

I.R. NO. 92-14

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HUNTERDON CENTRAL REGIONAL
HIGH SCHOOL DISTRICT BOARD
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-91-94

HUNTERDON CENTRAL HIGH
SCHOOL EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

A Commission Designee declines to restrain arbitration for an Application brought by the Hunterdon Central Regional High School District Board of Education. The Board claims that the arbitration brought by the Hunterdon Central High School Education Association, over the denial of an increment for a teacher, concerns matters related to teaching performance, should not be reviewed by an arbitrator and can only be reviewed by the Commissioner of Education. The Association claims that the denial of the increment was not for teaching performance but was for conduct outside of the classroom. The Board did not show that it had a substantial likelihood in demonstrating that alleged misconduct was related to actual teaching performance.

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Appearances:

For the Petitioner
James P. Granello, attorney

For the Respondent
John Thornton, NJEA Uniserv Representative

INTERLOCUTORY DECISION

On December 12, 1991, I conducted a hearing via telephone on an application for restraint of an arbitration filed by the Hunterdon Central Regional High School District Board of Education ("Board").^{1/}

The scheduled arbitration concerns the denial of an annual increment to a teacher employed by the Board, Georgette Madak. The Board claims it refused to pay the increment because of poor teaching performance. Accordingly, its action cannot be reviewed by an arbitrator and can only be reviewed by the Commissioner of Education.

^{1/} The Board also filed a scope of negotiations petition.

The Association claims that the denial of increment was not for actual teaching performance but rather was for conduct that occurred outside the classroom and is appropriate for arbitration.

In Scotch Plains-Fanwood Bd. of Ed., P.E.R.C. No. 91-67, 17 NJPER 144 (¶22057 1991), the Commission set forth the standard 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 pursuant to N.J.S.A. 34:13A-27. See also Tenafly Bd. of Ed., P.E.R.C. No. 91-68, 17 NJPER 147 (¶22058 1991); Upper Saddle River Bd. of Ed., P.E.R.C. No. 91-69, 17 NJPER 148 (¶22059 1991). Bergen Cty. Voc. Bd. of Ed., P.E.R.C. No. 91-70, 17 NJPER 150 (¶22060 1991); Greater Egg Harbor Bd. of Ed., P.E.R.C. No. 92-9, 17 NJPER 384 (¶22181 1991).

The Commission's power in these matters is limited to determining the appropriate forum for resolving any increment withholding dispute. The Commission cannot consider whether an increment withholding was with or without just cause.

The standards that have been developed by the Commission for evaluating interim relief requests are similar to those applied by the Courts when addressing similar applications. The moving party must demonstrate that it has a substantial likelihood of success on the legal and factual allegations in a final Commission decision and that irreparable harm will occur if the requested relief is not granted. Further, in evaluating such requests for

relief, the relative hardship to the parties in granting or denying the relief must be considered.^{2/}

Here, I do not believe the Board has met the standard for interim relief. The Board has not shown there is a substantial likelihood the Commission will find Madak's alleged misconduct was related to actual teaching performance. I cannot say that there is a substantial likelihood that the Commission will refer this matter to the Commissioner of Education.

Accordingly, the application to restrain arbitration is denied. This matter is subject to a final Commission decision.


Edmund G. Gerber
Commission Designee

DATED: Trenton, New Jersey
December 12, 1991

^{2/} Crowe v. DeGioia, 90 N.J. 126 (1982); Tp. of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Tp. of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975).