

P.E.R.C. NO. 2000-59

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RAMSEY BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2000-41

RAMSEY TEACHERS ASSOCIATION,

Respondent.

DECISION

The Public Employment Relations Commission grants the request of the Ramsey Board of Education for a restraint of binding arbitration of a grievance filed by the Ramsey Teachers Association. The grievance contests the withholding of a teacher's salary increment. The Commission concludes that the assertion that the teacher did not interact properly with his students relates to teaching performance and that the withholding must be reviewed 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, Winne, Banta, Rizzi, Hetherington &
Basralian, P.C., attorneys
(Robert M. Jacobs, on the brief)

For the Respondent, Bucceri & Pincus, attorneys
(Sheldon H. Pincus, on the brief)

DECISION

On October 14, 1999, the Ramsey Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Ramsey Teachers Association. The grievance contests the withholding of a teacher's salary increment for the 1999-2000 school year.

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

The Association represents teaching staff members. The Association and the Board are parties to a collective negotiations agreement effective from July 1, 1999 through June 30, 2000. The grievance procedure ends in binding arbitration.

Sandra Martin, a 23-year district employee, teaches Spanish to sixth, seventh and eighth grade students. Her certification states that she has never been disciplined or had an unsatisfactory observation or evaluation.

On October 1, 1998, Martin and the district's superintendent met to discuss a letter from parents complaining that Martin exhibited inappropriate and demeaning behavior toward their child during the last school year. At that meeting, the superintendent noted that he had received similar letters in the past. One such letter was received in 1989, one in 1991, two in 1994, two in 1995 and one in 1996. Martin produced a box of complimentary letters, numbering in the hundreds, from former students and their parents.

On October 15, 1998, the superintendent wrote to Martin, summarizing the meeting. In closing, he stated: "However, I want to make clear that I find both your actions and attitude of great concern. Any further incidents with students and parents that possess similarities to those outlined above will result in my recommending to the Board of Education the withholding of your increment."

On October 22, 1998, Martin responded. She referred to her file of letters from appreciative students and parents. She stated that the letters the superintendent had referenced were from parents of students who cut class, cheated, stayed home to go to soccer games, did not do their work, disrupted class and were

disrespectful to teachers. Finally, she stated that the message she received from the meeting with the superintendent was that no matter what a student says or does, a parent must not be made angry.

On December 3, 1998 and February 25, 1999, respectively, Martin was observed by the language department supervisor and the assistant principal. Both reports praised her teaching abilities. Neither document identified any incidents of the type discussed in October.^{1/}

On April 16, 1999, the assistant principal completed an annual evaluation praising Martin's performance. It recommended re-employment and receipt of salary increments.

Between May 25 and June 18, 1999, nine letters were received from parents of pupils in Martin's 1998-1999 classes expressing varying degrees of dissatisfaction with the Spanish

^{1/} The December summary notes that Martin, "[F]requently complimented students on their questions and responses. Even when a couple of students made some unusual (and incorrect) connections between ways of expressing times and dates, you discouraged them gently by commenting positively, 'It doesn't work that way, but it shows you're thinking.' When you observed one boy writing what was clearly something not part of the lesson, you asked him in Spanish if what he was writing was Spanish. He immediately put it away."

teacher.^{2/} Many of the parents requested that their children be placed with another Spanish teacher for the next school year. On June 24, the superintendent met with Martin. He concluded after the meeting that he would recommend that her increment be withheld.

On July 13, 1999, the Board voted to withhold Martin's salary increment for the 1999-2000 school year. On July 14, the superintendent advised Martin of the Board's decision. His letter stated:

As I mentioned in my letter of June 17, 1999, Dr. Wiener has forwarded to me a number of parent letters that he has received subsequent to the completion of your Annual Performance Report for the 1998-1999 school year. Several of those letters describe inappropriate and/or demeaning comments on your part and the clear parental/student perception of your rudeness or nastiness in dealing with them. These parental concerns are similar to those that I outlined in my meeting with you on Thursday, October 1, 1998 and summarized in my letter of October 15, 1998.

The ability of a staff member to successfully teach and interact with students, including students that can be difficult or indeed trying, and the ability of a staff member to successfully work with parents to address concerns and resolve problems are key competencies for all teachers. You indicated to me that a few of these students were very difficult. You also offered the opinion that

^{2/} Martin states that on May 26, 1999, her building principal and on June 3, 1999 both the principal and the superintendent advised her that "letters" had been received complaining about her treatment of students. She notes that only one letter bears a date (May 25, 1999) prior to the dates on which those representations were made to her.

two of the students "sabotaged the class -- apparently with their parents' permission" and opined that one of them had "a sinister side." I pointed out that these two students were together in other classes, that they were experiencing academic success in those classes, and that their other teachers were successful in working with them. I do agree with your observation that "you lost the class." The review of the final exam scores in that class indicates that "losing the class" had a negative impact on the learning for many of the students in that class. That is unacceptable.

During our meeting on June 24, 1999, you also indicated that "It is very difficult for me to have a relationship with seventh graders." This is consistent with previous comments that you have made about your competence in teaching at the middle school level. I once again pointed out that you are certified to teach at that level and that the District has assigned you to teach at that level. I do not accept that argument as an excuse for your performance, and I believe that the continual repetition of that belief is an impediment to your success in your current assignment.

