

P.E.R.C. NO. 91-70

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

THE BOARD OF EDUCATION OF THE
VOCATIONAL SCHOOLS IN THE
COUNTY OF BERGEN,

Petitioner,

-and-

Docket No. SN-91-34

BERGEN COUNTY VOCATIONAL-
TECHNICAL SCHOOLS EDUCATION
ASSOCIATION, INC.,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Bergen County Vocational-Technical Schools Education Association against the Bergen County Vocational Schools Board of Education. The grievance contests the withholding of a shop teacher's salary increment. The Commission finds that the withholding was based predominately on an evaluation of teaching performance and must be submitted to the Commissioner of Education.

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Appearances:

For the Petitioner, Smith, Don, Alampi, Scalo & D'Argenio
(Philip Scalo, of counsel; Lisa Smith Moorer, on the brief)

For the Respondent, Zazzali, Zazzali, Fagella & Nowak
(Robert A. Fagella, of counsel)

DECISION AND ORDER

On November 15, 1990, the Board of Education of the Vocational Schools in the County of Bergen petitioned for a scope of negotiations determination. On December 13, 1990, the Board filed an amendment. It seeks a restraint of binding arbitration of a grievance filed by the Bergen County Vocational-Technical Schools Education Association, Inc. The grievance contests the withholding of a shop teacher's salary increment.

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

The Association represents the Board's non-supervisory professional employees. The parties entered into a collective

negotiations agreement effective from July 1, 1988 until June 30, 1992. The grievance procedure ends in final and binding arbitration.

Anthony Polo teaches carpentry at Teterboro Technical Education Center South. On June 8, 1990, the Assistant Superintendent sent Polo a letter informing him that the Board would consider whether to withhold his salary increment for the next school year. The letter stated that there had been a number of difficulties in Polo's classes during the 1989-90 school year. These difficulties included:

- a. On September 27, 1989, you left your students unsupervised for approximately one-half hour while you went over to the Teterboro Special Needs School to attend to a task. This lack of student supervision occurred despite the fact that the principal gave you specific instructions to provide teacher coverage for the students remaining in your class.
- b. There have been several occasions where your attention to shop safety has been inadequate and has placed students at risk.
- c. You have been unable to adequately and consistently discipline and supervise your students.
- d. You have had significant difficulties with regard to instruction and responding to administrative suggestions for improvement.
- e. You have taken it upon yourself not to attend two or more faculty meetings. No advance permission was sought and no subsequent notice or explanation was provided despite several requests from the principal.^{1/}

^{1/} During the 1989-90 school year, Polo's principal had written many memoranda criticizing Polo for such matters as having many students withdraw from his class, ignoring safety precautions in his classroom, not assigning enough projects, not maintaining classroom discipline, and confronting a student. The Board's Director of Curriculum also sent Polo many memoranda criticizing his classroom management, lesson planning, and safety practices.

On June 25, 1990, the Board approved the recommended withholding.

On July 30, 1990, the Association demanded binding arbitration. The demand describes the dispute as involving the withholding of Polo's increment for disciplinary reasons. This petition ensued.

In Scotch-Plains-Fanwood Bd. of Ed., P.E.R.C. No. 91-67, 17 NJPER ____ (¶____ 1991), 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 Tenafly Bd. of Ed., P.E.R.C. No. 91-68, 17 NJPER ____ (¶____ 1991); Upper Saddle River Bd. of Ed., P.E.R.C. No. 91-69, 17 NJPER (¶____ 1991). Our power is limited to determining the appropriate

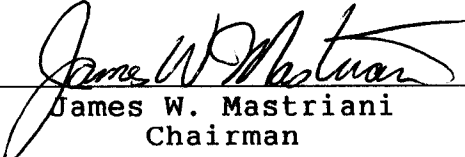
forum for resolving any increment withholding dispute. We do not and cannot consider whether an increment withholding was with or without just cause.

Under all the circumstances, we find that the reasons for the withholding of Polo's increment relate predominately to an evaluation of his teaching performance. The Board's administrators faulted Polo's teaching in several respects -- inadequate discipline and supervision of students, inadequate attention to shop safety, and instructional difficulties. While Polo was also faulted for other reasons, the withholding was based predominately on an evaluation of his teaching performance and 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