

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PARSIPPANY-TROY HILLS  
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2000-15

PARSIPPANY-TROY HILLS  
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Parsippany-Troy Hills Board of Education for a restraint of binding arbitration of a grievance filed by the Parsippany-Troy Hills Education Association. The grievance asserts that a teacher was unjustly disciplined when the Board withheld his increment for the 1999-2000 school year. The Commission concludes that this withholding predominately relates to teaching performance concerns including classroom management, organization of lesson plans, instruction, and communication with students. Any challenge to the withholding must be made by an appeal to 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. 2000-28

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Appearances:

For the Petitioner, Dillon, Bitar & Luther, L.L.C.,  
attorneys (Marie-Laurence Fabian, on the brief)

For the Respondent, Bucceri & Pincus, attorneys  
(Sheldon H. Pincus, of counsel; Linda Ganz Ott, on the  
brief)

DECISION

On July 29, 1999, the Parsippany-Troy Hills Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Parsippany-Troy Hills Education Association. The grievance asserts that a teacher was unjustly disciplined when the Board withheld his increment for the 1999-2000 school year.

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

The Association represents teachers and certain other employees. The Board and the Association are parties to a

collective negotiations agreement effective from July 1, 1998 through June 30, 2001. The grievance procedure ends in binding arbitration.

John Christensen is a tenured teacher employed by the Board. He teaches fifth grade at the Northvail Elementary School.

On September 15, 1998, the principal observed Christensen teaching his class. Her observation report asserted that there was little evidence of adequate planning in the lesson and that Christensen needed to improve his class management and instruction and monitor student progress and understanding more effectively. Under Areas of Critical Importance, the principal wrote that student folders had not yet been established; there should be more emphasis on improving class management by developing behavioral expectations and rules; lesson plans must be organized with clear objectives and motivating activities; and objectives must be communicated to students. She also noted that the Emergency Substitute Folder was missing and that it must be completed and available.

On October 23, 1998, the principal reminded Christensen to submit weekly lesson plans. She added that she still had not received his Emergency Substitute Plans.

On November 12, 1998, the principal observed Christensen's class again. The principal commented on the need to improve class management and student behavior. Under Areas of

Critical Importance, she indicated that Christensen needed to implement a plan for classroom management and needed to design instruction in light of the Language Arts Core Curriculum Content Standards.

On November 2, 1998, the principal sent Christensen a memorandum concerning several matters, some involving parental concerns about testing procedures. The last paragraph of the memorandum states:

Your failure to write clear substitute plans, the inappropriate manner in which you handled a lack of textbooks, your failure to communicate your expectations to the students, parents and me resulted in a great deal of confusion and unnecessary parent concern. You are reminded that your 1998-1999 Professional Improvement Plan goals are "to strengthen efficiency in class management, managing class instructional time and the pacing of instruction at a rate which ensures clarity, understanding and appropriate completion of district approved curriculum" and "to strengthen communication, assessment and documentation of student progress." Toward that end, item #5 under "Implementation Procedures," states: "Continue and strengthen communication with parents regarding teacher's academic expectations and standards - (e.g., testing schedule and what test will cover, research reports and student performance). Expectations will be communicated through parent letters in a timely manner (at least one week's notice). Communication will be shared with the principal prior to distribution to parents." It is my expectation that you will begin to initiate your parent letters regarding your academic expectations and standards immediately.

On December 3, 1998, the principal met with Christensen and followed up with a memorandum. She suggested revisions in his Emergency Substitute Plans and his Teacher's Daily Schedule. The

principal also noted that lesson plans still "do not clearly state objectives, procedures/activities or methods of assessment."

Finally, parental concerns were discussed.

On January 19, 1999, the assistant superintendent filed tenure charges against Christensen with the Board. The charges state:

John Christensen, a tenured teaching staff member employed as a teacher of Fifth Grade at the District's Northvail Elementary School, is hereby charged with inefficiency inasmuch as:

1. He has demonstrated an inability to properly control and manage his classroom.
2. He has failed to prepare lesson plans that include clear goals and objectives.
3. His lack of properly prepared lesson plans has resulted in disorganized and confusing lessons which inhibit the learning process of his students.
4. He did not prepare adequate emergency substitute plans until December of 1998 and did so only after repeated requests by his principal. The lack of adequate emergency substitute plans resulted in lost instructional time during his absences in the first part of the school year.
5. He has demonstrated an inability to properly communicate his academic expectations and standards to his students and their parents.
6. With reference to a particular incident that occurred during the Fall of 1998, he expected students who did not have textbooks to be responsible for the material contained in the textbook. Prior to a test on the material, he directed those without textbooks to study at home with a friend who did have the book. Mr. Christensen's inappropriate handling of this situation resulted in confusion among both students and parents.

