

P.E.R.C. NO. 93-26

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOUTHERN GLOUCESTER COUNTY
REGIONAL HIGH SCHOOL DISTRICT
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-92-93

DELSEA EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Delsea Education Association against the Southern Gloucester County Regional High School District Board of Education. The grievance contested the withholding of a teacher's employment and adjustment increments for the 1991-1992 school year. The Commission concludes that the increments were withheld for predominately educational, rather than disciplinary, reasons.

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Appearances:

For the Petitioner, Louis Rosner, of counsel

For the Respondent, Selikoff & Cohen, P.A., attorneys
(Steven R. Cohen, of counsel)

DECISION AND ORDER

On March 26, 1992, the Southern Gloucester County Regional High School District Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance which the Delsea Education Association has filed. That grievance contests the withholding of a teacher's employment and adjustment increments for the 1991-1992 school year.

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

The Association represents the Board's teachers. The parties have entered into a collective negotiations agreement

effective from July 1, 1991 through June 30, 1992. Binding arbitration is the terminal step of the grievance procedure for increment withholdings that are predominately disciplinary.

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

The Board hired Cheryl Cousin in 1985. She teaches math in the Delsea Middle School. Terry Vanaman is the principal.

According to Vanaman, guidance counselors received a number of calls from parents during the 1989-90 school year complaining that Cousin was inflexible with students and did not communicate well with parents. Vanaman instructed the guidance counselors to refer calls to her. During the summer of 1990, Vanaman received approximately five calls from parents requesting that their children not be assigned to a class with Cousin. Vanaman discussed these problems with Cousin before the 1990-91 school year started. Vanaman believed that "Cousin was not showing sufficient recognition and understanding of the adolescent phase that students within her grade level were going through and, further, that she tended to be adversarial in her dealings with parents." Vanaman also believed that Cousin's defensive and adversarial approach did not invite and encourage parents to work with her to help their children.

On September 10, 1990, Vanaman reprimanded Cousin for four incidents which allegedly violated Board policies and procedures. The first incident was that Cousin violated the dress code by wearing a tank top in the classroom. The second was that Cousin was ten minutes late to lunch duty. The third was that Cousin left a

seventh period duty early to change for cheerleading practice. The fourth incident was that Cousin was late to school one day. Vanaman hoped that "this formal reprimand will serve to alleviate any further problems which would require a more severe course of action." A copy of the reprimand was placed in Cousin's personnel file and a copy was sent to the superintendent.

On October 30, 1990, Vanaman issued a Teacher Observation Report to Cousin. Under Teacher-Pupil Relations, Cousin was rated satisfactory in two categories and strong in the third category.

On November 27, 1990, Vanaman sent Cousin a memorandum stating that Cousin had been continually late for school and that continued tardiness would be considered a failure to follow the negotiated contract. A copy of the memorandum was placed in her personnel file and a copy was sent to the superintendent.

On December 10, 1990, Vanaman sent Cousin a letter "to document three important concerns that [Vanaman had] with your professional duties and obligations." The first concern was "the constant complaints from parents that Vanaman and the guidance counselors received each week." These complaints related to Cousin's treatment of students in class and treatment of parents at conferences. An attached letter from a parent stated that Cousin had called her son a liar and "failing [name]"; had screamed at her son daily; and had been so sarcastic that the parent left a conference with her. The second concern was that Cousin had taken

an eighth grade student to the Poconos for a weekend.^{1/} The third concern was Cousin's not arriving at school on December 14 until 9:45 a.m.; Vanaman referred this problem to the superintendent and recommended that Cousin be docked for the missed time. A copy of the letter was placed in Cousin's personnel file and a copy was sent to the superintendent.

Cousin sent Vanaman a response to her letter. With respect to the first concern, she stated that she was a strict teacher; since she was now a traveling teacher she was having a hard time getting organized at the beginning of class; and the student was disruptive and was failing. She denied calling him a liar or "failing [name]." With respect to the second concern, she stated that she took the student to the Poconos with her parents' approval and as part of a "big-sister program" she had developed with the student. With respect to the third concern, she attached a letter from her landlord stating that there had been no electricity or hot water in her apartment on that morning.

