

P.E.R.C. NO. 95-54

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BRIGANTINE BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-95-31

BRIGANTINE PRINCIPALS' ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Brigantine Principals' Association against the Brigantine Board of Education. The grievance contests the withholding of a principal's salary increments. The Commission holds that the reasons given for the withholding relate predominately to an evaluation of the principal's performance as an educational leader and manager.

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, DeMaria, Ellis, Hunt, Salsberg & Friedman, attorneys (Richard H. Bauch and George W. Rettig, on the brief; Richard H. Bauch and Debra S. Friedman, on the reply brief)

For the Respondent, Springstead & Maurice, attorneys (Alfred F. Maurice, of counsel)

DECISION AND ORDER

On October 3, 1994, the Brigantine Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Brigantine Principals' Association. The grievance contests the withholding of a principal's salary increments.

The parties filed certifications, exhibits and briefs. These facts appear.

The Association represents the Board's principals, assistant principals, and supervisors. The parties entered into a collective negotiations agreement with a grievance procedure ending in binding arbitration of increment withholding disputes. N.J.S.A.

34:13A-29. The contract states that "[n]o administrator shall be disciplined, reduced in rank or compensation or deprived of any professional advantage without just cause." The Board has a personnel policy governing increment withholdings when "a staff member will fail to improve upon an unsatisfactory performance or may violate a policy or rule of the district, forcing the Board to take disciplinary action."

Donald Marrandino is the principal of Brigantine Elementary School. That school houses students in grades 1-4. He is also the Association's president.

Board policy no. 2000 is entitled "Concepts and Roles in Administration; Goals and Objectives." The policy states that the Board "expects the educational administration to direct, coordinate and control pupils and staff in their efforts to reach goals and objectives adopted by the board." The policy requires educational administrators to "[p]lan, organize, implement and evaluate the educational programs established by board policy, in order to provide optimum educational opportunities to the pupils of the district."

Board policy no. 6145, adopted in 1989, is entitled "Extracurricular Activities." The policy requires that pupils participating in extracurricular activities be in "good disciplinary standing" and "good academic standing." The policy also incorporates the Board's attendance requirements.

On November 10, 1993, the Superintendent wrote a memorandum to Marrandino entitled "Board Policy for Extracurricular Activities." The memorandum asserted that Marrandino had failed to implement policy no. 6145 in that he had allowed ineligible students to participate in extracurricular activities. The memorandum instructed Marrandino that it was his responsibility to know all Board policies and to articulate them to his staff.

On April 28, 1994, the Board voted to withhold Marrandino's employment and/or adjustment increments for the 1994-1995 school year. The Board Secretary/Business Administrator wrote Marrandino a letter stating that the reason for the withholding was his "failure to implement and/or follow Board Policy #6145 regarding extracurricular activities; and [his] failure to advise [his] staff of the policy."

On May 20, 1994, Marrandino filed a grievance. He asserted that the withholding was without just cause.

On June 28, 1994, the Board Secretary/Business Administrator wrote Marrandino a letter stating that the Board had denied his grievance. The letter stated that Marrandino had failed to perform his duties under policy no. 6145 and was thus responsible for allowing students with academic and attendance problems to engage in extracurricular activities, potentially exacerbating their academic problems and causing an improper balance between the academic and non-academic needs of these students.

The Association demanded arbitration, asserting that the withholding was without just cause. This petition ensued.

Marrandino has filed a certification disputing the justness of the withholding and the Board's motivation. He asserts that the Board has reorganized the administration several times in the last five years and that before the Superintendent's memorandum he had never been responsible for implementing policy no. 6145. He also asserts that the Board has not negotiated in good faith since the Association's contract expired on June 30, 1993 and that the Board used the withholding to avoid negotiations and to punish him for his Association leadership.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (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.

Thus, we do not consider the contractual merits of this dispute. We specifically do not decide whether Marrandino was responsible for implementing policy no. 6145 or whether there was just cause for this withholding.

Under N.J.S.A. 34:13A-26, increment withholdings of teaching staff members for predominately disciplinary reasons are to be reviewed through binding arbitration. But not all withholdings

can go to arbitration. Under N.J.S.A. 34:13A-27(d), if the reason for a withholding is related predominately to an 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, we must make that determination. N.J.S.A. 34:13A-27(a). Our power 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 considered whether a principal could contest an

increment withholding through binding arbitration. We recognized that while principals are teaching staff members, they do not usually teach classes; instead, they have broad responsibility for managing and supervising students, staff, facilities, and community relations. We thus adopted this test for determining whether withholding a principal's increments relates predominately to an evaluation of that "teaching staff member's teaching performance": does the withholding relate predominately to an evaluation of the quality of the principal's performance as an educational leader and manager? In Middletown Tp. itself, we restrained arbitration because the principal's increments had been withheld on the grounds that he had not satisfactorily overseen the high school's students, staff and building; he had not properly trained his staff or monitored the budget; and he had not been an effective leader and trainer of assistant principals. See also Readington Tp. Bd. of Ed., P.E.R.C. No. 95-38, 21 NJPER 34 (¶26022 1994) (restraining arbitration over withholding on grounds that school psychologist's lack of organization hurt morale and effectiveness of child study team); Paterson Sch. Dist., P.E.R.C. No. 95-39, 21 NJPER 36 (¶26023 1994) (restraining arbitration of vice-principal's increment withholding).

Under all the circumstances of this case, we hold that the reasons given for the withholding relate predominately to an evaluation of Marrandino's performance as an educational leader and manager. The Board has asserted that Marrandino was responsible for overseeing its policy on extracurricular activities and that he

failed to discharge that responsibility. The truth and significance of those allegations must be assessed by the Commissioner of Education.

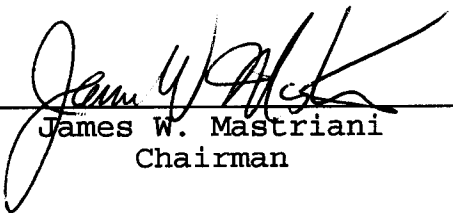
The Association also asserts that the withholding was motivated by anti-union animus. But allegations of illegal discrimination do not transform a dispute that cannot otherwise be submitted to binding arbitration into one that can. Teaneck Tp. Bd. of Ed. v. Teaneck Teachers Ass'n, 94 N.J. 9 (1983); see also Paterson.

For these reasons, the Board's request for restraint of binding arbitration must be granted.

ORDER

The request of the Board of Education of the City of Brigantine for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Finn, Klagholz and Ricci voted in favor of this decision. Commissioner Buchanan voted against this decision. Commissioner Boose abstained from consideration. Commissioner Wenzler was not present.

DATED: February 28, 1995
Trenton, New Jersey
ISSUED: March 1, 1995