

P.E.R.C. NO. 92-70

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOUTH RIVER BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-91-88

SOUTH RIVER EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance filed by the South River Education Association against the South River Board of Education. The grievance contests the withholding of a teacher's employment and adjustment increments for 1990-1991. The Commission finds that the withholding of the teacher's increments was based predominantly on disciplinary reasons rather than on an evaluation of teaching performance. The reasons for the withholdings solely involved allegations of misconduct in the form of corporal punishment.

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Appearances:

For the Petitioner, Wilentz, Goldman & Spitzer, attorneys  
(Gordon J. Golum, of counsel)

For the Respondent, Balk, Oxfeld, Mandell & Cohen,  
attorneys (Arnold S. Cohen, of counsel)

DECISION AND ORDER

On May 17, 1991, the South 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 South River Education Association. The grievance contests the withholding of a teacher's employment and adjustment increments for 1990-91.

The parties have filed briefs, documents and a certification. These facts appear.

The Association represents certain Board employees including teaching staff members. The Board and Association entered into a collective negotiations agreement effective July 1, 1985 to June 30, 1988. Binding arbitration is the terminal step with

respect to disputes concerning the imposition of reprimands and discipline as defined by N.J.S.A. 34:13A-22. See N.J.S.A. 34:13A-29.

Juanita Fieseler is a physical education teacher in an elementary school. According to the Board's superintendent, on May 22, 1990, Fieseler twisted a fifth grade student's arm behind his back during a class. On May 30, Fieseler allegedly admitted to twisting the student's arm to cause the student's hand to nearly touch the back of his head. The Association denies these allegations.

On July 9, 1990, the superintendent wrote Fieseler that, based on her admission and a psychiatric report,<sup>1/</sup> he was going to recommend that the Board withhold her increments in the amount of \$2750.

On September 26, the Association filed a grievance asserting that the Board had withheld Fieseler's salary and longevity increments without just cause. On March 21, 1991, the Board denied the grievance. On April 3, the Association demanded binding arbitration. This petition ensued.

The Board claims that its decision predominately involves its evaluation of Fieseler's teaching performance and therefore, its decision can only be reviewed by the Commissioner of Education.

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<sup>1/</sup> According to the Association, Fieseler went for a psychiatric evaluation pursuant to the superintendent's recommendation. An evaluation was held on June 11. The psychiatrist's report was not submitted to us, but the Association quotes this portion, "I certainly do not have any notion, ...that she should be excluded from continuing in her profession."

Citing cases decided by the Commissioner, it argues that student discipline directly affects student education and therefore relates to teaching performance.

The Association claims that there was no evaluation of Fieseler's teaching performance. Rather she was disciplined for an "isolated improper act."

In a companion case decided today, Morris Hills Reg. Dist. Bd. of Ed., P.E.R.C. No. 92-69, \_\_\_ NJPER \_\_\_ (¶1991), we declined to restrain binding arbitration of a grievance contesting an increment withholding for alleged corporal punishment. After reviewing the history of statutes and caselaw concerning increment withholdings, we explained that:

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. [Tenafly Bd. of Ed., P.E.R.C. No. 91-68, 17 NJPER 147, 148 n.1 (¶22058 1991)]

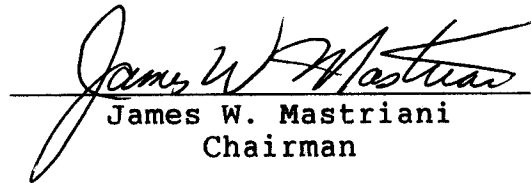
We hold, therefore, that the withholding of...[the teacher's] increments was based predominately on disciplinary reasons rather than on an evaluation of teaching performance. An arbitrator can properly make an objective determination whether or not...[the teacher] engaged in what is indisputably improper conduct.

The analysis and holding in Morris Hills apply here as well.

ORDER

The request for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Goetting, Grandrimo, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Regan abstained from consideration.

DATED: Trenton, New Jersey  
December 19, 1991  
ISSUED: December 20, 1991