

P.E.R.C. NO. 95-57

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LOGAN TOWNSHIP BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-94-59

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 her teaching performance. The case involves allegations of poor classroom rapport, poor classroom management, 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  
(Alan R. Schmoll and 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.

Patricia Senff is employed by the Board as a tenured mathematics teacher in the Basic Skills Program. On July 21, 1993, the Superintendent notified her that the Board had voted to withhold her employment increment for the 1993-1994 school year. The Board based this withholding on Senff's alleged "continued difficulties with establishing rapport between you and your students, allowing small problems to escalate into major teacher/student conflicts, and problems of instructional techniques as delineated in performance evaluations." These reasons in turn reflected previous memoranda, observation reports, and an annual performance report criticizing Senff for demeaning, intimidating and embarrassing students; yelling at them; letting classroom problems get out of hand; making students feel unfree to ask questions, disagree or express their own ideas; not using positive, encouraging and supportive criticism; and not creating a feeling of good will and rapport in the classroom.

On October 1, 1993, the Association demanded arbitration. It asserted that the Board had violated the parties' agreement by withholding Senff's employment increment without just cause. This petition ensued.

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

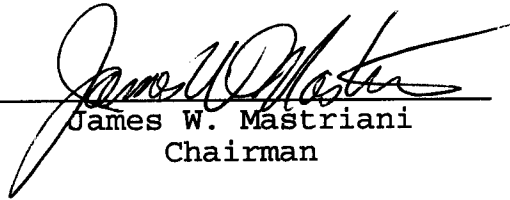
Assembly Labor Committee's Statement to the amendments, only the "withholding of a teaching staff member's increment based on the actual teaching performance would still be appealable to the Commissioner of Education." As in Holland Tp. Bd. of Ed., P.E.R.C. No. 87-43, 12 NJPER 824 (¶17316 1986), aff'd ... [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 Senff's employment increment relate predominately to an evaluation of her teaching performance. We have so held in similar cases involving allegations of poor classroom rapport, poor classroom management and instructional difficulties. Logan Tp. Bd. of Ed., P.E.R.C. No. 95-56, 21 NJPER (¶\_\_\_\_\_ 1995); Southern Gloucester Cty. Reg. H.S. Dist., P.E.R.C. No. 93-26, 18 NJPER 479 (¶23218 1992); 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 corporal punishment. We therefore restrain 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