

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HUNTERDON CENTRAL REGIONAL
HIGH SCHOOL DISTRICT BOARD
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-91-94

HUNTERDON CENTRAL HIGH
SCHOOL EDUCATION ASSOCIATION,

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance filed by the Hunterdon Central High School Education Association against the Hunterdon Central Regional High School District Board of Education. The grievance contests the withholding of a home economics teacher's salary increment. The withholding was based upon events cited in a memorandum prepared by an assistant principal. Hardly any of the incidents occurred while the grievant was teaching. None related to the way she taught any of her classes. The determinations of whose version of the incidents is correct and whether those incidents warrant withholding an increment do not predominantly involve an evaluation of teaching performance.

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HUNTERDON CENTRAL HIGH
SCHOOL EDUCATION ASSOCIATION,

Respondent.

Appearances:

For the Petitioner, James P. Granello, attorney

For the Respondent, John Thornton, NJEA Uniserv
Representative

DECISION AND ORDER

On June 21, 1991, the Hunterdon Central 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 filed by the Hunterdon Central High School Education Association. The grievance contests the withholding of a home economics teacher's salary increment.

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

The Association represents the Board's non-supervisory professional and clerical employees. The parties entered into a

collective negotiations agreement effective from July 1, 1989 until June 30, 1991. The grievance procedure ends in final and binding arbitration.

Georgette Madak teaches home economics at Hunterdon Central Regional High School. The Association has submitted observation reports, prepared by the Assistant Principal, of three separate classes taught by Madak during the 1990-91 school year. Aside from a few comments expressing some concerns (but also a comment stating some improvement) with classroom management, the observation reports generally praised the substance and delivery of each lesson.

On March 20, 1991, Madak received a memorandum from the school principal regarding "Classroom Management." The memorandum dealt principally with a March 11, 1991 incident in which the principal discovered two students, who were assigned to a study hall next door, sleeping in Madak's unattended and otherwise unoccupied classroom. According to the memorandum, Madak, who had entered the room with the principal, explained that she had asked the students to help her during their study hall. The principal wrote that the incident violated an October 17, 1990 directive to refrain from taking students from the study hall to assist her. The memorandum also advised Madak that the withholding of her increment was possible and chronicled these other alleged transgressions:

October 5, 1990

During 8th period Miss Spieker was trying to locate a student who was scheduled to be in your class. When she discovered there was no one in the classroom she checked with Dr. Gray [the Assistant Principal] to see if she knew where you

had gone. Dr. Gray was not aware that you had been scheduled to move out of the classroom. When she asked about this situation the following Monday, you replied that several students were absent and that those that were there were upset over an incident that had occurred during the afternoon. As a result of that, you decided to "take the students for a walk."

October 5, 1990

You had scheduled two students for appointments in the Career Resource Center during Period 8. Neither of the students showed up, and Mrs. DiBianca was not notified.

October 11, 1990

You took responsibility for two students during 4th period study hall. You then left them alone in your classroom, and the students left the classroom while you were in the duplicating room.

October 12, 1990

Despite previous warnings, Dr. Gray found a bag of dirty gym clothes stored in your classroom drawers.

November 19, 1990

During Period 7 Dr. Gray observed one... [student] sitting at your desk despite numerous warnings that students should not be permitted to be seated at the desk.

January 3, 1991

You allowed two students to leave your classroom and enter the science storage area even though both Mr. Falcone and Dr. Gray had asked you not to send students to the storage area. In addition, your evaluations have included the provision that only one student be dismissed from class at one time (1989-90 Annual Evaluation, Section V, 1c.).

January 3, 1991

Dr. Gray observed...[two students] in your Period 7 class although neither of those students is scheduled in that class. You have been previously warned about having students in your class, specifically in your 1988-89 Annual Evaluation, Section VI, 3.

March 11, 1991

My observation of two young men sleeping in your classroom on the furniture followed by an investigation which revealed that you had taken responsibility for those students by requesting their cut cards for the period and the fact that you had left them unsupervised in the classroom.

On March 27, 1991, Madak responded to the principal's memorandum, giving her account of the incidents:

October 5, 1990

The six students in Independent Living class were upset by a crisis that day involving an absent class member. Meanwhile, a loud teacher-student argument was taking place in the hallway just outside our door which made concentration difficult. I informed the assistant secretary in the Junior Office that our small group was moving just outside the breezeway for part of the period. Mr. Falcone encountered us later in the period on our way back to the classroom.

October 5, 1990

The last two students scheduled for the Resource Center visit were absent from class. This occurred during last period on a Friday afternoon. The following week, I spoke to Mrs. DiBianca personally and rescheduled the students. This situation was handled just as any student absent for an appointment with a guidance counselor.

