

P.E.R.C. NO. 95-56

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LOGAN TOWNSHIP BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-94-57

LOGAN TOWNSHIP EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Logan Township Education Association against the Logan Township Board of Education. The grievance contests the withholding of an employment increment from a teacher. The Commission holds that the reasons for the withholding of the teacher's employment increment relate predominately to an evaluation of his teaching performance. The case involves allegations of poor classroom management, unsafe conditions, and instructional difficulties.

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, Capehart & Scatchard, P.A., attorneys
(Robert A. Muccilli, of counsel)

For the Respondent, Zazzali, Zazzali, Fagella & Nowak,
attorneys (Richard A. Friedman, of counsel)

DECISION AND ORDER

On January 3, 1994, the Logan 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 Logan Township Education Association. The grievance contests the withholding of an employment increment from a teacher.

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

The Association represents the Board's teachers and certain other employees. The parties entered into a collective negotiations agreement effective from July 1, 1991 through June 30, 1994. The grievance procedure ends in binding arbitration of disputes over increments withheld for predominately disciplinary reasons.

N.J.S.A. 34:13A-29.

Robert Eldridge was (but is no longer) employed by the Board as a tenured industrial arts teacher. On August 18, 1993, the Board voted to withhold his employment increment for the 1993-1994 school year. The Board based the withholding on Eldridge's alleged "failure to ensure proper safety standards in the Technology Education Room and classroom management concerns." These reasons in turn reflected previous observation reports and an annual performance report criticizing Eldridge for not maintaining control of students; permitting interruptions; not ensuring that students used safety shields while operating power equipment; not ensuring that all machines have safety guards and are secured; allowing students to chatter idly and make too much noise; allowing students to work too closely to one another; not involving students in the lessons; and not bringing closure to his lessons.

On October 13, 1993, the Association demanded arbitration. It asserted that the Board had violated the parties' agreement by withholding Eldridge's employment increment without just cause. 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 the 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

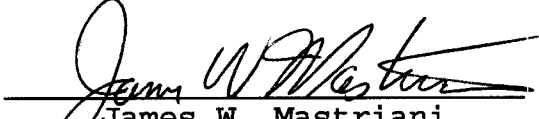
(¶17316 1986), aff'd ... [NJPER Supp.2d 183 (¶161 App. Div. 1987)], we will review the facts of each case. We will then balance the competing factors and determine if the withholding predominately involves an evaluation of teaching performance. If not, then the disciplinary aspects of the withholding predominate and we will not restrain binding arbitration. [17 NJPER at 146]

Under all the circumstances of this case, we hold that the reasons for the withholding of Eldridge's employment increment relate predominately to an evaluation of his teaching performance. We have so held in similar cases involving allegations of poor classroom management, unsafe conditions, and instructional difficulties. Bergen Cty. Voc. Schools Bd. of Ed., P.E.R.C. No. 91-70, 17 NJPER 150 (¶22060 1991); 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). We do not agree with the Association that this case centers on allegations of failure to follow administrative directives. We therefore restrain binding arbitration.

ORDER

The request of the Logan Township 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 and Ricci voted in favor of this decision. None opposed. Commissioner Boose abstained from consideration. Commissioner Wenzler was not present.

DATED: February 28, 1995
Trenton, New Jersey
ISSUED: March 1, 1995