I concluded my letter of October 15, 1998 by stating that "any further incidents with students and parents that possess similarities to those outlined above will result in my recommending to the Board of Education the withholding of your increment." As can be readily seen, there have been similar incidents. I have therefore recommended to the Board, based on your performance in this area, that they withhold your increment for the 1999-2000 school year. They have accepted that recommendation, and passed the attached resolution at their meeting on July 13, 1999.

On the bottom line, students do not respond well to nasty comments and public humiliation. They can also sense immediately if a staff member likes them as individuals, and is concerned about their success. Parents are supportive if they see that a staff member is willing to listen to their concerns and perceptions of events, and is willing to work

cooperatively with them to improve unsatisfactory situations. Mrs. Linda Fisk, World Language Supervisor, and the Smith School administrators will continue to work with you in these areas. However, the ultimate responsibility lies with you. Success will be elusive if you continue to express unhappiness in your assignment at the middle school, to view students as sinister and their parents as willing co-conspirators, and to verbally demean these students in front of their peers. Some students are easier to like than others are. Some students are easier to teach than others are. Your colleagues have met success in teaching these same students that made you "lose this class." I expect the same from you.

I will close this letter as I closed my letter of October 15, 1998. Your actions and attitude are of great concern to the Board and me. Any further incidents with students and parents that possess similarities to those outlined above will result in my recommending further action on the part of the Board of Education.

Martin disputes that this letter accurately reflects the discussions during the June 24 meeting.

On July 22, 1999, the Association filed a grievance alleging that the withholding was disciplinary and without just cause. On September 21, the Board denied the grievance. On September 24, 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 of this 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 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.

The Board asserts that this withholding was predominantly based on an evaluation of teaching performance. It contends that a teacher's inability to interact with students and their parents is an aspect of teaching performance.

The Association asserts that this withholding is unrelated to Martin's teaching performance. It notes that Martin was recommended for her increment by supervisors and administrators who observed her interaction with students and parents. The Association characterizes the October 15, 1998 letter as a reprimand and asserts that the superintendent followed through on his threat to Martin based on supposed facts which he has no personal knowledge of or events which Martin states never occurred. It urges that we examine the context in which this dispute has taken place and pay attention to the absence of any mention in Martin's evaluations of the deficiencies identified by the superintendent.

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 Paterson School Dist., P.E.R.C. No. 95-39, 21 NJPER 36 (¶26023 1994), we declined to look behind a board's stated reasons to see if a discriminatory or improper motive was at work. In Saddle River Bd. of Ed., P.E.R.C. No. 96-61, 22 NJPER 105 (¶27054 1994), we also declined to look behind the reasons even though no adverse evaluation of the teacher's work was made until after an influential parent made a complaint. We said such an inquiry would require a full-scale hearing and a judgment as to the merits of the withholding.^{3/}

The assertion that Martin did not interact properly with her students relates to teaching performance. In Washington Bor. Bd. of Ed., P.E.R.C. No. 98-49, 23 NJPER 603 (¶28296 1997), an elementary school teacher's increment was withheld based upon her alleged improper tone of voice in dealing with her students. The board's action was prompted by letters of complaint received from parents. We said:

Allegations that a teacher uses a loud tone of voice and inappropriate language when dealing with young children in class predominately relate to teaching performance and thus must be reviewed by the Commissioner of Education.

^{3/} In restraining arbitration, we assumed that a Board would be bound by its asserted reasons before the Commissioner of Education and that the Commissioner had the power to set aside a withholding induced by an improper motive. Kopera v. West Orange Tp. Bd. of Ed., 60 N.J. Super. 288, 294 (App. Div. 1960).

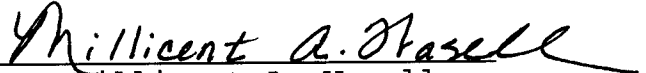
See, e.g., Southern Gloucester Cty. Reg. H.S. Dist. Bd. of Ed., P.E.R.C. No. 93-26, 18 NJPER 479, (¶23218 1992); Florham Park Bd. of Ed., P.E.R.C. No. 93-76, 19 NJPER 159 (¶24081 1993); Upper Saddle River Bd. of Ed., P.E.R.C. No. 91-69; 17 NJPER 148 (¶22059 1991); Tenafly Bd. of Ed., P.E.R.C. No. 91-68, 17 NJPER 147 (¶22058 1991).

Although the reasons set forth in the superintendent's letter do not match the conclusions of other administrators who evaluated Martin, we decline to determine the veracity of the stated reasons. We have recognized that even after all observations of a teacher have been completed, an increment may still be withheld for teaching performance reasons which must be reviewed by the Commissioner of Education. See, e.g., Greater Egg Harbor H.S. Bd. of Ed., P.E.R.C. No. 95-58, 21 NJPER 116 (¶26071 1995) (alleged sexual harassment coming to light after administrator gave teacher draft of positive final evaluation). And deficient teaching performance does not necessarily have to appear on evaluation documents. See, e.g., Roxbury Bd. of Ed., P.E.R.C. No. 94-80, 21 NJPER 78 (¶25034 1994) (increment withheld based upon State agency investigation, rather than evaluations revealing alleged improper remarks to and contact with female students). The Commissioner is well-equipped to determine if the asserted teaching deficiencies warrant an increment withholding.

ORDER

The request of the Ramsey 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: January 27, 2000
Trenton, New Jersey
ISSUED: January 28, 2000