms of such agreement. (Emphasis supplied)

Thus, we must interpret the reach of N.J.S.A. 34:13A-5.3 to decide whether the determinations to withhold increments from the custodians and secretary here may be reviewed through binding arbitration. Two questions must be asked and answered. First,

Thus, this bill, as originally introduced, obviously considered increment withholdings to be discipline and specifically would have made increment withholdings and other disciplinary determinations -- regardless of whether or not they could be otherwise reviewed through specific statutory procedures such as N.J.S.A. 18A:29-14 -- reviewable through binding arbitration if the parties so agreed. The Legislature passed this bill, but the Governor vetoed it and suggested that it be amended to confirm the employer's right to establish unilaterally performance criteria and standards and to preclude binding arbitration when an alternate statutory appeal procedure or source of statutory protection existed. The Legislature accepted these conditions and the Governor then signed the amendment to Section 5.3.

From this legislative history, two points are clear. First, the Legislature from the beginning recognized that the denial of an increment constitutes discipline. Neither the Legislature nor the Governor ever made any subsequent statements to the contrary and instead their interchange focussed on the different question of the significance of whether or not other statutory appeal procedures or sources of statutory protection concerning such disciplinary determinations existed. Second, while the amendment to section 5.3 confirmed the employer's right to set performance criteria and standards without negotiations, it also recognized the disciplined employee's ability to challenge

the fairness of the employer's application of these criteria and standards in his or her own case through binding arbitration when the parties had negotiated such a procedure for review of disciplinary determinations and there was no statutory appeal procedure or source of statutory protection available to that employee. In sum, decisions to withhold increments are disciplinary determinations which may be reviewed through binding arbitration (if the parties so agree), provided no other statutory appeal procedure or protection exists. We further note that N.J.S.A. 34:13A-5.3 makes disciplinary review procedures for major disciplinary determinations such as discharges and long suspensions generally negotiable and such determinations arbitrable (assuming no other statutory appeal procedure or source of statutory protection exists) and that it follows that less severe forms of discipline such as increment withholdings are well within the ambit of N.J.S.A. 34:13A-5.3.

We next consider whether non-teaching staff members have statutory protection or an alternate statutory appeal procedure which would preclude binding arbitration under section 5.3 of disciplinary increment withholding decisions. The contrast between the many statutes concerning the increments of teaching staff members and the lack of statutes concerning increments of non-teaching staff members is instructive in this regard.

A complex of statutory provisions delineates the rights of teaching staff members with regard to the receipt of increments, the withholding of increments, and the opportunity to appeal any

increment withholding. N.J.S.A. 18A:29-7 requires a board of education to establish a salary schedule covering teaching staff members. N.J.S.A. 18A:29-8 and 18A:29-10 provide for the payment of yearly employment and adjustment increments to teaching staff members. N.J.S.A. 18A:29-14[1/] provides that the board may withhold an employment increment or adjustment increment or both from a teaching staff member provided the teaching staff member has been inefficient or other good cause exists. N.J.S.A. 18A:29-14 also affords a teaching staff member whose increment has been withheld an automatic right of appeal to the Commissioner of Education.

There is no similar complex of statutory provisions concerning the rights of non-teaching staff members such as secretaries and custodians with regard to the receipt of increments, the withholding of increments, and the opportunity to appeal any increment withholding. Salary schedules are not required to cover non-teaching staff members. Non-teaching staff members are

1/ N.J.S.A. 18A:29-14 provides:

> Any board of education may withhold, for inefficiency or other good cause, the employment increment, or the adjustment increment, or both, of any member in any year by a recorded roll call majority vote of the full membership of the board of education. It shall be the duty of the board of education, within 10 days, to give written notice of such action, together with the reasons therefor, to the member concerned. The member may appeal from such action to the commissioner under rules prescribed by him. The commissioner shall consider such appeal and shall either affirm the action of the board of education or direct that the increment or increments be paid. The commissioner may designate an assistant commissioner of education to act for him in his place and with his powers on such appeals. It shall not be mandatory upon the board of education to pay any such denied increment in any future year as an adjustment increment. (Emphasis supplied).

