

P.E.R.C. NO. 2009-67

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ATLANTIC CITY BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2009-038

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 The Association has not opposed the petition, but has not withdrawn the grievance.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 November 19, 2007, a principal conducted a classroom observation and then issued an observation report. In the area

of Curriculum and Evaluation, the teacher received unsatisfactory ratings in:

Plans lessons to accomplish specific objectives in accordance with the adopted curriculum;

Demonstrates adequate knowledge of subject matter;

Utilizes appropriate and varied teaching techniques;

Demonstrates the knowledge and skills to make effective decisions regarding independent work, cooperative work and student practice; and

Utilizes appropriate and varied instructional materials.

The principal states that on June 9, 2008, the Board withheld the teacher's increment for reasons directly related to the teacher's alleged poor teaching performance, as the principal observed and documented.

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.

The stated reasons for this withholding relate predominately 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