The superintendent met with Cousin about the principal's letter and Cousin's reply. He then wrote Cousin a letter summarizing these three points:

1. You should continue to be aware that students of our school district are the center of the decision making process and that our students are the most important factor of the entire

^{1/} In February 1989, the administration had strongly suggested that Cousin make efforts to separate her personal life from her students' personal lives.

educational enterprise. The use of sarcasm or ridicule is unnecessary and will ultimately provide the students and their parents/guardians with an opportunity for criticism of the teacher.

2. I would again encourage you to closely review your involvement with student, [R.S.]. As we discussed yesterday, I find it very difficult to develop a positive understanding of your role pertaining to this student. In regard to this matter, attached is a copy of Board of Education Policy #327 Liability for Student Welfare.
3. Under no circumstances can I condone your continued lateness to school. As we discussed, this must stop immediately. Pertaining to this matter, I am attaching a copy of Board of Education Policy #314 Assessing Wages for Tardiness.

On December 19, 1990, a vice-principal wrote the superintendent a memorandum stating that he had granted a parent's request to have her child's homeroom changed. Cousin had referred the child to the vice-principal because she believed the child had been rude; but the vice-principal, after a conference with the student, parent and Cousin, determined that Cousin had not properly handled the matter.

On February 20, 1991, Cousin was absent. Cousin requested an emergency personal day, but Vanaman, in a letter to Cousin, found her reasons deceptive and unsupported. A copy of the letter was placed in Cousin's personnel file and copies were sent to the superintendent and vice-principal. Cousin was docked a day's pay.

On February 22, 1991, Vanaman wrote Cousin a letter stating that the superintendent had reported that Cousin had been out jogging during her preparation period. The memorandum stated that

Cousin had not adhered to the contract and that continued infractions would necessitate stronger actions. A copy of this memorandum was placed in Cousin's personnel file and copies were sent to the superintendent and vice-principal.

Cousin responded to this memorandum. She stated, in part:

I am beginning to get the feeling you have a grudge against me. Why after five years in the district have I received several letters from you this year concerning my contractual obligations?

She also stated that she had gone jogging a few minutes before the school day ended so she could be with her cheerleaders at 4:00 p.m. She concluded by stating that letters were not necessary every time she strayed from the black and white lines and that Vanaman could have saved Cousin's valuable time and hers by discussing the matter with her.

Vanaman responded to Cousin's letter. She stated that she did not have a grudge against Cousin; Cousin was obligated to abide by the rules; Cousin should stop coaching and concentrate on teaching; and if Cousin continued to think she was an exception to the rules more severe reprimands would be issued.

On March 19, 1991, a student's parents wrote Cousin a letter complaining that Cousin had written disparaging comments on their son's report sheets and had undermined their efforts to make their son's outlook more positive. Copies of this letter were sent to the student's guidance counselor, Vanaman, and the superintendent. Cousin wrote the parents a response stating that she had tried to arrange a conference with them, but they did not

believe one was necessary^{2/}; their son had been negative, unprepared and disruptive; her comments on the report sheet were made to challenge their son and to communicate with the parents as well as the child; and the son had not met his responsibility to explain Cousin's comments to the parents.

On April 22, 1991, Vanaman wrote Cousin a letter stating that Vanaman would recommend that Cousin's 1991-92 salary increment be withheld. According to Vanaman's affidavit, the predominate and motivating reasons for this recommendation were Cousin's "repeated difficulties in her interaction with students and parents." She also considered Cousin's tardiness for school and duties, improper use of preparation time for jogging, inappropriate dress, and poor judgment in taking a student to the Poconos.

At the end of the 1990-91 school year, Vanaman issued an annual performance report. The report stated that these performance areas needed improvement:

1. Taking directions from the administration
2. Attention to rules/regulations for staff
3. Being more sensitive to the needs/feelings of students/parents
4. Improve professional attitude.

The accompanying narrative stated, in part:

Miss Cousin needs to be more in touch with the needs and feelings of Middle School children.

^{2/} According to the Association, Cousin scheduled three conferences, but the parents did not attend.