October 11, 1990

I gave two study hall students a pass during my prep period to help "turn" puff pastry dough to be ready for class that afternoon. I informed the hall monitor that I would be in the duplicating room for a few minutes. Miss Spieker reported to me that the two students had refused to accompany her on a separate discipline matter. I informed Miss Spieker that the students had abused their privilege and I wrote a discipline report on their behavior.

October 12, 1990

When I found some clean gym clothes in my classroom, I put them in a drawer inaccessible to students. I could not write a discipline report until someone asked for missing clothes. I am not aware that dirty clothes have ever been stored in my room.

November 19, 1990

Students have access to their study folders and stationery supplies stored in my desk. Because of the desk availability, confidential materials are stored elsewhere.

January 3, 1991

Two students were sent to my car for groceries. They went to the food storage cage by mistake since they had secured supplies there (as students have done for several years) earlier in the year, before Mr. Falcone objected to the procedure. Dr. Gray has agreed that more than one student may leave the classroom when gathering groceries. She has also agreed that I may allow one reliable student, selected at my discretion, to enter the storeroom area.

[One student]... was working independently to make up work that he had missed during his absence the previous week. [The other student]... was sent inside from phys ed because he had been ill the previous week. I allowed him to remain in my classroom rather than to be unsupervised and alone in the gym.

March 11, 1991

As a result of our conversation regarding the two study hall students of 10/11/90, Dr. Gray informed me that lunch was a time when I could visit with whomever I wish. [Two students]... were scheduled for lunch during that period. [A third]... was scheduled for the study hall immediately adjacent to our room. These were the only three students in the room on the day that Mrs. Startzel politely asked us to turn down the music; I was the fourth person in the room.

On March 11, 1991, [a student]... asked to use the telephone. I walked across the hall with her to the Junior Office. Since no one there knew if our department was scheduled for a meeting that afternoon, I walked one room down the hall to ask the workshop teacher for this information. I returned within two minutes and met Dr. Myers at my doorway. I don't believe that the students were "asleep" as I had been gone from the room so briefly.

On April 22, 1991, the Board voted to withhold Madak's salary increment. The Superintendent wrote her a letter informing

her of the withholding and citing the incidents in the principal's memorandum as the basis for the Board's action.

On May 30, 1991, the Association demanded binding arbitration. The demand describes the dispute as "Withholding of increment/unjust discipline." This petition ensued.

In Scotch Plains-Fanwood Bd. of Ed., P.E.R.C. No. 91-67, 17 NJPER 144 (¶22057 1991), we set forth the standards for determining which increment withholdings of teaching staff members may be submitted to binding arbitration and which must be submitted to the Commissioner of Education. See N.J.S.A. 34:13A-27.

The fact that an increment withholding is disciplinary does not guarantee arbitral review. Nor does the fact that a teacher's action may have involved 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 App. Div. Dkt. No. A-2053-86T8 (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. [17 NJPER at 146]

See also Tenafly Bd. of Ed., P.E.R.C. No. 91-68, 17 NJPER 147 (¶22058 1991); Upper Saddle River Bd. of Ed., P.E.R.C. No. 91-69, 17 NJPER 148 (¶22059 1991). Bergen Cty. Voc. Bd. of Ed., P.E.R.C. No.

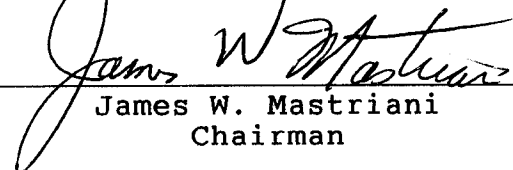
91-70, 17 NJPER 150 (¶22060 1991); Greater Egg Harbor Bd. of Ed., P.E.R.C. No. 92-9, 17 NJPER 384 (¶22181 1991). Our power is limited to determining the appropriate forum for resolving any increment withholding dispute. We do not and cannot consider whether an increment withholding was with or without just cause.

This increment withholding is based upon the events cited in the March memorandum. Hardly any of the incidents occurred while Madak was teaching. None related to the way she taught any of her classes. The determinations of whose version of the incidents is correct and whether those incidents warrant withholding an increment do not predominately involve an evaluation of teaching performance.^{1/} Under all the circumstances, we decline to restrain binding arbitration.

ORDER

The request for a restraint of binding arbitration is denied.

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: Trenton, New Jersey
December 19, 1991
ISSUED: December 20, 1991

^{1/} An arbitrator cannot secondguess the Board's policy on when and where students are permitted to be unsupervised.