

P.E.R.C. NO. 91-69

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

UPPER SADDLE RIVER BOARD  
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-91-5

UPPER SADDLE RIVER  
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Upper Saddle River Education Association against the Upper Saddle River Board of Education. The grievance contests the withholding of a teacher's "salary or increment increase" for the 1990-91 school year. The Commission finds that the increment was withheld allegedly because of poor classroom management, poor teaching skills and inappropriate language in the classroom. The withholding is thus based predominately on an evaluation of teaching performance and any appeal of the withholding must be submitted to the Commissioner of Education.

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Appearances:

For the Petitioner, Beattie Padovano, attorneys  
(Ralph J. Padovano, of counsel, Antimo A. Del Vecchio, on  
the brief)

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

DECISION AND ORDER

On July 19, 1990, the Upper Saddle River Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Upper Saddle River Education Association. The grievance contests the withholding of a teacher's "salary or increment increase" for the 1990-91 school year.<sup>1/</sup>

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

The Association represents the Board's certificated personnel. The Association and the Board entered into a collective

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<sup>1/</sup> The Board's request for oral argument is denied.

negotiations agreement effective from July 1, 1987 to June 30, 1990. The parties are in negotiations for a successor agreement which they agree will not alter their rights and obligations in this matter.

James Giacone has been a music teacher employed by the Board since 1969. On October 6, 1978, Giacone was given his principal's comments regarding an incident where Giacone mentioned a student's name in a negative context to other students. The principal made several recommendations for improvement.

In May 1980, Giacone's principal filed a complaint against Giacone for conduct unbecoming a teacher. The incident involved a class where students were rowdy and Giacone allegedly threatened to wrap his trumpet around a student's head and threw the trumpet to the floor. Giacone was suspended, sent for a psychological examination, and instructed to "control your level of frustration." The Board did not certify charges to the Commissioner of Education but reserved the right to do so.

In June 1980, Giacone received an evaluation with an "Overall Evaluation of Teacher Performance" rating of unsatisfactory. These areas of weakness were highlighted:

1. Late for school and classes
2. Organization and preparation
3. Discipline and control
4. Rapport with students
5. Rapport with fellow teachers
6. Understanding of T & E responsibilities, department goals and curriculum objectives
7. Attitude toward self and music program
8. Unprofessional comments regarding co-workers and programs at inappropriate times.

On June 23, 1980, Giacone responded that most of his outstanding qualities noted in his evaluations for the past eleven years had been obscured by a few irritating situations which had occurred that year.

In June 1981, Giacone received an evaluation with an "Overall Evaluation of Teacher Performance" rating of unsatisfactory. The evaluation noted that rapport with students, classroom procedures and management, and the development of a more positive approach still remain areas of serious concern. It noted that Giacone had taken action to improve suggested areas of weakness but that the practical application of that action had not visibly improved. Giacone objected to the unsatisfactory rating given his efforts to improve in the areas of student discipline and classroom management.

In June 1988, Giacone received an evaluation with an "Overall Evaluation of Teacher Performance" rating of fair. He received an unsatisfactory rating in "Professional Qualities (e.g. refrain from making derogatory remarks)." The evaluation referred to Giacone's use of the words "retard" and "scumbag fingers." Giacone had explained that "retard" is a musical term and that "scumbag" was first used by a student, but the principal felt that Giacone exercised poor judgment in using these words.

On March 2, 1990, Giacone's class was observed. The observation report suggests eliminating competition between children, giving clear instructions, providing positive comments,

offering constructive criticism without using names, and avoiding silly modes of delivery while injecting humor into a lesson.

On March 15, 1990, Giacone allegedly lost control of a band rehearsal and uttered a profanity while trying to discipline a student and regain control. Giacone denied the allegation.

After meeting with two principals and the superintendent, Giacone was suspended with pay. On April 11, 1990, the Board voted to withhold Giacone's "salary or increment" increases for the 1990-91 school year. It based its decision on:

The following deficiencies in your job performance as noted in your evaluations and in conferences with your principals:

- (a) Poor classroom management skills,
- (b) Poor teaching skills,
- (c) Use of inappropriate language in the classroom, and
- (d) Your failure to correct the above deficiencies.

In May 1990, Giacone received an evaluation with an "Overall Evaluation of Teacher Performance" rating of unsatisfactory from one principal. It mentioned lateness, 6th grade students losing interest, and the March 15, 1990 incident.

On June 4, 1990, Giacone received a classroom observation report commending his management of the observed class.

On June 18, 1990, Giacone received an evaluation from another principal. His "Overall Evaluation of Teacher Performance" rating was unsatisfactory. It highlighted the March incident and stated that Giacone's "guidance procedures, management techniques,

behavioral modification methods and consideration for social, emotional and cultural growth were unsatisfactory."

The Association grieved the withholding. The Board denied the grievance and the Association demanded binding arbitration. This petition ensued.

This case requires us to apply the principles we set forth in Scotch Plains-Fanwood Bd. of Ed., P.E.R.C. No. 91-67, 17 NJPER \_\_\_\_ (¶\_\_\_\_ 1990), in determining which increment withholdings of teaching staff members may be submitted to binding arbitration and which must be submitted to the Commissioner of Education. N.J.S.A. 34:13A-27.

The fact that an increment withholding is disciplinary does not guarantee arbitral review. Nor does the fact that a teacher's action may have involved 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 App. Div. Dkt. No. A-2053-86T8 (10/23/87)], 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 \_\_\_\_]

See also Tenafly Bd. of Ed., P.E.R.C. No. 91-68, 17 NJPER \_\_\_\_ (¶\_\_\_\_ 1991); Bergen Cty. Voc. Schools Bd. of Ed., P.E.R.C. No. 91-70, 17 NJPER \_\_\_\_ (¶\_\_\_\_ 1991). Our power is limited to

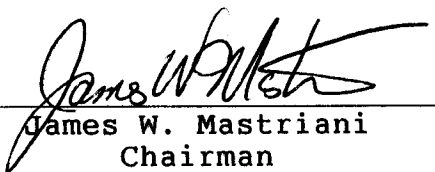
determining the appropriate forum for resolving an increment withholding dispute. We do not and cannot consider whether an increment withholding was with or without just cause.

Giacone's increment was withheld because of alleged deficiencies in his teaching performance. Those alleged deficiencies included poor classroom management, poor teaching skills, and inappropriate language in the classroom and are concerns within the Commissioner of Education's expertise and jurisdiction. While the withholding undoubtedly is disciplinary, we believe that it was based predominately on an evaluation of Giacone's teaching performance.

ORDER

The request for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

  
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James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Wenzler, Johnson and Goetting voted in favor of this decision. Commissioner Smith voted against this decision. Commissioners Bertolino and Regan abstained from consideration.

DATED: Trenton, New Jersey  
February 27, 1991  
ISSUED: February 28, 1991