

P.E.R.C. NO. 2009-68

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ATLANTIC CITY BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2009-039

ATLANTIC CITY EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Atlantic City Education Association. The grievance contests the withholding of a teacher's salary increment. 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, Comegno Law Group, P.C., attorneys
(Kimberly A. Sukinik, of counsel)

DECISION

On January 2, 2009, the Atlantic City Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Atlantic City Education Association. The grievance claims that a teacher's increment was withheld without just cause. We restrain arbitration because the withholding was based predominately on an evaluation of teaching performance.

The Board has filed a brief and certification. The Association has not opposed the petition, but has not withdrawn the grievance. These facts appear.

On October 30, 2007, two students were fighting in the teacher's classroom. The principal determined that the fight arose while the teacher was sleeping or otherwise not paying

attention to the students. The principal also states that the teacher fell asleep at faculty meetings and in-services and that his classroom was disruptive and did not provide students with an environment conducive to learning.

On December 5, 2007, the teacher received an evaluation that indicated that during a November 20 observation, the teacher did not:

Demonstrate skills in motivating students and securing participation;

Provide for the development of good work and study habits;

Maintain discipline appropriate to the learning situation;

Establish a classroom environment which is conducive to learning;

Show evidence of good housekeeping;

Demonstrate attention to conditions that affect the safety of students;

Keep students on task and make efficient use of time; and

Conform with the dress code.

According to the principal, in light of this "very poor teaching performance," which allegedly continued throughout the remainder of the 2007-2008 school year, she recommended that the teacher's increment be withheld. On June 9, 2008, the Board voted to withhold the teacher's increment.

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.

Some of the reasons for the withholding may not relate to an evaluation of teaching performance -- for example, sleeping at faculty meetings or failing to conform to the dress code. However, the majority of the reasons do relate to an evaluation of teaching performance. Accordingly, we restrain binding arbitration. Any review of the withholding must be before the Commissioner of Education.

ORDER

The request of the Atlantic City Board of Education for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

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

ISSUED: May 28, 2009

Trenton, New Jersey