

P.E.R.C. NO. 98-73

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

DENNIS TOWNSHIP BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-97-41

DENNIS TOWNSHIP EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Dennis Township Board of Education for a restraint of binding arbitration of grievances filed by the Dennis Township Education Association. One grievance contests the Board's decision not to restore a teacher's salary increments withheld for the 1995-1996 school year. The second grievance contests the Board's decision to withhold that teacher's increments for the 1996-1997 school year. The Commission concludes that these withholdings were predominately based on the evaluations of teaching performance and that any appeal shall be filed with the Commissioner of Education. In addition, under Cherry Hill Bd. of Ed., P.E.R.C. No. 97-139, 23 NJPER 346 (128160 1997), the Association may not arbitrate its claim that the 1995-1996 increment should be restored.

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, Bruce M. Gorman, attorney

For the Respondent, Waltman, Reilly & Rogovoy, attorneys  
(Ned P. Rogovoy, of counsel)

DECISION

On November 13, 1996, the Dennis Township Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of grievances filed by the Dennis Township Education Association. One grievance contests the Board's decision not to restore a teacher's salary increments withheld for the 1995-1996 school year. The second grievance contests the Board's decision to withhold that teacher's increments for the 1996-1997 school year.

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

The Association represents teachers and bus drivers employed by the Board. The parties entered into a collective negotiations agreement with a grievance procedure ending in binding arbitration.

Sandra Simpson is a tenured teacher employed by the Board. On May 22, 1995, Simpson received her annual performance report for the 1994-95 school year. One section was entitled "Performance Areas Needing Improvement Upon Job Description." It provided:

Your overall classroom management is seriously lacking. Control of student behavior, organization for instruction and presentation, lesson delivery, and lesson planning all need major improvements.

Student/teacher rapport is unacceptable and this is evidenced by complaints received by parents. There have been numerous problems of student management and students' interaction with you.

Because of unsatisfactory performance, I am recommending that any salary increment for the 1995-96 school year be withheld and your salary frozen at the 1994-95 level.

On May 24, 1995, the Board voted to withhold Simpson's salary increments for the 1995-1996 school year. The Board stated these reasons for the withholding:

1. Inappropriate physical contact with students.
2. Inadequate supervision of students.
3. Inadequate classroom management.
4. Inadequate lesson plans and class preparation.
5. Poor classroom management techniques.
6. Ineffective communication with students.

That withholding was not challenged at the time.

On February 22, 1996, a corrective action plan was developed. The plan required, among other things, that Simpson abide by requirements of her job description and make sure that there would be no inappropriate physical contact with pupils; none

of her students would be left unsupervised; there would be proper classroom management; and students would have work assignments. Simpson's progress pursuant to the corrective action plan was to be noted at the time of her evaluation.

On April 18, 1996, the superintendent wrote Simpson a memorandum. It summarized a meeting he had with her on April 15, 1996. According to the superintendent, Simpson acknowledged discussing with female students such topics as dating, kissing, sex, boyfriends and sexually-transmitted diseases and giving students reading materials about love, infatuation, and teen sex. The memorandum instructed her to refrain from such conversations with students and either to decline to answer sensitive questions or to refer them to counselors, parents, or family life education classes.

On June 18, 1996, Simpson received her annual performance report for the 1995-1996 school year. The section entitled "Performance Areas Needing Improvements Upon Job Description" provided:

This year there were instances that detracted from your meeting the requirements of the corrective action plan. Specifically, numerous referrals of students to the office from the Support Services Room during the year and assigning students to the room on your own demonstrated lack of student control and assurance that "a well thought out discipline program is in place." (Item #4 of the Corrective Action Plan).

The observation of 5/7/96 very importantly showed less than acceptable classroom control. (Again, Item #4 of the Corrective Action

Plan). Other documentation shows unsatisfactory performance in student management.

Therefore, I conclude that you have not satisfactorily met the requirements of the CAP. I therefore recommend that your increment not be restored. I further recommend that based on these and numerous other instances throughout the year that your increment be withheld for this coming year, (specifically you taught topics inappropriate to the curriculum, you made unapproved purchases of unapproved instructional materials, you failed to respond to administrative requests in a timely fashion, you violated student confidentiality, you arrived to work late on a number of occasions, and your failure to control students). In addition, a major incident occurred this year with respect to inappropriate discussion with students regarding dating and sex, topics reserved for Family Life Education (For which parental permission is required).

On July 3, 1996, the superintendent informed Simpson that the Board had voted to withhold her salary increment for the 1996-1997 school year and declined to restore her increment for the 1995-1996 school year. The superintendent listed these reasons:

1. You have engaged in inappropriate discussions about sexual and romantic topics with female students.
2. You offered reading material and cassette tapes regarding sexual matters to female students, outside the scope of your Job Description.
3. You violated confidentiality by disclosing information about a minor child to a person other than the child's parents.
4. You failed to abide by the requirements of the Job Description.

5. You caused students to act out the conduct which caused them to be assigned to the Support Services room.
6. Your lack of appropriate management skills and teaching techniques resulted in an inordinately large number of referrals from your room.
7. You have failed to respond to correspondence from the Administration in a timely fashion.

On July 22, 1996, Simpson grieved the withholdings. 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 timeliness or merits of this grievance.

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, \_\_\_ N.J. Super. \_\_\_ (App. Div. 1997), aff'g P.E.R.C. No. 97-40, 22 NJPER 390 (¶27211 1996).

Under N.J.S.A. 34:13A-27(d), 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-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]

Applying these standards, we conclude these withholdings were predominately based on the evaluations of Simpson's teaching performance. The concerns raised in her annual evaluations and corrective action plan relate to teaching performance matters such as curriculum, instruction, and classroom discipline. We have restrained arbitration in cases predominately involving allegations of ineffective instruction and poor classroom management of students and do so again here. See, e.g., Hillside Bd. of Ed., P.E.R.C. NO. 97-39, 22 NJPER 389 (¶27210 1996); Wayne Tp. Bd. of Ed., P.E.R.C. No. 93-107, 19 NJPER 272 (¶24137 1993); Bergen Cty. Voc. Schools Bd. of Ed., P.E.R.C. No. 91-70, 17 NJPER 150 (¶22060 1991); Upper Saddle River Bd. of Ed., P.E.R.C. No. 91-69, 17 NJPER 148 (¶22059 1991). We need not determine whether every reason cited relates to teaching performance. Hillside; State-Operated School Dist. of Jersey City, P.E.R.C. No. 97-98, 23 NJPER 165 (¶28083 1997); Mahwah Bd. of Ed., P.E.R.C. No. 94-99, 20 NJPER 197 (¶25093 1994). In particular, even if we were to find that the conversations with students about sex and dating occurred outside classes and did not involve the evaluation of teaching performance, we would nevertheless conclude, given the annual performance evaluations and the corrective action plan, that the withholdings relate predominately to the evaluation of teaching performance. We note also that under Cherry Hill Bd. of Ed., P.E.R.C. No. 97-139, 23 NJPER 346 (¶28160 1997), the Association may not arbitrate a claim that the 1995-1996 increment should be restored.



ORDER

The request of the Dennis Township Board of Education for restraints of binding arbitration are granted.

BY ORDER OF THE COMMISSION

*Millicent A. Wasell*

Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, Finn, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioners Boose and Klagholz were not present.

DATED: November 20, 1997  
Trenton, New Jersey  
ISSUED: November 21, 1997