not entitled by law to receive employment or adjustment increments; instead they must negotiate or be given such additional compensation pursuant to the Board's general and discretionary powers under N.J.S.A. 18A:16-1[2/] to fix employee compensation. Compare, Woodbridge Twp. Bd. of Ed. v. Plumbers & Steamfitters, Local No. 270, 159 N.J. Super. 83 (1978) (custodians barren of statutory tenure protection may negotiate contractual tenure protection) ("Plumbers & Steamfitters").[3/] Similarly, no provision of Title 18 or any other statute specifically protects non-teaching staff members against the withholding of any negotiated or granted increments for other than good cause; instead, the board apparently has the general and discretionary power under N.J.S.A. 18A:11-1 (c)[4/] to withhold increments as a means of regulating its employees' conduct, subject to any requirements N.J.S.A. 34:13A-5.3 allows it

2/ N.J.S.A. 18A:16-1 provides:

> Each board of education, subject to the provisions of this title and of any other law, shall employ and may dismiss a secretary or a school business administrator to act as secretary and may employ and dismiss a superintendent of schools, a custodian of school moneys, when as provided by section 18A:13-14 or 18A:17-31, and such principals, teachers, janitors and other officers and employees, as it shall determine, and fix and alter their compensation and the length of their terms of employment.

3/ The necessity for non-teaching staff members to negotiate for the right to receive increments in the first instance raises a question of whether any subsequent deprivation of an increment would be an arbitrable loss of employee compensation. For example, if an employer and employee organization negotiated a clause unconditionally basing increments on years of service, it could be argued that the refusal to pay such an increment caused a loss in contractually due compensation which could be submitted to binding arbitration. In view of our holding under section 5.3, we need not decide that question.

4/ N.J.S.A. 18A:11-1(c) empowers boards of education to:

> Make, amend and repeal rules, not inconsistent with this title or with the rules of the state board, for its own government and the transaction of its business and for the

(continued)

to negotiate. Finally, no statute specifically gives non-teaching staff members a specific right to appeal an increment withholding to the Commissioner of Education and to contest whether "good cause" for that action existed; instead, the only possible jurisdictional basis for the Commissioner of Education entertaining petitions concerning increments withheld from non-teaching staff members is N.J.S.A. 18A:6-9. That section provides:

> The commissioner shall have jurisdiction to hear and determine, without cost to the parties, all controversies and disputes arising under the school laws, excepting those governing higher education, or under the rules of the state board or of the commissioner.

The Commissioner of Education will not assert jurisdiction under N.J.S.A. 18A:6-9 over petitions based on contractual guarantees concerning compensation or unjust discipline since these claims do not arise under the school laws. See, e.g., Larsen v. Bd. of Ed. of Piscataway, 1982 S.L.D. __ (State Bd. of Ed., October 6 1983); Booth v. Willingboro, Comm. of Ed Decision #1-83 (Jan. 3, 1983); Lang v. Bd. of Ed. of Township of Holmdel, Comm. of Ed. #231 (July 22, 1983); Woods v. Board of Education of Borough of Sayreville, Comm. of Ed. #324-83 (October 7, 1983). Further, to the extent a petition asserts that a particular disciplinary determination was an abuse of a board's general powers under

4/ (continued)
government and management of the public schools and public school property of the district for the employment, regulation of conduct and discharge of its employees, subject, where applicable, to the provisions of Title 11, Civil Service, of the Revised Statutes....

N.J.S.A. 18A:11-1 and 18A:16-1, the Commissioner will at most consider whether the Board acted arbitrarily, capriciously, or unreasonably. Regent v. Woodbridge Twp. Bd. of Ed., Comm. of Ed. Decision #99-81 (March 9, 1981) ("Regent"). Thus, in a proceeding under N.J.S.A. 18A:6-9, the Commissioner of Education will not consider whether contractual "just cause" or statutory "good cause" exists for withholding an increment from a non-teaching staff member.

Based on the amendment to N.J.S.A. 34:13A-5.3 and the legislative history, we believe it is indisputable that teaching staff members, whether tenured or untenured, may not contest decisions to withhold their increments through binding arbitration since N.J.S.A. 18A:29-14 creates a specific and mandatory statutory procedure allowing them to appeal such decisions to the Commissioner of Education. See also Bernards Township.[5/] The plain wording of N.J.S.A. 18A:29-14 and the caselaw of the Commissioner of Education, however, establish that N.J.S.A. 18A:29-14 is not applicable to non-teaching staff members such as secretaries and custodians. See