While they need discipline and structure, they also need to be treated with dignity.

Cousin wrote a response. She stated, in part:

I acknowledge that I am a strict teacher in the classroom, but I feel I am sensitive to their scholastic and personal needs and feelings. I feel I have had a personal communication problem with the administration and would like to work and improve on this problem, hopefully with the support and cooperation of my administrators.

On June 28, 1991, the superintendent wrote Cousin a letter informing her that he would recommend that the Board withhold her employment and adjustment increments for the 1991-92 school year. He stated that the basis for his recommendation was the "performance areas in need of improvement" listed on her annual performance report.

On July 12, 1991, the Board voted to withhold Cousin's employment and adjustment increments for the next school year. The letter officially notifying Cousin stated that the basis for this action was:

1. Failure to take direction from the Administration.
2. Failure to attend to rules/regulations for staff
3. Lack of sensitivity to the needs/feelings of students/parents
4. Need for improvement of professional attitude

On August 12, 1991, the Association filed a grievance alleging that the withholding of Cousin's increments violated a contractual assurance that teachers would not be disciplined or have

their compensation reduced without just cause. The Board denied the grievance and the Association demanded binding arbitration. This petition ensued.

Under N.J.S.A. 34:13A-26, disputes involving the withholding of a teacher's increment by a school board for predominately disciplinary reasons shall be subject to binding arbitration. But not all withholdings can go to arbitration. Under N.J.S.A. 34:13A-27(a), 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. Under N.J.S.A. 34:13A-27(a), we must resolve disputes over whether the reason for a withholding is predominately disciplinary. Our power is limited to determining the appropriate forum for resolving an increment withholding dispute. We do not and cannot consider whether an increment 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 explained the analysis we will follow in determining the appropriate forum for resolving an increment withholding dispute. 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

Tr. Bd. of Ed., P.E.R.C. No. 87-43, 12 NJPER 824 (¶17316 1986), aff'd App. Div. Dkt. No. A-2053-8678 (10/23/87), 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. [Id. at 146]

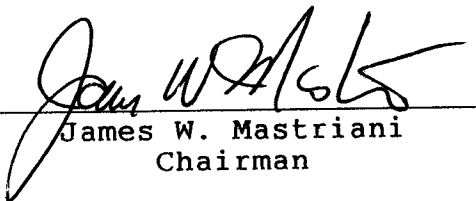
Considering all the circumstances of this case and balancing all the competing factors, we conclude that the withholding of Cousin's increments predominately involved an evaluation of teaching performance. From the summer before the 1990-91 school year through the month before Cousin's increment was withheld, principal Vanaman registered several serious concerns about Cousin's educational dealings with students and parents. Thus in the summer of 1990, after having five parents request that Cousin not teach their children, Vanaman discussed with Cousin her allegedly insufficient recognition and understanding of her students' adolescent phase and her allegedly adversarial dealings with parents; in December, 1990 Vanaman sent Cousin a letter stating that she had received constant complaints about Cousin's treatment of students in class and treatment of parents at conferences and one parent had complained that Cousin had called her son a liar and a failure and had screamed at him daily; again in December 1990, a vice-principal found that Cousin had not properly handled a student discipline matter; and finally in March 1991, just one month before the principal decided to recommended the withholding, a student's parents complained that Cousin had disparaged their son and undermined their efforts to make his outlook more positive. While

the record also reflects several allegations of misconduct we consider disciplinary, such as violating the dress code, being repeatedly late for school and duties, jogging during school hours, and being absent without justification; the educational reasons objectively appear, on balance, to have been more significant in substance and in timing in producing the withholding recommendation. We further note in this regard that the principal's affidavit stated that the predominate and motivating reasons for her recommendation were Cousin's "repeated difficulties in her interaction with students and parents." We finally repeat that we have determined only the appropriate forum for reviewing the allegations leading to the withholding and we do not pass judgment on the merits of any of these allegations.

ORDER

The request of the Southern Gloucester County Regional High School District Board of Education for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Goetting, Grandrimo, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Regan abstained from consideration.

DATED: September 24, 1992
Trenton, New Jersey
ISSUED: September 25, 1992