

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WILDWOOD BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2000-49

WILDWOOD EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Wildwood Board of Education for a restraint of binding arbitration of a grievance filed by the Wildwood Education Association. The grievance asserts that the withholding of a nurse's salary increments constituted discipline without sufficient cause. The Board's reason for the withholding was inefficiency based on improper handling of a student's medication and responses to the situation. The Commission finds that the administration of medication by a school nurse relates to the performance of nursing duties. The Commissioner of Education must review disputes over the performance of nursing duties reserved by education law statutes to certificated nurses.

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. 2000-67

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Appearances:

For the Petitioner, Cassetta, Taylor, Whalen & Hybbeneth  
(William F. Hybbeneth, Jr., on the brief)

DECISION

On November 10, 1999, the Wildwood Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Wildwood Education Association. The grievance asserts that the withholding of a nurse's salary increments constituted discipline without sufficient cause.

The Board has filed a brief and exhibits. The Association did not file a brief. These facts appear.

The Association represents all certificated personnel and certain other employees. The Board and the Association are parties to a collective negotiations agreement effective from July 1, 1997 through June 30, 2001. The grievance procedure ends in binding arbitration.

Debra Noe is a nurse employed by the Board. On or about March 24, 1999, a fifth grade student, who normally receives a 5 mg dose of Ritalin at noon, told his teacher that he thought he had been overmedicated. The teacher reported this to Noe who allegedly confirmed that she had given him the wrong dosage. Noe allegedly did not notify the child's mother, the school administration, or the school physician about the overmedication.

The next day, the student's parent phoned the elementary school nurse and stated that her child had exhibited unusual behavior the previous evening. The parent explained that she had called the child's physician who said that the child appeared to have been overmedicated. When questioned about the incident, Noe allegedly admitted that she was aware that the child could have had a reaction to the overmedication, but did not think to contact anyone.

The district policy manual provides, in part:

3. All prescription and non-prescription medicines other than those medications meeting the criteria for self-administration, must be registered with the school nurse. If the school nurse has any concern about administering said medication, she will contact the parent and the school doctor for advice relative thereto. Medications for elementary students must be brought to the school by a parent or guardian and registered with the school nurse. Parents or guardians of high school students may send in medication with their child to be registered with the school nurse PROVIDED they telephone the school nurse to inform her of this intent.

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4. Any prescription medication submitted to the school nurse must be labeled by a pharmacist or physician and the label must contain the name of the medicine, the strength and amount to be given, and the time of day the medication is to be given. In addition, the parent or guardian must submit to the school nurse a written medication order signed by a physician and a completed Parent Permission for the Administration of Medication Form. (Addendum #2)

On April 30, 1999, the superintendent advised Noe that the Board had approved the withholding of her salary increments for the 1999-2000 school year. The reason "was inefficiency based on improper handling of a student's medication and your related responses to the situation."

The Association grieved the withholding as "Inappropriate discipline without sufficient cause. Concept of progressive discipline not followed."

The Board denied the grievance and the Association demanded arbitration. This petition ensued.

Under N.J.S.A. 34:13A-26 et seq., all increment withholdings of teaching staff members may be submitted to binding arbitration except those based predominately on the evaluation of teaching performance. Edison Tp. Bd. of Ed. v. Edison Tp. Principals and Supervisors Ass'n, 304 N.J. Super. 459 (App. Div. 1997), aff'g P.E.R.C. No. 97-40, 22 NJPER 390 (¶27211 1996). Under N.J.S.A. 34:13A-27d, if the reason for a withholding is related predominately to the 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, as defined by N.J.S.A. 34:13A-22, or related predominately to the evaluation of teaching performance, we must make that determination. N.J.S.A. 34:13A-27a. Our power is limited to determining the appropriate forum for resolving a withholding dispute. We do not and cannot consider whether a withholding was made 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]


N.J.S.A. 34:13a-22 defines "teaching staff member" for purposes of determining which employees are covered by N.J.S.A. 34:13A-27 and its increment withholding provisions. That definition states that a school nurse is a teaching staff member.

In Franklin Bor. Bd. of Ed., P.E.R.C. No. 99-2, 24 NJPER 487 (¶29186 1998), we restrained arbitration over an increment withholding involving a school nurse. We held that the Commissioner of Education, not an arbitrator, must review disputes over the performance of nursing duties reserved by education law statutes to certificated nurses. Administering medication to students is such a duty. We restrain arbitration.

ORDER

The request of the Wildwood Board of Education for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

  
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Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, Madonna, McGlynn, Muscato, Ricci and Sandman voted in favor of this decision. None opposed.

DATED: February 24, 2000  
Trenton, New Jersey  
ISSUED: February 25, 2000