

P.E.R.C. NO. 91-68

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TENAFLY BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-91-10

TENAFLY EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Tenafly Education Association against the Tenafly Board of Education. The grievance contests the withholding of a teacher's salary increment. The Commission finds that the increment was withheld because of the teacher's alleged corporal discipline of a student, retaliation against the student by lowering his grade, and inappropriate disciplinary techniques. The Board's overall judgment on these matters predominately involves an evaluation of teaching performance. Thus, any appeal of the withholding must be submitted to the Commissioner of Education.

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Appearances:

For the Petitioner, Sills, Cummis, Zuckerman, Radin,  
Tischman, Epstein & Gross, attorneys  
(James L. Plosia, Jr. and Frank N. D'Ambra, of counsel)

For the Respondent, Bucceri & Pincus, attorneys  
(Louis P. Bucceri, of counsel)

DECISION AND ORDER

On July 30, 1990, the Tenafly Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Tenafly Education Association. The grievance contests the withholding of a teacher's salary increment.

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

The Tenafly Education Association represents teachers and certain other Board employees. The Board and the Association entered into a collective negotiations agreement effective from July 1, 1989 to June 30, 1991. The agreement's grievance procedure ends in binding arbitration.

Edith Bergman is a tenured art teacher. Her 1988-89 summary evaluation rated her from effective to outstanding in every category and contained many laudatory comments. But the evaluation also recommended that Bergman avoid excessive "shouting."

On December 14, 1989, the parents of one of Bergman's students complained that Bergman had disciplined their son by slapping him hard on the back of the head. The parents met with Bergman but were not satisfied with her denial of the allegation. In compliance with district policy, the principal referred the matter to the Division of Youth and Family Services ("DYFS").

On January 19, 1990, the principal wrote Bergman a memorandum criticizing her for yelling loudly at a child and suggesting more "effective and appropriate" disciplinary techniques.

On March 9, 1990, the principal responded to the parental complaint. After investigating the incident with a DYFS representative, the principal concluded that Bergman yelled at the student and struck him "lightly on the back of the head." She also decided to give Bergman a written reprimand stating that she must maintain a "hands off" policy.

On April 5, 1990, the principal wrote Bergman a memorandum about another complaint from the student's parents. They believed that Bergman had retaliated against their son by giving him low marks on his report card. The principal demanded that Bergman submit a response by April 12.

On April 6, 1990, Bergman wrote a detailed response emphatically denying that she ever used corporal punishment on any child. That same day, Bergman authored another memorandum criticizing the way the investigation into the alleged corporal punishment had been conducted.

On April 9, 1990, the principal recommended to the superintendent that Bergman's salary increment be withheld for the 1990-91 school year because of her alleged corporal punishment of the student, grading retaliation against that student, and "excessive and consistent yelling as a means to 'discipline' students."

On April 11, 1990, Bergman authored a memorandum explaining the student's report card rating. That same day, the superintendent recommended to the Board that Bergman's increment be withheld for the reasons given by the principal.

On May 3, 1990, the student's parents wrote to the Board's president demanding that the Board replace Bergman or bring another art teacher into the school for their son.

According to two affidavits submitted by the Association, the principal and superintendent confirmed that absent the specified allegations, Bergman's increment would not have been withheld. On July 12, 1990, the Association filed a demand for arbitration of a grievance contesting the withholding. This petition ensued.

In Scotch-Plains-Fanwood Bd. of Ed., P.E.R.C. No. 91-67, 17 NJPER \_\_\_\_ (¶\_\_\_\_ 1990), we set forth the standards for determining

which increment withholdings of teaching staff members may be submitted to binding arbitration and which must be submitted to the Commissioner of Education. See 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 Upper Saddle River Bd. of Ed., P.E.R.C. No. 91-69, 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.


Bergman's increment was withheld because of her alleged corporal discipline of a student, retaliation against the student by

lowering his grade, and inappropriate disciplinary techniques.<sup>1/</sup>  
The withholding is undoubtedly disciplinary. Nevertheless, the Board's overall judgment about corporal punishment, student grading and classroom management predominately involved an evaluation of Bergman's teaching performance and thus any appeal of the withholding must be submitted to the Commissioner of Education.

ORDER

The request for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

  
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

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<sup>1/</sup> No educational expertise is needed to decide that if a teacher hit a child, it would be improper conduct. N.J.S.A. 18A:6-1 prohibits corporal punishment of students except in very limited circumstances not applicable here. But this withholding involved more than a determination that a teacher hit a student.