7. In another incident during the Fall of 1998, he caused confusion among students and their parents by giving a problematic quiz, followed by a "makeup" quiz, which was given in an attempt to rectify the problems inherent in the first quiz, but without adequately communicating to the students and their parents how the two quizzes would be used to assess the students' progress.

8. He has failed to promptly respond to his principal's requests to meet with her to discuss problems brought to her attention by parents.

9. He has failed to submit his lesson plans for review on a timely basis as requested by his principal.

On January 22, 1999, the Board secretary/business administrator advised Christensen that tenure charges had been filed against him. The letter indicated that he had until April 30, 1999 to correct the alleged inefficiencies. The letter also indicated that his PIP had been modified to address the charges of inefficiency and to incorporate the improvement period established in the letter.

Christensen was out on a medical leave from February 11, 1999 through the end of the school year. He was notified on May 17, 1999 that the tenure charges remained and that the improvement period would begin again when school started in September 1999.

Christensen's Performance Evaluation Report was completed on May 14, 1999. The evaluation indicated that Christensen was observed in September and November and that the tenure charges had been filed. It also indicated that he had been on leave and that

his modified PIP had not been completed. The principal recommended "Reemployment--withhold increment."

On June 9, 1999, Christensen responded to his modified PIP. He stated that he looked forward to returning and would make every effort to meet the requirements and standards set forth in the modified PIP. He asserted that he had made every effort to submit clear lesson plans in a timely manner, but absences because of his illness sometimes made it difficult. He also indicated that he would continue to communicate to parents as he had started before leaving for his surgery and that he would address the principal's concerns about parental complaints. He did state that he felt parents who had complaints should be directed to him so that he would have an opportunity to respond to their complaints.

On June 30, 1999, the assistant superintendent informed Christensen that the Board had acted on the recommendation of the superintendent to withhold his increment and salary adjustment for the 1999-2000 school year. He wrote that "the reason for this action was your inefficiency in the performance of your professional responsibilities, as identified in your performance observations and evaluations."

On July 9, 1999, the Association demanded arbitration. The Board indicates that the grievance procedure is subject to three levels and that the grievance procedure was not followed. 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 jurisdiction 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]


This withholding centers on a number of teaching performance concerns including classroom management, organization of lesson plans, instruction, and communication with students. We have restrained arbitration in similar cases and do so here. See Morris Bd. of Ed., P.E.R.C. No. 99-84, 25 NJPER 162 (¶30074 1999) (arbitration restrained where areas of concern involved professional characteristics, class management and teaching procedures); Wood-Ridge Bd. of Ed., P.E.R.C. No. 98-41, 23 NJPER 564 (¶28281 1997) (arbitration restrained where withholding based on alleged deficiencies in preparing lessons and instructing

students -- as well as difficulty in maintaining classroom discipline); South Harrison Bd. of Ed., P.E.R.C. No. 96-36, 22 NJPER 20 (¶27007 1995) (arbitration restrained where withholding based on "ineffective instruction as observed in the classroom); see also Bernardsville Bd. of Ed., P.E.R.C. No. 94-83, 20 NJPER 82 (¶25037 1994) (arbitration restrained where increment withholding based on evaluations describing poor lesson plans, lack of teaching objectives for each class period, and poor student supervision -- as well as failure to follow administrative procedures). While an element of this withholding appears to involve an alleged failure to comply with administrative procedures regarding preparation of lesson plans, even that issue touches upon teaching performance. For all these reasons, we restrain arbitration. Any challenge to the withholding must be made by an appeal to the Commissioner of Education.

ORDER

The request of the Parsippany-Troy Hills Board of Education for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

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

DATED: October 28, 1999  
Trenton, New Jersey  
ISSUED: October 29, 1999