

P.E.R.C. NO. 93-99

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BONNIE SPEARMAN,

Petitioner,

-and-

Docket No. SN-93-63

NEWARK BOARD OF EDUCATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by Bonnie Spearman, a teacher employed by the Newark Board of Education. The grievance contests the withholding of Spearman's increments for the 1992-1993 school year. The Commission finds that the basis for the withholding predominately involved an evaluation of Spearman's teaching performance and that the dispute must be submitted to the Commissioner of Education.

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Appearances:

For the Petitioner, Giblin & Giblin, attorneys  
(John L. Schettino, of counsel)

For the Respondent, Carolyn Ryan Reed, of counsel

DECISION AND ORDER

On January 21, 1993, Bonnie Spearman, a teacher employed by the Newark Board of Education, petitioned for a scope of negotiations determination. Spearman seeks a declaration that an increment withholding dispute may be resolved through binding arbitration rather than through an appeal to the Commissioner of Education. On March 1, the Board filed a reply seeking a restraint of binding arbitration.

Spearman teaches fifth grade at the Hawthorne Avenue School. In June 1992, her principal issued her annual evaluation report. Spearman was rated satisfactory in using English proficiently. She was rated unsatisfactory in the nine other performance areas. Those areas are:

Establishes learning objectives and plans instruction consistent with appraisal of individual student needs and requirements.

Uses effective instructional methods.

Uses effective instructional resources.

Demonstrates competence in the subject field(s).

Keeps an accurate systematic, ongoing record of student achievement.

Establishes and maintains effective classroom discipline and management procedures.

Appraises the effectiveness of one's own instructional program and methods.

Functions as a member of the total school program.

Meets accepted standards of professional behavior.

The report stated that Spearman needed to involve all students; provide review/reinforcement per individual need; use varied resources to enhance instruction; establish firm, fair discipline procedures; and develop professional standards of behavior. The principal recommended that Spearman's 1992-1993 increments be withheld and that tenure charges be filed.

The principal also completed a professional improvement plan for Spearman. This plan stated that Spearman should focus on developing and implementing strategies to upgrade test performance; design meaningful homework assignments, and incorporate variety in instructional thrusts.

Spearman did not sign either her annual evaluation report or her professional improvement plan. The principal tried without

success to arrange a meeting with Spearman to discuss these documents. The documents and a cover letter dated August 7, 1992 were mailed to Spearman.

On July 14, 1992, the Board voted to withhold Spearman's increments for the 1992-1993 school year. According to Spearman's petition, the Board based its decision upon her annual evaluation report.

Under N.J.S.A. 34:13A-26, withholdings of increments from teaching staff members for predominately disciplinary reasons shall 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).<sup>1/</sup> 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:

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<sup>1/</sup> We reject Spearman's argument that an arbitrator should determine whether the reasons for a withholding were predominately disciplinary. Under the statute, that is our task.

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 App. Div. Dkt. No. A-2053-8678 (10/23/87), 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. [Id. at 146]

Based upon the record before us, we hold that the reasons for withholding Spearman's increments for the 1992-1993 school year predominately relate to an evaluation of her teaching performance. Spearman's petition states that the withholding was based on Spearman's annual evaluation report, a report that finds her teaching performance unsatisfactory in almost every category. While Spearman's brief alleges that she had many confrontations with her principal, no facts or documents in the record substantiate that allegation or indicate that the withholding was based on any confrontation. We accordingly hold that this dispute must be submitted to the Commissioner of Education.<sup>2/</sup>

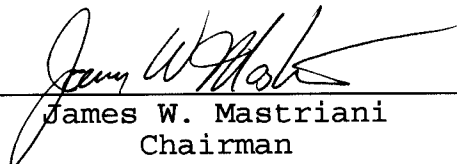
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<sup>2/</sup> A claim that contractual evaluation procedures were not followed is mandatorily negotiable and legally arbitrable,

ORDER

The request for a restraint of binding arbitration of the dispute over the withholding of increments from Bonnie Spearman for the 1992-1993 school year is granted.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Goetting, Smith and Wenzler voted in favor of this decision. None opposed. Commissioner Bertolino abstained. Commissioner Regan abstained from consideration. Commissioner Grandrimo was not present.

DATED: April 29, 1993  
Trenton, New Jersey  
ISSUED: April 30, 1993

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2/ Footnote Continued From Previous Page

even if a related personnel action is not. See, e.g., Fair Lawn Bd. of Ed. v. Fair Lawn Ed. Ass'n, 174 N.J. Super. 554 (App. Div. 1980); Ocean Tp. Bd. of Ed., P.E.R.C. No. 85-123, 11 NJPER 378 (¶16137 1985), aff'd App. Div. Dkt. No. A-4753-84T1 (4/9/86), certif. den. S. Ct. Dkt. No. C-218 (10/3/86). We do not address the merits of Spearman's claim that contractual procedures were not observed. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978).