

P.E.R.C. NO. 2009-73

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RUMSON-FAIR HAVEN REGIONAL  
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2009-037

RUMSON-FAIR HAVEN REGIONAL  
EMPLOYEES ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Rumson-Fair Haven Regional Employees Association. The grievance contests the withholding of a teacher's salary and adjustment increments. The Commission finds that the withholding was based predominately on the evaluation of teaching performance and any challenge to the withholding must be filed with the Commissioner of Education.

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, Reussille, Mausner, Carotenuto,  
Barger, Kenny & Steel, L.L.C., attorneys (Martin M.  
Barger, on the brief)

For the Respondent, Zazzali, Fagella, Nowak, Kleinbaum  
& Friedman, attorneys (Richard Friedman, on the brief)

DECISION

On December 24, 2008, the Rumson-Fair Haven Regional Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Rumson-Fair Haven Regional Employees Association. The grievance claims that a teacher's employment and adjustment increments were withheld without just cause. We restrain arbitration because the withholding was based predominately on an evaluation of teaching performance.

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

The Association represents classroom teachers and other Board employees. The parties have entered into a collective negotiations agreement effective from July 1, 2007 through June 30, 2010. The grievance procedure ends in binding arbitration.

On June 19, 2008, the Board's superintendent notified the teacher that the Board approved his recommendation to withhold the teacher's employment and adjustment increments. The superintendent stated that among his reasons for making the recommendation were unsatisfactory ratings in two of nine categories on the teacher's annual evaluation. Those categories were "Classroom management support the learning environment" and "Interaction with professional colleagues promotes positive results." In addition, he stated that after the annual evaluation was written, he became aware of unsatisfactory instructional practices documented in the superintendent's memorandum to the teacher dated June 5, 2008. The letter concluded by stating that the superintendent would be providing the teacher with a Specific Assistance Plan.

The details of the unsatisfactory ratings in the Annual Evaluation are as follows:

- 5.0 Classroom management supports the learning environment.

- Completion of non-instructional responsibilities
- Maximization of instructional time
- Encouragement of positive student behavior

Comments and Recommendations

- Prior to presentation, music is selected and laid out for ease for student access in an effort to increase time on task.
- Further emphasis is to be placed upon maintaining student focus on topics during presentations (Ref. Observation 5/08).
- Additional emphasis to be placed on Music Room organization as per Annual Evaluation 04/05, 05/06, Action Plan 06/07, also reference meeting 4/8/08 with Dr. Righi/Handerhan/Azzaro.

\* \* \*

9.0 Interaction with professional colleagues promotes positive results.

- Development of in-district and out-of-district interaction
- Production of increased knowledge and improved skills
- Promotion of teamwork
- Impact on job responsibilities

Comments and Recommendations

- Provided information to the Music teacher at Sickles School during visitation to view use of technology in the Music Department (1/18/08) this involved the Songwriting and Recording elective and MIDI software applications.
- Provides equipment, supplies, and music orders in both vocal and instrumental areas to support music electives. (08-09)
- Assisted in the organization of Tri-District Music festival held at

RFH. This involved over 200 students from sending district schools.

- Failed to provide supervisor requested information related to course of study changes for presentation to Superintendent (Ref. memo 4/30/08).
- Failed to provide requested CD's of student's performance (Songwriting and Recording) to supervisor in a timely manner as requested for presentation to Education Committee (Ref. memo Azzaro 5/07/08).
- Memo dated 3/26/08, Subject: "Meeting to Discuss Hall Duty" from Dr. Righi. Attention to be directed towards accountability regarding duty assignments.
- Memo dated 3/26/08, Subject: Classroom Visitation. School policy restricts all food and beverages belonging to students to remain in the cafeteria.

The June 5, 2008 memorandum summarizes a conference held on June 4 to discuss the teacher's Specific Assistance Plan. The memorandum states that the teacher:

was late for hall duty at least two times;

was not punctual in handing in paperwork related to a concert and posted information about fundraising without approval, which was characterized as a neglect of duty and a failure to follow administrative regulations;

was deficient in instructional planning as evidenced by his not timely researching a textbook;

delayed in securing guest speakers for a Songwriting and Recording course;

failed to followup on suggestions to boost class enrollment;

displayed a lack of enthusiasm, interest and instruction during a number of band practices;

did nothing to seek help that was offered to address dangerously low enrollment; and

inappropriately gave extra credit to a student for cleaning up the teacher's desk.

