

P.E.R.C. NO. 96-65

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MANSFIELD TOWNSHIP BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-95-86

MANSFIELD EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the Mansfield Township Board of Education's request for a restraint of binding arbitration of a grievance filed by the Mansfield Education Association. The grievance contests the withholding of a teacher's salary increment for the 1994-95 school year. The Commission concludes that under all the circumstances, the basis for this withholding relates predominately to an evaluation of teaching performance under educational laws and regulations and that the appropriate forum for review of the allegations is with the Commissioner of Education.

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Appearances:

For the Petitioner, Courter, Kobert, Laufer & Cohen,
attorneys (Charlene M. Arrington, of counsel)

For the Respondent, Balk, Oxfeld, Mandell & Cohen,
attorneys (Nancy I. Oxfeld, of counsel)

DECISION AND ORDER

On March 29, 1995, the Mansfield Township Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Mansfield Education Association. The grievance contests the withholding of a teacher's salary increment for the 1994-95 school year. On December 8, the Board amended its petition to allege that the teacher had waived any right to arbitrate the withholding because she had filed a lawsuit in Superior Court under the Conscientious Employee Protection Act, N.J.S.A. 34:19-3(b).

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

The Association represents the Board's certificated personnel. The parties' grievance procedure ends in binding arbitration of disputes over increments withheld for predominately disciplinary reasons. N.J.S.A. 34:13A-26 and 29.

Louise Kolb is an elementary school teacher who has taught for the Board for 20 years. Her responsibilities have included teaching special education students. Those responsibilities require her, as a classroom teacher, to consult with the resource room teacher and the child study team to establish an individualized education plan for each special education student and to evaluate the student's progress under that plan.

The parents of a special education student in Kolb's third grade class filed an action against the Board contending that the child's placement and individualized education program violated education statutes and regulations. A hearing was held before an Administrative Law Judge appointed by the Office of Administrative Law. Kolb testified about her experiences with and her observations and opinions of the special education student. When asked whether she had shared this information with the resource room teacher and child study team, Kolb allegedly testified that she did not do so even though she knew she was required to do so.

On August 17, 1994, the Board's attorney wrote Kolb a letter advising her that at its next meeting, the Board would consider the recommendation of the superintendent and the personnel committee that her salary increment for the next school year be withheld. The letter listed two reasons for this recommendation:

Your failure to timely communicate to, and your actions to withhold from, the resource room teacher and/or the child study team, your concerns regarding a classified student in your class, contrary to your acknowledged understanding as to your responsibilities in this area; and

Your failure to obey, and your actions to evade, an express administrative directive that all communications with a particular parent with whom the district was in ongoing multiple litigation, must take place in the presence of another district employee as witness.

On August 25, 1994, the Board voted to withhold Kolb's salary increment based on the two listed reasons.

On September 7, 1994, the Association filed a grievance on Kolb's behalf contesting the increment withholding as allegedly lacking just cause. The Board denied the grievance and 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, 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 or arbitrability of this increment withholding dispute or any contractual defenses the Board may have.

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]

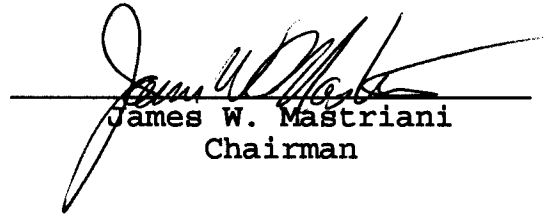
Under all the circumstances, we cannot say that the basis for this withholding is predominately disciplinary and thus subject to binding arbitration under N.J.S.A. 34:13A-26 and 29. The first reason for withholding is clearly related to an evaluation of teaching performance given a teacher's responsibility to cooperate with a child study team and other educators to develop the best educational plan for a special education student in her classroom. See, e.g., Readington Tp. Bd. of Ed., P.E.R.C. No. 95-38, 21 NJPER 34 (¶26022 1994) (restraining arbitration of withholding based on allegations that school psychologist's disorganization was hurting the morale and effectiveness of child study team). The first reason may also require the interpretation and application of education statutes and regulations that pertain to the responsibilities of special education teachers and that are administered by the Commissioner of Education. See, e.g., N.J.A.C. 6:28-3.6 and 3.7 (pertaining to individualized education plans and instructional guides for special education students and necessary re-evaluations). While the second reason accuses Kolb of insubordination and is disciplinary, this reason may also relate to or indirectly arise out of litigation touching upon Kolb's teaching responsibilities. Under all the circumstances, we conclude that the basis for this withholding relates predominately to an evaluation of Kolb's teaching performance under educational laws and regulations

and that the appropriate forum for review of the allegations against her is with the Commissioner of Education.^{1/}

ORDER

The request of the Mansfield Township Board of Education for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

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

DATED: March 28, 1996
Trenton, New Jersey
ISSUED: March 29, 1996

^{1/} Given this holding, we do not consider the Board's CEPA argument.