

I.R. NO. 96-15

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MANCHESTER TOWNSHIP BOARD OF EDUCATION,

Public Employer/Petitioner,

-and-

Docket No. SN-96-75

MANCHESTER TOWNSHIP EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

A Commission Designee restrains arbitration pending a final Commission decision. The arbitration contests the denial of an increment to a teacher. The denial appears to be evaluatory in nature and there is a substantial likelihood that the Commisison will find this matter not arbitrable.

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Appearances:

For the Public Employer/Petitioner,
Richard K. Sacks, attorney

For the Respondent,
John A. Thornton, Jr.

INTERLOCUTORY DECISION

On January 25, 1996, the Manchester Township Board of Education filed a scope of negotiations petition and proposed order to show cause with temporary restraints with the Public Employment Relations Commission. The Board seeks to restrain an arbitration brought by the Manchester Township Education Association contesting the denial of an increment to a teacher. The Board claims that the grievance concerns a teacher's evaluation and is not discipline within the meaning of N.J.S.A. 34:13A-26. Therefore, if the Association wishes to dispute the withholding of the increment, the dispute must be brought before the Commissioner of Education.

The Association alleges that the denial of the increment was predominately disciplinary in nature and arbitration is the appropriate forum in which to challenge the increment denial.

Carolyn McGowan was denied an increment for the current school year. The Board claims it did so because McGowan received poor evaluations.

The Association claims that McGowan's evaluations for 1994-1995 was entirely satisfactory and that Ms. McGowan's earlier evaluations for 1993-1994 were stale; the true reason for the denial of McGowan's increment was for the distribution of certain materials in her sex education class. McGowan superimposed a picture of a 10th grade student on a cartoon character used in the course. The student's parents complained to the school and McGowan was denied her increment as a form of discipline.


The Commission stated in Scotch Plains-Fanwood Board of Education, P.E.R.C. No. 91-67, 17 NJPER 144 (¶22057 1991):

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 App. Div. Dkt. No. A-2053-8678 (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.

The Association claims that the increment denial flows from the use of a student's picture in health class. Assuming their position is accurate, this denial of increments is disciplinary. However, the discipline stems from McGowan's actions as a teacher. That is, her performance in the classroom.

Accordingly on balance, I believe there is a substantial likelihood that the Commission will find that this matter is predominately evaluative in nature, is not appropriate for arbitration and any appeal must be brought before the Commissioner of Education. Accordingly, the arbitration is restrained pending a final Commission decision.

BY ORDER OF THE COMMISSION



Edmund G. Gerber
Commission Designee

DATED: February 23, 1996
Trenton, New Jersey