

P.E.R.C. NO. 2011-27

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RIDGEWOOD BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2010-051

RIDGEWOOD EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Ridgewood Board of Education for a restraint of binding arbitration of a grievance filed by the Ridgewood Education Association. The grievance contests the increment withholding of a teaching staff member. Because the reasons cited by the Board for the withholding relate predominately to an evaluation of teaching performance, the Commission grants the request for a restraint.

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, Lindabury, McCormick, Estabrook & Cooper, attorneys (Jeffrey R. Merlino, of counsel)

For the Respondent, Bucceri and Pincus, attorneys (Gregory T. Syrek, of counsel)

DECISION

On January 19, 2010, the Ridgewood Board of Education petitioned for a scope of negotiations determination. The District seeks a restraint of binding arbitration of a grievance filed by the Ridgewood Education Association. The grievance asserts that the Board withheld the salary increment of a music teacher without just cause. We restrain arbitration as we find that the reasons given for the withholding relate predominately to an evaluation of teaching performance.

The parties have filed briefs and exhibits. The Board has filed a certification of its Manager of Human Resources. These facts appear.

The Association represents teaching staff employed by the Board. The parties entered into a collective negotiations agreement effective from July 1, 2008 through June 30, 2011. The grievance procedure ends in binding arbitration.

By letter dated July 1, 2009, the teacher was advised that the Board had approved a recommendation by the Superintendent of Schools to withhold the teacher's salary increment for the 2009-2010 school year. The letter advises that the recommendation was made after the teacher's supervisor and principals documented alleged inappropriate conduct including:

1. Inappropriate methods of student management and/or student discipline in October 2008;^{1/}
2. Inadequate communication to students in class about using the bathroom in November 2008;^{2/}
3. Inappropriate methods of student management and/or student discipline in February 2009;^{3/} and
4. Any other examples of inadequate job performance and/or inappropriate conduct

1/ The certification of the Board's Human Resources Manager relates that in October 2008, the teacher disciplined two first graders by sending them into the hallway alone, disciplined others by having them sit behind a piano, and screamed in the face of another student.

2/ A student was allegedly not allowed to go to the bathroom.

3/ The certification recites that the teacher yelled at first grade students causing five of them to cry and asserts that the teacher admitted that she had done so because the students had violated her rule against touching the piano.

in 2008-2009 that may be described or referred to in your 2008-2009 performance evaluation.

The teacher's year end evaluation rates her as "unsatisfactory" in six of fourteen categories and contains a narrative reciting details of the incidents referenced in the letter. The comments made on the 2008-2009 evaluation also describe in detail incidents of alleged inadequate or inappropriate performance that occurred in 2006, 2007 and 2008.

On July 8, 2009, the Association filed a grievance alleging that the increment was withheld without just cause. On August 3, the Superintendent issued a three page, single-spaced memorandum denying the grievance. After the Board denied the grievance, the Association demanded arbitration. This petition ensued.

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, 146 (¶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.

The Board argues that the documents establish that the increments were withheld for poor teaching performance. It asserts that where the primary basis for the withholding is lack of classroom management or control or poor disciplinary techniques, arbitration should be restrained.

The Association asserts that the increment was withheld for disciplinary reasons and that no special educational expertise is required to determine if the Board had just cause for its action; the Superintendent's written grievance response did not have to discuss at length a prior increment withholding for the 2007-2008 school year, unless the Board was punishing the teacher for failing to maintain improvements shown during the 2007-2008 school year; and the references in the teacher's evaluation to performance during the three preceding school years are irrelevant to the current increment withholding and are further evidence of the Board's punitive motive. The Association further asserts that if we allow arbitration, the burden of proof will be on the Board, whereas in increment withholdings reviewed by the Commissioner of Education, the employee must show the Board acted arbitrarily.

In determining the predominate basis for a withholding, we ordinarily look to the official statement of reasons given in the letter notifying a teaching staff member of a withholding. In this case, that letter asserts that the withholding was due to poor performance as reflected in the annual evaluation documents issued by the teacher's supervisor in June 2009. That document contained detailed references to events occurring in prior school years.

Initially, we note that references to a teaching staff member's performance during prior school years are not irrelevant to our inquiry provided that evaluations from prior years were referenced in the statement of reasons issued at the time the increment was withheld. See Morris School Dist. Bd. of Ed., P.E.R.C. No. 97-110, 23 NJPER 225, 227 (¶28107 1997) (statement of reasons asserted that teacher had failed to meet goals of Professional Improvement Plans for the past two school years). Contrast Bergenfield Bd. of Ed., P.E.R.C. No. 2006-80, 32 NJPER 126, 127 (¶58 2006) (where documents from prior school years were not referenced in statement of reasons, they were not considered). Here, as in Morris School Dist. Bd. of Ed., the statement of reasons referenced the teacher's 2008-2009 evaluation that included a detailed narrative discussing specific events from prior school years.

We find that the stated reasons focus on teaching performance. Increment withholdings based on allegedly inappropriate interactions with students, including disciplinary methods that are purported to be harsh or humiliating, should be reviewed by the Commissioner of Education. See Bethlehem Tp. Bd. of Ed., P.E.R.C. No. 2010-29, 35 NJPER 392 (¶131 2009) (alleged harsh and negative interactions with students); Dumont Bd. of Ed., P.E.R.C. No. 2007-17, 32 NJPER 323 (¶134 2006) (physical education teacher allegedly called children offensive

names and put them in a closet to discipline them); Knowlton Bd. of Ed., P.E.R.C. No. 2003-47, 29 NJPER 19 (¶5 2003) (allegations that a teacher has difficulty in properly relating to second grade students, including humiliating students in class, involve an evaluation of teaching performance).

ORDER

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

BY ORDER OF THE COMMISSION

Commissioners Colligan, Eaton, Fuller, Voos and Watkins voted in favor of this decision. None opposed. Commissioner Krengel was not present.

ISSUED: September 23, 2010

Trenton, New Jersey