

P.E.R.C. NO. 2003-64

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

FLEMINGTON-RARITAN BOARD
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2003-23

FLEMINGTON-RARITAN EDUCATION
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Flemington-Raritan Board of Education for a restraint of binding arbitration of a grievance filed by the Flemington-Raritan Education Association. The grievance contests the withholding of a Payroll Secretary's salary increment. The Commission concludes that parties may agree to binding arbitration of increment withholdings of non-teaching staff members. The Board's argument that the contract excludes this type of dispute from binding arbitration is one of contractual arbitrability which the Commission had no jurisdiction to consider. The Board does not dispute that the parties could have lawfully agreed to arbitrate the dispute.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Petitioner, Parker, McCay & Criscuolo, P.A.,
attorneys (James F. Schwerin, on the brief)

For the Respondent, Klausner & Hunter, attorneys
(Stephen B. Hunter, on the brief)

DECISION

On October 16, 2002, the Flemington-Raritan Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Flemington-Raritan Education Association. The grievance contests the withholding of a Payroll Secretary's salary increment.

The parties have filed briefs and exhibits. These facts appear.

The Association represents teachers, secretarial employees, library clerks and teaching assistants. The Board and the Association are parties to a collective negotiations agreement

effective from July 1, 1999 through June 30, 2002. Article 4, Employee Rights, provides, in part, that no employee shall be disciplined or reduced in compensation without just cause. The grievance procedure ends in binding arbitration.

Mary Ann Schneider has been employed for eight years as a Payroll Secretary in the central office. She is not a "teaching staff member" - that is, a professional staff member required to hold a certificate issued by the State Board of Examiners. See N.J.S.A. 18A:1-1. On January 29, 2002, the Business Administrator issued a memorandum to Schneider alleging insubordination and certain performance deficiencies and indicating that the administrator would be recommending that Schneider's increment be withheld.

On March 11, 2002, the Association filed a grievance stating that the January 29 memorandum recommended disciplinary action without just cause. It asked that the memorandum be destroyed and the recommendation withdrawn. On March 14, the Business Administrator denied the grievance, stating that it was filed beyond the 20-day time limit and that the "items set forth in the memorandum reflect legitimate performance concerns." On April 4, the superintendent denied the grievance for the reasons stated by the principal.

On April 23, 2002, the Board notified Schneider that it had voted to withhold her increment for the 2002-2003 school year.

On May 29, the Board denied the grievance. On June 25, the Association demanded arbitration seeking restoration of the increment and destruction of the memoranda. This petition ensued.^{1/}

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978), states:

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. [Id. at 154]

Thus, we do not consider the contractual merits of this dispute or any contractual defenses the Board may have.

In East Brunswick Bd. of Ed., P.E.R.C. No. 84-149, 10 NJPER 426 (¶15192 1984), aff'd 11 NJPER 334 (¶16120 App. Div. 1985), certif. den. 101 N.J. 280 (1985), we held that N.J.S.A. 34:13A-5.3 permits binding arbitration over the withholding of increments from non-teaching staff members. The withholdings in that case, like this one, involved allegations of performance

^{1/} Neither party has addressed arbitration over the January 29 memorandum. Accordingly, we do not address arbitration over that aspect of the grievance.

deficiencies and misconduct. In its brief, the Board argues that a subsequent Appellate Division decision, Randolph Tp. Bd. of Ed. and Randolph Ed. Ass'n, 328 N.J. Super. 540 (App. Div. 2000), certif. den. 165 N.J. 132 (2000), nevertheless bars arbitration.

Randolph addressed whether the 1990 amendments to the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., mandated binding arbitration of an increment withholding of a non-teaching staff member in a case where the parties had not otherwise contractually agreed to binding arbitration of such a withholding. The Court recognized that where the 1990 amendments did not mandate arbitration, withholdings would nevertheless be subject to the grievance procedures established by agreement between the parties. Id. at 545.

We invited the parties to file supplemental submissions addressing whether Randolph simply holds that non-disciplinary withholdings are not subject to mandatory arbitration under N.J.S.A. 34:13A-29 and whether there is any legal barrier to the parties' agreeing to arbitrate all withholdings involving non-teaching staff members under the case law predating the 1990 amendments.

The Association responded that there is no legal barrier to the parties agreeing to arbitrate all increment withholdings involving non-teaching staff members pursuant to East Brunswick and the 1990 amendments, and that Randolph did not overrule that

case law. The Board responded that the parties' contract excludes from arbitration all matters for which a "method of review is prescribed by law"; non-disciplinary withholdings are subject to review by the Commissioner of Education; and therefore this withholding is not contractually arbitrable.

We believe that Randolph does not bar parties from agreeing to binding arbitration of all increment withholdings involving non-teaching staff members.^{2/} The opportunity to seek such agreements through negotiations existed under section 5.3 prior to the 1990 amendments and those amendments do not restrict or limit any 5.3 rights. N.J.S.A. 34:13A-28. The 1990 amendments were intended to provide additional rights and Randolph clarifies that the additional right to mandatory binding arbitration extends only to increment withholdings that are "disciplinary" as defined by that amendment.


^{2/} The portion of section 5.3 that authorizes parties to agree to binding arbitration of disciplinary disputes excepts disciplinary disputes for which there is an alternate statutory appeal procedure. In East Brunswick, we rejected the argument that non-teaching staff members have statutory protection or an alternate statutory appeal procedure that would preclude binding arbitration under section 5.3. Unlike teaching staff members, non-teaching staff are not entitled by law to receive increments. 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. And finally, no statute specifically gives non-teaching staff members a specific right to appeal an increment withholding to the Commissioner of Education. See LeRose v. Lacey Bd. of Ed., 95 N.J.A.R.2d(EDU) 548 (St. Bd. 1995).

The Board argues that the parties' contract nevertheless excludes this type of dispute from binding arbitration. That argument is one of contractual arbitrability, and we have no jurisdiction to consider it. Ridgefield Park. The Board no longer disputes that the parties could have lawfully agreed to arbitrate this dispute. Accordingly, we have no basis to issue a restraint of arbitration.

ORDER

The request of the Flemington-Raritan Regional Board of Education for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, DiNardo, Mastriani and Ricci voted in favor of this decision. None opposed. Commissioners Katz and Sandman were not present.

DATED: March 27, 2003
Trenton, New Jersey
ISSUED: March 28, 2003