

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NORTH CALDWELL BOARD OF
EDUCATION,

Petitioner,

-and-

Docket No. SN-2001-35

NORTH CALDWELL EDUCATION
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the North Caldwell Board of Education for a restraint of binding arbitration of a grievance filed by the North Caldwell Education Association. The grievance contests the withholding of a teacher's increment for the 2000-2001 school year for deficiencies in teaching performance, poor instructional planning, and an inconsistent and inappropriate classroom environment. The Commission concludes that the reasons cited by the Board for this withholding relate predominately to the evaluation of teaching performance and any appeal must be to the Commissioner of Education. The Commissioner can also consider the Association's questions concerning the superintendent's attitude towards the teacher and its effect on observation reports.

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.

P.E.R.C. NO. 2001-76

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Appearances:

For the Petitioner, Gaccione, Pomaco & Beck, P.C.,
attorneys (J. Frank Vespa-Papaleo, on the brief)

For the Respondent, Zazzali, Fagella & Nowak, P.C.,
attorneys (Paul L. Kleinbaum, of counsel; Vincent J.
Nolan, 3rd, on the brief)

DECISION

On December 29, 2000, the North Caldwell Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the North Caldwell Education Association. The grievance contests the withholding of a teacher's increment for the 2000-2001 school year.

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

The Association represents teachers and certain other employees. 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 advisory arbitration. N.J.S.A. 34:13A-29 requires binding arbitration as the terminal step with respect to disputes concerning the imposition of reprimands and other forms of discipline as defined by N.J.S.A. 34:13A-22.

James Cancialosi is a fifth grade teacher in the Gould Avenue School. He has taught in the district for 28 years. The district is a kindergarten through sixth grade district and has two schools. Cancialosi also serves on the Association's grievance committee and has served as grievance chairperson.

On July 27, 2000, the Board advised Cancialosi that it had voted to withhold his increment for the 2000-2001 school year. The letter states:

The purpose of this letter is to inform you that the North Caldwell Board of Education has decided to withhold your increment for the 2000-2001 school year. This decision was made upon a unanimous vote of the board at its meeting of July 18, 2000, based upon the recommendation of Superintendent Wyks due to deficiencies in your performance as an educator and employee of the district during the 1999-2000 school year. These performance deficiencies were noted in the observations and evaluations conducted throughout the school year and include the following areas:

INSTRUCTION

Your instructional planning is unsatisfactory. You fail to clearly communicate content appropriately to your students. Instructional methodologies evidenced in your classroom are inconsistent with district philosophy. Further, observations indicate that your questioning methods do not consistently address

higher order thinking. Your use of materials fails to appropriately meet your students' levels of functioning. Finally, activities in your lessons have been observed to conflict with your stated goals and objectives.

CLASSROOM ENVIRONMENT

You fail to demonstrate that you have created a classroom climate conducive to learning where academic risk taking appears to be valued. Your treatment of children is inconsistent and reflects a lack of consideration for their emotional well being. On several occasions throughout the school year you were observed being inappropriate and inconsistent in dealing with student behavior.

PROFESSIONAL RESPONSIBILITIES

It is the Board's expectation that school goals be implemented and met. You have been observed as being deficient in this area. You fail to actively engage in reflection regarding your teaching. It is also the Board's expectation that each teacher read and implement the appropriate curriculum. Again, you have failed to do so.

Despite multiple attempts by supervisors to help you overcome these deficiencies and improve your teaching skills, you have failed to take the necessary corrective actions to bring your teaching performance to an acceptable level.

On August 7, 2000, the Association filed a grievance contesting the withholding and asserting that the increment was withheld for unjust cause disciplinary and retaliatory reasons. On August 30, the Board denied the grievance. On September 27, the Association demanded arbitration. This petition ensued.

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 this dispute 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 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]

The Board asserts that this increment is predominately based on an evaluation of teaching performance. It points to 16 classroom observation reports as an indication of Cancialosi's failure to overcome direct and specific deficiencies in his teaching skills. The Board states that the observations, written by three different supervisors during different times of the year and different subject matters, show that Cancialosi refused to change his teaching techniques to address problems with poor instructional planning and created an inconsistent and inappropriate environment.

The Association asserts that a review of these documents shows that the increment withholding was disciplinary and intended to punish him. The Association states that prior to 1997, when Wyks became the superintendent, Cancialosi had overwhelmingly favorable observation reports and never had an increment withheld. It states that these observation reports and rebuttals evidence the superintendent's attitude towards Cancialosi. The Association also points to previous attempts by Wyks to have Cancialosi's increment withheld as evidence of her attitude toward him and her continued attempts to withhold his increment.^{1/}

The reasons cited by the Board for the withholding predominately relate to the evaluation of teaching performance. In Saddle River Bd. of Ed., P.E.R.C. No. 96-61, 22 NJPER 105 (¶27054 1996), we held that our limited gatekeeping function did not warrant an investigation into whether a school board's cited reasons for a withholding were pretextual. We determined that the Commissioner of Education could evaluate the veracity of the Board's claims of deficient teaching performance. See Kopera v. West Orange Bd. of Ed., 60 N.J. Super. 288, 296-297 (App. Div.


^{1/} The Board withheld Cancialosi's increment for the 1998-1999 school year. An arbitrator found that the increment withholding was based on teaching performance. However, because the Board failed to follow contractual procedures by making Cancialosi aware of parental complaints which were a basis for the withholding, the increment was restored. Wyks again recommended that Cancialosi's increment be withheld for the 1999-2000 school year, but the Board did not accept the recommendation and did not vote to withhold that increment.

1960) (in reviewing increment withholding, Commissioner should determine whether facts were as asserted by evaluator and whether withholding was reasonable in light of the facts). The Kopera standard of review assumes the absence of any bias or animosity toward the teacher, id. at 292, 297, and recognizes the Commissioner's power to set aside a withholding "induced by improper motives." Id. at 294. Cf. North Bergen Fed. Teachers v. North Bergen Bd. of Ed., 141 N.J. Super. 97, 101 (App. Div. 1976) (arbitrary personnel action bearing no relationship to educational goals will not be tolerated). The Commissioner can consider the questions raised by the Association concerning the superintendent's attitude toward Cancialosi and how that attitude affected the content of observation reports in determining whether the withholding should be sustained.

ORDER

The request of the North Caldwell Board of Education for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

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

DATED: June 28, 2001
Trenton, New Jersey
ISSUED: June 29, 2001