

P.E.R.C. NO. 95-55

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOMERSET COUNTY VOCATIONAL AND
TECHNICAL SCHOOLS BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-95-23

SOMERSET COUNTY VOCATIONAL AND
TECHNICAL EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by a shop teacher represented by the Somerset County Vocational and Technical Education Association against the Somerset County Vocational Technical Schools Board of Education. The grievance asserts that the Board did not have just cause to withhold the teacher's salary increments. The Commission believes that the withholding of the teacher's increments was predominately based on an evaluation of teaching performance. The Board withheld the increment because of its continuing concern about the teacher's classroom management, specifically his alleged failure to control students and ensure student safety during class.

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 Bivona, Cohen, Kunzman, Coley, Yospin,
Bernstein & DiFrancesco, attorneys
(Judith A. Babinski, of counsel)

For the Respondent, Klausner, Hunter & Seid, attorneys
(Stephen B. Hunter, of counsel)

DECISION AND ORDER

On September 12, 1994, the Somerset County Vocational and Technical Schools Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by a shop teacher represented by the Somerset County Vocational and Technical Education Association. The grievance asserts that the Board did not have just cause to withhold the teacher's salary increments.

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

The Association represents the Board's classroom and shop teachers and certain other employees. The parties entered into a

collective negotiations agreement providing in part, that "[n]o teacher shall be discharged, disciplined, reprimanded, reduced in rank or compensation ... without just cause." The contract's grievance procedure ends in binding arbitration of increments withheld for predominately disciplinary reasons. N.J.S.A. 34:13A-29.

Donald Pantalone is a tenured shop teacher. On April 21, 1994, his principal sent him a memorandum entitled Student Management. The memorandum stated:

I am concerned with a number of incidents that have occurred during recent years while students were under your supervision.

During the 1990-1991 school year your evaluation cited student management as an area needing improvement. This position was based on incidents involving student injury and property damage during your assigned class periods. In 1991-1992 you were advised by your immediate supervisor to improve student management again because of a fireworks incident within your assigned class.

During the 1992-1993 school year an academic teacher reported the concerns of a female student who was being harassed by three (3) male students in one of your related classes. In the 1993-1994 school year, there were several incidents that indicate concerns regarding your ability to manage students. Your preannounced formal observation by your immediate supervisor identified a lack of student discipline within the observed classroom. Students were reportedly allowed to drink soda, listen to portable radios and talk during your lesson.

During recent weeks a student who was suspected of using marijuana was allowed to leave your class unsupervised, even though you had reason to suspect that he was under the influence of marijuana. Our district policy regulations mandate your notification of the Principal or his designee if students are suspected of being under

the influence of controlled dangerous substances. Your action of directing this student to the nurse's office unaccompanied was inappropriate.

On Tuesday, April 12, another incident involving student management and supervision occurred during one of your assigned periods. Students reportedly left class, entered the Diesel Mechanics area and one of those students backed a forklift into the overhead garage doors causing approximately \$2,000.00 in damage. As I have stated in the beginning of this communication, I am concerned with your ability to supervise, discipline and manage students.

The most recent incident involving the damage to the overhead garage doors and the Diesel shop could have been prevented if the students had remained in the related classroom until the sounding of the bell and your dismissal of them.

The above mentioned incidents are not meant to be exhaustive of my concerns with your performance over the last few years, but rather illustrative of the same.

I sincerely regret having to write this, but for the good of our school, its students and in the interest of the teaching profession, I feel that it is necessary to address my concerns. A copy of this communication is being forwarded to our Superintendent of Schools to be placed in your personnel file and is to be considered a written reprimand to you for the above described "forklift" incident.

I have discussed these concerns with your immediate supervisor and the Assistant Superintendent for Instruction and collectively we will recommend the withholding of your employment and adjustment increment for the upcoming school year.

On June 27, 1994, the Board voted to withhold Pantalone's employment and adjustment increments for 1994-1995 school year. It gave these reasons:

1. Inadequate classroom management and failure to control students which was demonstrated by an incident that occurred on or about April 12, 1994. Students left Mr. Pantalone's classroom unsupervised and entered the diesel mechanics area of the school at which time one student backed a fork-lift into the overhead garage door causing approximately two thousand dollars (\$2,000) in damage.
2. Failure to properly supervise students and failure to follow school policy which was demonstrated on or about March 24, 1994, when Mr. Pantalone allowed a student which he suspected to be under the influence of marijuana to leave his supervision without assistance.
3. Mr. Pantalone's inadequate classroom management has been exhibited in previous years which has caused a deleterious impact on the delivery of education. His previous conduct is identified as follows:
 - a. Inadequate classroom management and failure to control students. During the 1992-1993 school year a female student was hurt, by horseplay, during the period she was under Mr. Pantalone's supervision.
 - b. Inadequate classroom management which resulted in failure to control students when a fireworks incident occurred in Mr. Pantalone's auto/diesel class.
 - c. Inadequate management and failure to control students which resulted in an incident during the 1990/1991 school year in which a student was injured while under Mr. Pantalone's supervision.
 - d. Inadequate management and failure to control students which resulted in an incident during the 1989/1990 school year in which Mr. Pantalone left his classroom unattended and a basketball went through a classroom window.

On June 29, 1994, Pantalone filed a grievance asserting that the Board had withheld his increments without just cause. The Board denied the grievance, asserting that Pantalone's only recourse was to file a petition with the Commissioner of Education. The Association demanded arbitration and 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 of this case, we believe that the withholding of Pantalone's increments was predominately based on an evaluation of his teaching performance. The Board withheld Pantalone's increment because of its continuing concern about his classroom management, specifically his alleged failure to control students and ensure student safety during class. We have restrained arbitration in similar cases predominately involving allegations of poor classroom management, specifically including allegations

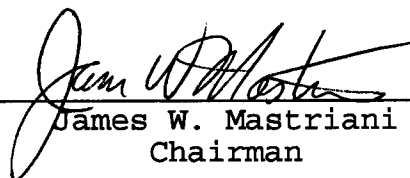
involving student safety in a shop setting. See, e.g., Bergen Cty. Voc. Schools Bd. of Ed., P.E.R.C. No. 91-70, 17 NJPER 150 (¶22060 1991); Upper Saddle River Bd. of Ed., P.E.R.C. No. 91-69, 17 NJPER 148 (¶22059 1991); Tenafly Bd. of Ed., P.E.R.C. No. 91-68, 17 NJPER 147 (¶22058 1991). Contrast Hunterdon Central Reg. H.S. Dist. Bd. of Ed., P.E.R.C. No. 92-72, 18 NJPER 64 (¶23028 1991) (teacher permitted students who were supposed to be in study hall to remain in her classroom unattended). This dispute must be submitted to the Commissioner of Education.

The Association contends that the Commissioner of Education will not permit the Board to base a withholding on events occurring before the 1993-1994 school year. The Board responds that the Commissioner will consider such evidence in determining whether a withholding was justified. We leave it to the Commissioner to determine what evidence may be used to support this withholding.

ORDER

The request of the Somerset County Vocational and Technical School 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