5/ In Bernards Township, the Supreme Court considered the arbitrability of a teacher's claim that the board of education had withheld an increment without just cause. The Court concluded that the claim could not be submitted to binding arbitration because it believed the decision to withhold a teacher's increment was an essential educational policy decision which the Legislature had delegated to the board under N.J.S.A. 18A:29-14 and because that statutory provision specifically required that teachers' protests against withheld increments be presented to the Commissioner of Education. The Court, however, also held that the claim could be submitted to advisory arbitration and specifically noted that such proceedings might prove helpful to the Commissioner in discharging his responsibilities under N.J.S.A. 18A:29-14. Following Bernards Township, the Commission restrained binding, but permitted advisory, arbitration of increment withholding disputes involving teaching staff members. See, e.g., In re Glen Rock Bd. of Ed., P.E.R.C. No. 84-33, 9 NJPER 605 (¶14258 1983); In re Englewood Bd. of Ed., P.E.R.C. No. 84-13, 9 NJPER 544 (¶14226 1983); In re Nutley Bd. of Ed., P.E.R.C. No. 80-41, 5 NJPER 417 (¶10218 1979); In re Fair Lawn Bd. of Ed., P.E.R.C. No. 80-52, 5 NJPER 487 (¶10249 1979).

Regent; Ehid v. Piscataway Twp. Bd. of Ed., Comm. of Ed. Decision #253-83 (August 15, 1983) ("Ehid"); Speer.[6/] Accordingly, N.J.S.A. 18A:29-14 does not bar binding arbitration of the instant increment withholding disputes.

Under Regent, Ehid, and Speer, a board's authority to grant or withhold increments from non-teaching staff members stems from its general and discretionary powers under N.J.S.A. 18A:11-1(c) and N.J.S.A 18A:16-1 to regulate employee conduct and fix employee compensation. These discretionary statutes do not preempt negotiation or arbitration over any terms and conditions of employment falling within their compass. State v. State

6/ The Board is simply mistaken when it contends that Regent and Smith v. East Brunswick Twp. Bd. of Ed., Comm. of Ed. Decision #254-83 (August 15, 1983) ("Smith"), extend the statutory protection and procedures of N.J.S.A. 18A:29-14 to non-teaching staff members. The Administrative Law Judge in Regent specifically held that N.J.S.A. 18A:29-14 was inapplicable to non-teaching staff members and the Commission adopted this conclusion. See also Ehid and Speer. We disregard the contrary discussion of the Administrative Law Judge in Smith.

We also believe that the Board's arguments concerning the purported exclusive and/or predominant jurisdiction of the Commissioner of Education are mistaken. Bernards Township approved this Commission's power, as part of its scope jurisdiction, to interpret education statutes. Further, the Association's grievances are contractual claims which are distinguishable from the claims in the Kist and Speer proceedings before the Commissioner and which the Commissioner lacks jurisdiction to review in any event. See pp. 7-8. See also Fair Lawn Bd. of Ed. v. Fair Lawn Ed. Ass'n, 174 N.J. Super. 574 (App. Div. 1980); In re Fairview Bd. of Ed., P.E.R.C. No. 84-49, 10 NJPER 10 (¶15006 1983). Finally, we note that in the case of one of these employees (Kist), the Administrative Law Judge, with both parties' consent, has elected to await this Commission's decision; in the case of the second employee (Speer), the issues to be decided before the Commissioner do not include a review of the justness of the increment withholding; and in the case of the third employee (Elia), there are no proceedings pending before the Commissioner.

alleging that certain nontenured custodians, groundsmen, maintenance men, and mechanics had been discharged, suspended, and reprimanded without just cause; these employees had been accused of misconduct, violating absence procedures, and poor job performance. Toms River involved a grievance alleging that a nontenured school bus driver had been terminated without just cause; this employee had been accused of a negative attitude, lack of cooperation, failure to report unsafe conditions, and excessive absences. The boards of education in both cases argued that the general jurisdiction of the Commissioner of Education under N.J.S.A. 18A:6-9 to hear cases arising under school laws such as N.J.S.A. 18A:11-1 and 18A:16-1 constituted a statutory appeal procedure sufficient to preclude binding arbitration. Both this Commission and the Appellate Division specifically rejected that argument and held that all the grievances could be submitted to

7/ (continued)
for publication ("East Orange") The other three consolidated cases involved the arbitrability of minor disciplinary determinations affecting civil service employees in local jurisdictions. They held that any minor disciplinary determinations could be submitted to binding arbitration and that it was irrelevant that the employees in question otherwise enjoyed all the protections afforded permanent civil service employees. Under the holding and logic of East Orange, it is irrelevant whether school employees are tenured if they have no statutory procedure available to appeal a particular type of disciplinary determination or specific statutory protection concerning that determination. We note in this regard that N.J.S.A. 18A:6-10 apparently does not give tenured custodians and secretaries any appeal rights or protection against increment withholdings since the courts do not view withholdings as reductions in compensation within the meaning of that particular statute. Williams v. Plainfield Bd. of Ed., 176 N.J. Super. 154, 152 (App. Div. 1980).

