

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STERLING HIGH SCHOOL DISTRICT
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2000-59

STERLING HIGH SCHOOL PRINCIPALS
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Sterling High School District Board of Education for a restraint of binding arbitration of a grievance filed by the Sterling High School Principals Association. The grievance asserts that the Board acted without just cause when it withheld a vice-principal's salary increment. The reasons for the withholding center on in-school interactions between the vice-principal and a student. The Commission concludes that this withholding predominantly relates to allegations concerning the vice-principal's leadership and educational judgment. Whether the allegations are true and whether they warranted an increment withholding are matters that must be assessed by the Commissioner of Education.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Petitioner, Cassetta, Taylor, Whalen & Hybbeneth,
labor relations consultants (Bruce Taylor, on the brief)

For the Respondent, New Jersey Principals and Supervisors
Association (Wayne J. Oppito, attorney, on the brief)

DECISION

On December 8, 1999, the Sterling High School District Board of Education petitioned for a scope of negotiations determination. The employer seeks a restraint of binding arbitration of a grievance filed by the Sterling High School Principals Association. The grievance asserts that the Board acted without just cause when it withheld a vice-principal's salary increment.

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

The Association represents principals and vice-principals. The Board and the Association are parties to a collective negotiations agreement effective from July 1, 1997

through June 30, 2000. The grievance procedure ends in arbitration.

On or about June 17, 1999, the superintendent received a written statement from a high school senior that a vice-principal had sexually harassed her by making inappropriate remarks. She alleged that the vice-principal had taken her out of classes to tell her how nice she looked; had torn up disciplinary slips, telling her that she looked particularly nice and that "you owe me"; had called her to the back room of the library and asked her to go to lunch the next Saturday; had called her at home; and had carressed her arms, shoulders, and back. The vice-principal denied any wrongdoing.

The Board suspended the vice-principal with pay and asked the Camden County Prosecutor to investigate. By September 1999, the Prosecutor had not made any findings.

On September 23, 1999, the Board vacated the suspension and reinstated the vice-principal with pay. However, it also adopted a resolution withholding his salary increment for the following school year. The resolution stated that the vice-principal had exercised poor judgment and that his remarks and conduct toward the student were unprofessional.

On September 27, 1999, the superintendent advised the vice-principal of the resolution. His letter stated:

In light of your long service with the school district, the majority of the Board has given you the benefit of the doubt. However, this should not be construed as an exoneration with

respect to your actions. The Board wishes to caution you about the need to be circumspect in your dealings with students, especially female students, so that no remarks or conduct on your part can lead, fairly or unfairly, to similar charges in the future. It is important to understand that remarks and conduct which were considered inoffensive twenty years ago are today considered offensive by some and could be construed as sexual harassment.

The Association filed a grievance contesting the withholding and seeking restoration of the increment.^{1/} The superintendent and the Board denied the grievance, asserting that the matter is non-negotiable and non-arbitrable and the contract was not violated. The Association demanded arbitration and this petition ensued.

The Board asserts that this withholding is an evaluative matter centering on the vice-principal's interactions with students. It cites Greater Egg Harbor Reg. H.S. Dist. Bd. of Ed., P.E.R.C. No. 95-58, 21 NJPER 116 (¶26071 1995), recon. denied, P.E.R.C. No. 95-84, 21 NJPER 175 (¶26110 1995), restraining arbitration over allegations that a teacher disparaged female students. The Board asserts that the fact that this case involves a vice-principal is irrelevant because supervisors are teaching staff members and an evaluation of a supervisor's interactions with students is reviewable by the Commissioner of Education.

^{1/} Although the grievance and demand for arbitration contest the placement of the resolution and letters of reprimand in the employee's personnel file, the parties do not address this issue. We do not consider it further.

