

P.E.R.C. NO. 97-110

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MORRIS SCHOOL DISTRICT
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-97-30

THE EDUCATION ASSOCIATION
OF MORRIS,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Morris School District Board of Education for a restraint of binding arbitration. The grievance contests the withholding of a teacher's salary increment for the 1996-1997 school year. The reasons given for the withholding are based on the teacher's observation reports, summaries of supervisory conferences, and alleged inability to meet the goals of her Professional Improvement Plan for two years in a row. The Commission concludes that the reasons for the withholding predominately relate to an evaluation of teaching performance and any appeal must be heard by the Commissioner of Education.

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. 97-110

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MORRIS SCHOOL DISTRICT
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-97-30

THE EDUCATION ASSOCIATION
OF MORRIS,

Respondent.

Appearances:

For the Petitioner, Wiley, Malehorn & Sirota, attorneys
(John G. Geppert, Jr., of counsel)

For the Respondent, Bucceri & Pincus, attorneys
(Sheldon H. Pincus, of counsel)

DECISION AND ORDER

On October 9, 1996, the Morris School District Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by The Education Association of Morris. The grievance contests the withholding of a teacher's salary increment for the 1996-1997 school year.

The parties have filed briefs and exhibits. 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, 1992 through June 30, 1995. The grievance procedure ends in binding arbitration of

disputes over increment withholdings for predominately disciplinary reasons. N.J.S.A. 34:13A-26 and 29.

Valerie Burton is a tenured teacher. During the 1995-1996 school year, she was formally observed on November 14, 1995, February 14, 1996 and April 1, 1996. Each of the observations was made by a different administrator. Each administrator prepared a report on a form that required the evaluator to rate the teacher as acceptable or unacceptable in "Professional Characteristics," "Classroom Management" and "Teaching Procedures." All of the observations rated Burton's performance as unacceptable in at least one of the categories.

Burton submitted a written rebuttal to at least one of the observation reports. In addition to these reports, Burton received written memoranda or reprimands concerning three separate incidents during her classes in which she allegedly made inappropriate comments expressing her political views and value judgments unrelated to the curriculum. Some of these communications were initiated after parent complaints. At least one complaint was written. In one incident, Burton allegedly reminded a student that her family was in America on a "green card" and could be sent back to her native country. One memorandum criticized Burton for eating during class on several occasions.

An annual evaluation, prepared in narrative form by two of Burton's supervisors, recounted the incidents and the three

observations. The evaluation rated Burton's performance as unacceptable in "Professional Characteristics," "Classroom Management" and "Teaching Procedures" and recommended that her increment be withheld. The evaluation also stated that Burton's allegedly inappropriate comments in her classroom were unrelated to the curriculum she was assigned to teach. The evaluation asserted that the teacher had exhibited deficiencies in her performance over the previous two school years and had not achieved the goals of a Professional Improvement Plan designed to correct those deficiencies. Burton was advised that she could bring an Association representative to the conference at which the annual evaluation would be discussed.

On June 4, 1996, the Superintendent wrote to Burton advising that the Board, at its meeting the previous evening, had voted to withhold her adjustment increment. On June 21, 1996, the Association filed a grievance asserting that the decision to withhold Burton's increment constituted discipline without just cause. The Board denied the grievance and the Association demanded arbitration. 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 questions 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]

The Board asserts that Burton's increment was withheld for reasons relating to her classroom performance as reflected by her annual evaluation. The Association asserts that the increment was withheld to discipline Burton for her "argumentative" rebuttals to written observations and evaluations and for the "green card" incident which resulted in the issuance of a written reprimand. The Association also maintains that because Burton was advised that she could bring a representative to the conference held regarding her annual evaluation, the Board believes its action was disciplinary.

As we have frequently noted, the withholding of an increment, whether based on teaching performance or some other reason unrelated to teaching responsibilities, is a disciplinary action. Thus it is not surprising that a board, before discussing an unfavorable observation report with a teacher or an incident of allegedly inappropriate classroom behavior, might apprise the teacher of a possible right to have a representative present during a conference. The fact that a teacher has been allowed to have a representative present at such a conference does not create a

presumption that the reasons for a withholding are unrelated to teaching performance.

The reasons given by the Board for withholding Burton's increment are based upon the observation reports, summaries of supervisory conferences, reprimands and alleged inability to meet the goals of her Professional Improvement Plan for two years in a row. These reasons predominately relate to teaching performance. See, e.g., Red Bank Reg. H.S. Bd. of Ed., P.E.R.C. No. 97-72, 23 NJPER 45 (¶28031 1996). The Commissioner of Education may determine whether the allegations are true and whether the teacher's performance warrants the penalty imposed by the Board. Arbitration will be restrained.

ORDER

The request of the Morris School District Board of Education for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Chair

Chair Wasell, 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: March 26, 1997
Trenton, New Jersey
ISSUED: March 26, 1997