

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOUTH HARRISON TOWNSHIP
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-96-52

SOUTH HARRISON TOWNSHIP
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains, in part, binding arbitration of a grievance filed by the South Harrison Township Education Association against the South Harrison Township Board of Education. The grievance asserted that the Board withheld the longevity allowances of a teaching staff member and failed to advance the teacher to the master's degree level on the salary guide without just cause. The Commission finds that longevity payments are construed by the Commissioner of Education to constitute employment increments. Because the Commission has already found that this withholding was based on an evaluation of teaching performance, any challenge to that part of the withholding must also be made to the Commissioner of Education. As for the failure to advance the teacher to the master's degree on the salary guide, the Commission knows of no precedent construing such a failure as an increment withholding under N.J.S.A. 18A:29-14. The Commission therefore declines to restrain arbitration of that portion of the grievance.

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.

P.E.R.C. NO. 96-84

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOUTH HARRISON TOWNSHIP
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-96-52

SOUTH HARRISON TOWNSHIP
EDUCATION ASSOCIATION,

Respondent.

Appearances:

For the Petitioner, Jo Ann A. Laughlin, attorney

For the Respondent, Eugene Sharp, NJEA UniServ
representative

DECISION AND ORDER

In P.E.R.C. No. 96-36, 22 NJPER 20 (127007 1995), we granted a request of the South Harrison Township Board of Education for a restraint of binding arbitration of a grievance filed by the South Harrison Township Education Association. That grievance asserted that the Board withheld the salary increment of Peg Buzby, a teaching staff member, without just cause.

On December 13, 1995, the Board petitioned for another scope of negotiations determination seeking to restrain arbitration of a second grievance filed by the Association. That grievance challenges the Board's decision to remove a \$400 longevity payment from her salary and not to move her horizontally on the salary guide in recognition of her obtaining a master's degree. The parties have filed briefs and exhibits.

For the 1994-95 school year, Buzby was paid a total salary of \$45,623. That total was composed of a placement on step 15 of the BA + 30 column on the salary guide, plus a longevity allowance of \$200 for 13 years of service and a longevity allowance of \$200 for 18 years of service.

On April 24, 1995, the Board voted to "approve withholding the employment increment, the adjustment increment, the longevity increment and masters level increment ... [for the 1995-96 school year] so that [Buzby's] salary is fixed at the 1994-95 base salary of Step 15 BA + 30 in the amount of \$45,223." The superintendent's April 27 letter to Buzby stated:

On April 24, 1995 the South Harrison Board of Education approved withholding your 1995-96 employment increment, adjustment increment, longevity increment and master's level increment. Your 1995-1996 salary will be fixed at the 1994-95 base salary of step BA+30 in the amount of \$45,223. The reason for withholding the increments is based on ineffective instruction as observed in the classroom.

That same day, Buzby grieved the withholding. The Board denied the grievance, the Association demanded arbitration, and the Board filed its first petition.

On July 25, 1995, the Board approved Buzby's salary of \$45,223 for the next school year. On August 22, the Board modified the ratio of local and federal funding for Buzby's position but maintained the salary of \$45,223.

On September 12, the Buzby filed a second grievance. She claims that she was entitled to horizontal movement on the salary

guide because of her new master's degree and that removing the \$400 longevity allowances from her 1995-96 salary reduced it below the 1994-95 level.

In P.E.R.C. No. 96-36, we held that the increment withholding involved an evaluation of Buzby's teaching performance and the merits of the withholding thus had to be reviewed by the Commissioner of Education. The Board asserts that res judicata and collateral estoppel bar arbitration of the second grievance. The Association contends that our prior decision restrained arbitration over only the first grievance. It further contends that the longevity allowances and the advancement to the master's degree level are not based on teaching performance and are mandatorily negotiable and legally arbitrable.

In the first case, the Board requested a restraint of arbitration on the grounds that the withholding was based upon an evaluation of teaching performance. N.J.S.A. 34:13A-26; Scotch Plains-Fanwood Bd. of Ed., P.E.R.C. No. 91-67, 17 NJPER 144 (¶22057 1991). The Association did not oppose the Board's request. We held that the withholding centered on the alleged ineffectiveness of Buzby's teaching techniques and thus was based on an evaluation of her teaching performance. Applying N.J.S.A. 34:13A-27(d), we restrained arbitration.

Based on the record in both cases, we cannot say that the first grievance and demand for arbitration also challenged the failure to advance Buzby to the master's degree level or the removal of the \$400 longevity allowances from her 1995-96 salary which

reduced her salary below its 1994-95 level. Those issues were not separately identified in the first case and we did not consider or decide them. Contrast Rutgers, the State Univ., P.E.R.C. No. 82-20, 7 NJPER 505 (¶12224 1981), aff'd NJPER Supp.2d 132 (¶113 App. Div. 1983) (res judicata is conclusive of rights of parties in all later suits on points and matters determined in former suits). Accordingly, neither res judicata nor collateral estoppel principles apply.

N.J.S.A. 18A:29-14 authorizes a board of education to withhold, for inefficiency or other good cause, the employment increment or the adjustment increment, or both, of any teaching staff member. Employment increments are the increases awarded after the successful completion of each year of employment. Probst v. Haddonfield Bor. Bd. of Ed., 127 N.J. 518 (1992). Adjustment increments are negotiated increases reflecting an estimated rise in the cost of living for each year or other economic considerations. Ibid.

Longevity payments are construed by the Commissioner of Education to constitute employment increments. See, e.g., Rosania v. Middlesex Bd. of Ed., C.D. 18+-88 (210-87) (1/22/88). Because we have already found that the withholding was based on an evaluation of teaching performance, any challenge to that part of the withholding must also be made to the Commissioner of Education. The Association may seek its relief before the Commissioner.


As for the failure to advance Buzby to the master's degree level on the salary guide, we know of no precedent construing such a failure as an increment withholding under N.J.S.A. 18A:29-14. Advancement to the master's degree level on the guide is not an employment increment based on another year of satisfactory service with a school board nor is it an adjustment increment based on an increase in the cost of living or other economic considerations. Instead it is a negotiated agreement to pay higher salaries to those teaching staff members who have attained higher academic degrees. By accusing a teacher of ineffective classroom instruction and refusing to pay that teacher the negotiated amount for having attained an advanced degree, the Board imposed discipline as defined by N.J.S.A. 34:13A-22 and that discipline is subject to binding arbitration under N.J.S.A. 34:13A-29.^{1/} The fact that this aspect of the disciplinary action may have been based on an evaluation of teaching performance does not change the result. Only tenure charges filed pursuant to N.J.S.A. 18A:6-10 et seq. and increments withheld pursuant to N.J.S.A. 18A:29-14 are excluded from the definition of discipline and are thus subject to the jurisdiction of the Commissioner of Education.

^{1/} This case does not involve a dispute over whether Buzby has otherwise met the contractual conditions for advancement to the master's degree level on the salary guide. Such a dispute would center on employee compensation and would also be legally arbitrable.

ORDER

The request of the South Harrison Township Board of Education for a restraint of binding arbitration is granted to the extent the grievance contests the withholding of Peg Buzby's longevity increment. The request is denied to the extent the grievance contests the alleged failure to move Buzby horizontally on the salary guide in recognition of her new master's degree.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Acting Chair

Acting Chair Wasell, Commissioners Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. Commissioner Boose abstained from consideration.

DATED: June 20, 1996
Trenton, New Jersey
ISSUED: June 21, 1996