The Association asserts that this withholding was based on one student's allegations of sexual harassment, allegations not pursued by the prosecutor. The Association further asserts that the Commissioner's educational expertise is not needed to decide whether a sexual harassment policy applicable to all employees was violated. It cites Morris Hills Reg. Dist. Bd. of Ed., P.E.R.C. No. 92-69, 18 NJPER 59 (¶23025 1991), declining to restrain arbitration over an allegation that a teacher corporally punished a student, and Montclair Bd. of Ed., P.E.R.C. No. 2000-1, 25 NJPER 361 (¶30155 1999), declining to restrain arbitration over an allegation involving an athletic director's compliance with administrative procedures governing gate receipts.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978), states:

The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations. Whether that subject is within the arbitration clause of the agreement, whether the facts are as alleged by the grievant, whether the contract provides a defense for the employer's alleged action, or even whether there is a valid arbitration clause in the agreement or any other question which might be raised is not to be determined by the Commission in a scope proceeding. Those are questions appropriate for determination by an arbitrator and/or the courts. [Id. at 154]

Thus, we do not consider the contractual merits of the grievance or any contractual defenses the Board may have.

Under N.J.S.A. 34:13A-26 et seq., all increment withholdings of teaching staff members may be submitted to binding

arbitration except those based predominately on the evaluation of teaching performance. Edison Tp. Bd. of Ed. v. Edison Tp. Principals and Supervisors Ass'n, 304 N.J. Super. 459 (App. Div. 1997), aff'g P.E.R.C. No. 97-40, 22 NJPER 390 (¶27211 1996). Under N.J.S.A. 34:13A-27d, if the reason for a withholding is related predominately to the evaluation of teaching performance, any appeal shall be filed with the Commissioner of Education. If there is a dispute over whether the reason for a withholding is predominately disciplinary, as defined by N.J.S.A. 34:13A-22, or related predominately to the evaluation of teaching performance, we must make that determination. N.J.S.A. 34:13A-27a. Our jurisdiction is limited to determining the appropriate forum for resolving a withholding dispute. We do not and cannot consider whether a withholding was with or without just cause.

In Scotch Plains-Fanwood Bd. of Ed., P.E.R.C. No. 91-67, 17 NJPER 144 (¶22057 1991), we articulated our approach to determining the appropriate forum. We stated:

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 [NJPER Supp.2d 183 (¶161 App. Div. 1987)], 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 146]

In Middletown Tp. Bd. of Ed., P.E.R.C. No. 92-54, 18 NJPER 32 (¶23010 1991), we recognized that the "teaching staff members" covered by N.J.S.A. 18A:29-14 and N.J.S.A. 34:13A-27 include administrators who do not teach classes. We concluded that the "teaching performance" standards set by N.J.S.A. 34:13A-27 have to be applied flexibly in light of these employees' broader responsibilities for overseeing the educational system and ensuring that students are educated properly. In Middletown, we considered a withholding involving a principal and concluded that the inquiry under N.J.S.A. 34:13A-27 was whether the basis for the withholding "relates predominately to an evaluation of the quality of the principal's performance as an educational leader and manager." Id. at 34. We restrained arbitration in that case because the reasons given -- inappropriate leadership and judgment in responding to a student-staff altercation, failure to train the staff and oversee the building's budget, and effective leadership and training of assistant principals -- centered, overall, on the employee's leadership, judgment, and management as a principal. Id. at 34; see also West Essex Reg. Bd. of Ed., P.E.R.C. No. 98-42, 23 NJPER 565 (¶28282 1997); Butler Bd. of Ed., P.E.R.C. No. 96-24, 21 NJPER 358 (¶26222 1995); Brigantine Bd. of Ed., P.E.R.C.


No. 95-54, 21 NJPER 110 (¶26067 1995); Paterson School Dist.,
P.E.R.C. No. 95-39, 21 NJPER 36 (¶26023 1994).

We conclude that this withholding predominantly relates to allegations concerning the vice-principal's leadership and educational judgment. The reasons for the withholding center on in-school interactions between the vice-principal and a student and include allegations that he took her out of classes and tore up disciplinary slips issued to her. Unlike Morris Hills, this case involves a question about the appropriateness of the disciplinary sanction of a withholding and unlike Montclair, this case involves the teaching staff member's conduct towards a student. Whether the allegations are true and whether they warranted an increment withholding are matters that must be assessed by the Commissioner of Education.

ORDER

The request of the Sterling High School District Board of Education for a restraint of arbitration is granted.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, McGlynn, Madonna, Muscato, Ricci and Sandman voted in favor of this decision. None opposed.

DATED: March 30, 2000
Trenton, New Jersey
ISSUED: March 31, 2000