Supervisory Employees Ass'n, 78 N.J. 54, 84 (1978). For non-teaching staff members, the ability to receive increments is a mandatorily negotiable matter of compensation not mandated by statute or regulation and the board's ability to discipline employees through withholding such negotiated increments is mandatorily negotiable and arbitrable to the extent permitted by N.J.S.A. 34:13A-5.3. The specific question we must now decide is whether, despite the inapplicability of the "good cause" standard of N.J.S.A. 18A:29-14, and despite the Commissioner's lack of jurisdiction over contractual claims concerning the increments rights of non-teaching staff members, N.J.S.A. 18A:6-9 creates a statutory appeal procedure or source of statutory protection sufficient under N.J.S.A. 34:13A-5.3 to bar binding arbitration of these disciplinary disputes.

The Appellate Division has issued two decisions concerning the applicability of N.J.S.A. 34:13A-5.3 to disciplinary determinations affecting certain school employees. Willingboro Bd. of Ed. v. Employees Ass'n of Willingboro Schools, App. Div. Docket No. A-5313-82T3 (April 24, 1984) aff'g P.E.R.C. No. 83-174, 9 NJPER 356 (¶14158 1983), pet. for certif. pending Supreme Court Docket No. _____ ("Willingboro") and Toms River Bd. of Ed. v. Toms River School Bus Drivers Ass'n, App. Div. Docket No. A-5489-82T2 (April 24, 1984), aff'g P.E.R.C. No. 83-148, 9 NJPER 360 (¶14159 1983) ("Toms River").[7/] Willingboro involved grievances

7/ These two cases were actually decided, along with three other cases, in one opinion issued under the name of CWA v. City of East Orange, __ N.J. Super. __ (April 24, 1984), approved (continued)

binding arbitration.[8/] Accordingly, we reject the Board's argument in this case that N.J.S.A. 18A:6-9 is a sufficient statutory appeal procedure to preclude binding arbitration of the instant increment withholdings. We reiterate that since major disciplinary determinations such as discharges and long suspensions were found arbitrable under N.J.S.A. 34:13A-5.3 in Willingboro and Toms River, it follows that less severe forms of discipline such as increment withholdings are also arbitrable under that section.

In light of the legislative history, Willingboro, Toms River, and East Orange, we hold that the instant grievances may be submitted to binding arbitration under N.J.S.A. 34:13A-5.3. While the withholding of a teaching staff member's increment may only be contested through N.J.S.A. 18A:29-14 proceedings, the amendment of N.J.S.A. 34:13A-5.3 makes arbitrable increment withholdings disciplining non-teaching staff members who have no statutory rights to increments, no source of statutory protection against allegedly unjust increment withholdings, and no specific statutory appeal procedure for raising such a claim.[9/] The legis-

8/ We emphasized the absence of jurisdiction under N.J.S.A. 18A:6-9 to review the propriety of a disciplinary determination through a contractual just cause clause and the necessarily curtailed power of the Commissioner of Education to review such a determination in the absence of such jurisdiction.

9/ Given that the amendment to N.J.S.A. 34:13A-5.3 controls this case, we need not determine whether Bernards Township, which considered withholding of increments from teaching staff members, would have been extended to cover non-teaching staff members as well. We observe that much of the reasoning of Bernards Township does not apply to non-teaching staff members who are not statutorily entitled to receive salary increments absent inefficiency or other good cause; who lack a specific statutory appeal procedure to question whether good cause existed for a withholding; and who are not as directly involved in the educational process as teachers are. Compare Plumbers & Steamfitters.

lative act and intention of N.J.S.A. 34:13A-5.3, as specifically construed by the Appellate Division of the Superior Court, must govern.

ORDER

The Board's request for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Graves, Suskin and Wenzler voted in favor of this decision. None opposed. Commissioners Hipp and Newbaker abstained. Commissioner Butch was not present.

DATED: Trenton, New Jersey
June 25, 1984
ISSUED: June 26, 1984