

P.E.R.C. NO. 99-94

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RANDOLPH TOWNSHIP BOARD
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-99-52

RANDOLPH EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Randolph Township Board of Education for a restraint of binding arbitration of a grievance filed by the Randolph Education Association. The grievance contests the withholding of a teacher's salary increment for the 1998-99 school year. The Board's reasons for the withholding were the teacher's alleged failure to adequately manage student behavior in the classroom and provide an instructional setting conducive to student learning in the classroom. The Commission concludes that these reasons relate predominately to the evaluation of teaching performance and review of this withholding must be before 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.

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Appearances:

For the Petitioner, Vogel, Chait, Schwartz & Collins,
P.C., attorneys (Aron M. Schwartz, of counsel and on the
brief; David H. Soloway, on the brief)

For the Respondent, Bucceri & Pincus, attorneys
(Linda Ganz Ott, on the brief)

DECISION

On January 20, 1999, the Randolph 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 Randolph Education Association. The grievance
contests the withholding of a teacher's salary increment for the
1998-99 school year.

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

The Association represents teaching and non-teaching
staff. The Board and the Association are parties to a collective

negotiations agreement effective from July 1, 1995 through June 30, 1998. The grievance procedure ends in binding arbitration.

Alex Panas is a tenured teacher. He is assigned to the Randolph Middle School to teach social studies. Between January 27 and March 30, 1998, three classes taught by Panas were observed -- two by his supervisor and one by his principal. Concerns were raised about his instructional methodologies and classroom management: the evaluators believed that Panas allowed students to be too disruptive and that he needed to get them focussed on the lesson and tasks at hand.

On April 2, 1998, Panas received his Annual Evaluation Report. Three ratings were used: "E" Exceeds Expectations; "N" Needs Improvement; and "M" Meets Expectation. Panas was rated as "N" in two categories under "Professional Characteristics" -- "Demonstrates professional judgment regarding confidentiality, implementation of legal requirements, district policies and practices" and "Maintains positive interrelationships with students, colleagues, and parents." Panas was also rated "N" in two categories under "Professional Competencies" - "Develops plans and procedures of appropriate quality and thoroughness" and "Employs a variety of methods and materials to motivate the student and to meet the diverse need of students." The narrative stated:

Before any meaningful instruction or learning can take place, you must have the attention of the students. Mr. Panas had minimal control of student behavior throughout the class period.

It is imperative these students get on task immediately. Spending five minutes at the start of the period collecting homework assignments individually, allows students to get away from you. It then takes another five minutes to get everyone's attention again. The lesson should begin immediately at the bell with all students required to perform a task. This should be planned for and implemented immediately. Homework can be collected at the end of the period without causing disruption to the lesson, and still allow you to hold each student individually accountable.

Allowing students to begin a homework assignment during the last five or ten minutes of the period is valuable only if the time is used for that purpose. These students took this opportunity to continue to socialize. Restructure the lesson to use the time productively.

This is not the first time I have expressed my concerns to Mr. Panas. We have discussed various strategies and activities that could be used in class in conferences and discussions we have had. Manuals, workbooks, teacher guides and strategies have been provided to Mr. Panas. I expect these ideas will be adopted and immediately implemented into his lessons.

The evaluation also contained a Professional Improvement Plan (PIP). It emphasized correcting deficiencies in lesson planning, development and presentation, and implementing classroom management practices and strategies to improve student behavior and increase participation.

On April 7, 1998, the superintendent informed Panas that the Board would not consider his 1998-99 salary until its June meeting. A recommendation concerning his salary would be made after monitoring of his job performance. Subsequent class observations by the director of curriculum, the middle school

vice-principal, and the principal registered continuing concerns about student misbehavior and disruptiveness during class.

On June 4, 1998, the principal recommended to the superintendent that Panas' salary increment be withheld for the 1998-99 school year. The principal asserted that Panas had not "sufficiently demonstrated his ability to manage student behavior nor has he provided an instructional setting which is conducive to student learning in his classroom."

On June 16, 1998, the Board advised Panas by letter that it had frozen his salary at current levels for the 1998-99 school year. The letter stated:

As required by statute, the following constitute the reasons for the Board's action:

- . Failure to adequately manage student behavior in the classroom.
- . Failure to provide an instructional setting which is conducive to student learning in your classroom.

The aforementioned reasons are more specifically set forth in the 1997-98 annual evaluation dated April 2, 1998.

On July 21, 1998 the Association filed a grievance contesting the withholding. It alleged that Panas was disciplined without just cause. The Board denied this 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 (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. [Id. at 154]

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 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 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 increment withholdings based on deficiencies in managing student behavior and teaching lessons center on teaching performance and must be challenged before the Commissioner of Education. The Association responds that the Board is seeking to punish Panas for the misbehavior of very challenged students and that it should be required to prove the alleged deficiencies in an arbitration proceeding.


Under all the circumstances, we conclude that the reasons for this withholding relate predominately to the evaluation of Panas' teaching performance. As our cases consistently reflect,

such matters as classroom supervision and management, instructional techniques and effectiveness, and adequate lesson planning all center on the educational relationship between teacher and students. See, e.g., Morris Sch. Dist. Bd. of Ed., P.E.R.C. No. 99-84, 25 NJPER ___ (¶_____ 1999); Dennis Tp. Bd. of Ed., P.E.R.C. No. 98-73, 24 NJPER 17 (¶29012 1997); Wood-Ridge Bd. of Ed., P.E.R.C. No. 98-41, 23 NJPER 564 (¶28281 1997); Millville Bd. of Ed., P.E.R.C. No. 98-48, 23 NJPER 601 (¶28295 1997). The fairness or accuracy of the allegations must be challenged before the Commissioner of Education. We accordingly restrain arbitration.

ORDER

The request of the Randolph Township 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 and Ricci voted in favor of this decision. None opposed. Commissioner Boose abstained from consideration.

DATED: April 29, 1999
Trenton, New Jersey
ISSUED: April 30, 1999