

P.E.R.C. NO. 96-52

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PARSIPPANY-TROY HILLS
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-96-21

PARSIPPANY-TROY HILLS
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Parsippany-Troy Hills Education Association against the Parsippany-Troy Hills Board of Education. The grievance contests the withholding of a teacher's salary increments for the 1995-1996 school year. Under all the circumstances, the Commission concludes that the reasons for this withholding predominately relate to an evaluation of the teaching performance of a learning disabilities teacher consultant. Accordingly, any appeal must be to 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, Dillon, Bitar & Luther, attorneys
(Marie-Laurence Fabian, of counsel)

For the Respondent, Balk, Oxfeld, Mandell & Cohen,
attorneys
(Randi Doner April, of counsel)

DECISION AND ORDER

On August 29, 1995, the Parsippany-Troy Hills Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Parsippany-Troy Hills Education Association. The grievance contests the withholding of a teacher's salary increments for the 1995-1996 school year.

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

The Association represents the Board's teachers, learning disabilities teacher consultants, and certain other employees. The parties entered into a collective negotiations agreement effective from July 1, 1992 through June 30, 1995. The grievance

procedure ends in binding arbitration of disputes over increment withholdings for predominately disciplinary reasons. N.J.S.A. 34:13A-26 and 29.

Julia Gard-Zuzick is a tenured learning disabilities teacher consultant. She is a member of the child study team at the Littleton and Lake Parsippany schools. As a consultant, she evaluates students and compiles reports for the child study team. The team then decides whether special services are required. If the answer is yes, Gard-Zuzick develops an individualized education program ("IEP").

Pursuant to N.J.A.C. 6:28-2.1, an IEP must be developed and implemented within 90 days of the date parents agree to have their child evaluated. Further, an IEP must be written within 30 days of the decision that a child is eligible for special education services. The Board therefore expects consultants to complete evaluations and reports within 60 days of receiving parental permission so that an IEP can be written within the next 30 days.

On March 27, 1995, the Lake Parsippany principal wrote a memorandum to Gard-Zuzick. The memorandum criticized Gard-Zuzick for not giving parents adequate notice about the standardized tests (MAT-7 preparations) for classified students. Gard-Zuzick and her Association representative met with the principal to discuss this memorandum. According to the Association's brief (no supporting affidavits or exhibits were submitted), the principal

did not know the procedures for preparing special education students for district-wide testing; Gard-Zuzick followed these procedures; and the testing went smoothly. The brief further asserts that the principal wished to punish Gard-Zuzick for proving his alleged ignorance of testing procedures.

On May 4, 1995, the principal sent Gard-Zuzick another memorandum. This one expressed his concerns about her meeting timelines. He stated that three cases had exceeded the 90-day limit between parental consent and implementing an IEP and that in seven cases she had exceeded the 60-day limit between parental consent and report submission. He also noted that ten students still needed testing and only 30 school days remained.

On May 16, 1995, the principal prepared Gard-Zuzick's annual performance report. He commended her for her excellent rapport with students; her good work with resource center teachers and a long-term substitute; and her willingness to observe students and provide feedback and guidance to teachers and parents. But under "Performance Areas Needing Improvement/Development," he wrote:

Mrs. Gard-Zuzick continues to demonstrate extreme difficulties in complying with time lines for the completion of testing and the submission of reports and IEP's. She has difficulty with time management and has demonstrated an inability to anticipate and plan for the work which needs to be done. She has had difficulty in effectively interacting with other professionals. Specifically, she looks to blame her colleagues for her own failings.

The principal rated Gard-Zuzick as having a "Consistently unacceptable performance" in "Planning & Organizing," "Evaluation & Record Keeping," and "Professional Relations & Growth." She received a rating of "Conditionally acceptable performance" in "Implementation & Interaction." Both principals and the Director of Special Services signed the evaluation. They recommended that Gard-Zuzick be reemployed but that her increment be withheld.

On July 13, 1995, the Board voted to withhold Gard-Zuzick's increment and salary adjustment for the 1995-96 school year. The Board Secretary/Business Administrator sent her a letter notifying her of the withholding. The letter stated that "the reason for this action was your unsatisfactory performance, evidenced primarily by an inability to perform duties on a timely basis without excessive supervision and by an exhibition of poor judgment with reference to MAT-7 testing of classified students."

The Association grieved the withholding and demanded binding arbitration. The demand asserted that Gard-Zuzick "was unjustly disciplined when the Board of Education withheld her 1995-96 increment." 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, 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

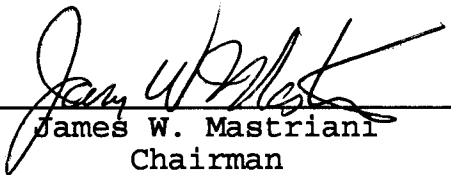
Sponsor's Statement and the Assembly Labor Committee's Statement to the amendments, only the "withholding of a teaching staff member's increment based on the actual teaching performance would still be appealable to the Commissioner of Education." As in Holland Tp. Bd. of Ed., P.E.R.C. No. 87-43, 12 NJPER 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 conclude that the reasons for this withholding predominately relate to an evaluation of Gard-Zuzick's teaching performance as a learning disabilities teacher consultant. Gard-Zuzick must evaluate students, complete reports and develop IEPs. Meeting regulatory deadlines for these responsibilities is a critical part of the consultant's teaching job. See, e.g., Willingboro Bd. of Ed., P.E.R.C. No. 96-28, 21 NJPER 388 (¶26239 1995). So is overseeing testing for classified students. The Commissioner of Education must determine whether the Board properly withheld Gard-Zuzick's increment based on its allegations that she had not capably performed these parts of her teaching job. We therefore restrain arbitration.

ORDER

The request of the Parsippany-Troy Hills Board of Education for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioner Boose abstained from consideration.

DATED: January 19, 1996
Trenton, New Jersey
ISSUED: January 19, 1996