Under N.J.S.A. 34:13A-26 et seq., all increment withholdings of teaching staff members may be submitted to binding arbitration except those based predominately on the evaluation of teaching performance. Edison Tp. Bd. of Ed. v. Edison Tp. Principals and Supervisors Ass'n, 304 N.J. Super. 459 (App. Div. 1997), aff'g P.E.R.C. No. 97-40, 22 NJPER 390 (¶27211 1996). Under N.J.S.A. 34:13A-27d, if the reason for a withholding is related predominately to the evaluation of teaching performance, any appeal shall be filed with the Commissioner of Education.

If there is a dispute over whether the reason for a withholding is predominately disciplinary, as defined by N.J.S.A. 34:13A-22, or related predominately to the evaluation of teaching performance, we must make that determination. N.J.S.A. 34:13A-27a. Our power is limited to determining the appropriate forum for resolving a withholding dispute. We do not and cannot consider whether a withholding was with or without just cause.

In Scotch Plains-Fanwood Bd. of Ed., P.E.R.C. No. 91-67, 17 NJPER 144 (¶22057 1991), we stated:

The fact that an increment withholding is disciplinary does not guarantee arbitral

review. Nor does the fact that a teacher's action may affect students automatically preclude arbitral review. Most everything a teacher does has some effect, direct or indirect, on students. But according to the Sponsor's Statement and the Assembly Labor Committee's Statement to the amendments, only the "withholding of a teaching staff member's increment based on the actual teaching performance would still be appealable to the Commissioner of Education." As in Holland Tp. Bd. of Ed., P.E.R.C. No. 87-43, 12 NJPER 824 (¶17316 1986), aff'd [NJPER Supp.2d 183 (¶161 App. Div. 1987)], we will review the facts of each case. We will then balance the competing factors and determine if the withholding predominately involves an evaluation of teaching performance. If not, then the disciplinary aspects of the withholding predominate and we will not restrain binding arbitration. [17 NJPER at 146]

The Board argues that the documents indicate that the increments were withheld for poor teaching performance.

The Association argues that the teacher's performance evaluation was extremely positive overall except for two areas involving alleged deficiencies in following directives or alleged school policy. It asserts that the teacher essentially is accused of violating administrative procedures, which does not involve teaching performance.

We acknowledge that the teacher was rated satisfactory in most categories of the annual performance evaluation. However, the Board identified particular areas of concern and withheld the increments for those reasons. Whether, on balance, the withholding was justified is for the reviewing body to determine.

Our role is limited to determining the appropriate forum for that review. That determination is based on whether the reasons for the withholding are based predominately on the evaluation of teaching performance. In this case, they are.

Classroom management is a key component of teaching performance. Parsippany-Troy Hills Bd. of Ed., P.E.R.C. No. 2000-28, 25 NJPER 442 (¶30194 1999) (arbitration restrained where withholding centered on classroom management, organization, and preparation of lesson plans, instruction, and communication with students).

Poor interaction with colleagues may or may not involve teaching performance. In this case, the alleged poor interaction directly affected students and the success of the music program. Compare Readington Tp. Bd. of Ed., P.E.R.C. No. 95-38, 21 NJPER 34 (¶26022 1994) (restraining arbitration of withholding based on school psychologist's alleged disorganization in scheduling appointments and working with colleagues; such disorganization may impair delivery of psychological services to students). This portion of the evaluation also alleges deficiencies that may not be related to teaching performance, such as duty assignments and food in the classroom. However, the primary focus of the unsatisfactory rating is the delivery of services related to the music program.



Finally, the June 5, 2008 memorandum expresses ongoing concerns about the success of the music program and the teacher's alleged deficiencies both in teaching and in promoting the program. Some non-teaching performance issues were raised, such as being late for hall duty and posting fundraising information without approval, but the predominate concerns involve instructional planning, enthusiasm in band practices, and efforts to increase class enrollment. These all involve the teaching performance of a music teacher/band instructor. Accordingly, we restrain binding arbitration over the decision to withholding this teacher's increments.

ORDER

The request of the Rumson-Fair Haven Regional Board of Education for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Branigan, Buchanan, Colligan, Fuller and Watkins voted in favor of this decision. None opposed. Commissioner Joanis was not present.

ISSUED: June 25, 2009

Trenton, New Jersey

ISSUED:

Trenton, New Jersey