

P.E.R.C. NO. 99-92

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LAKELAND CUSTODIAL ASSOCIATION,

Petitioner,

-and-

Docket No. SN-99-23

LAKELAND REGIONAL HIGH SCHOOL
DISTRICT BOARD OF EDUCATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines that the increment withholding of a custodian employed by the Lakeland Regional High School District Board of Education and represented by the Lakeland Custodial Association is subject to binding arbitration. The Association grieved the withholding and the matter was submitted to advisory arbitration. The arbitrator directed the Board to restore the increment and the Board refused to do so. The Commission concludes that increment withholdings involving non-professional school board employees are subject to binding arbitration under N.J.S.A. 34:13A-29. Therefore, this withholding was disciplinary and subject to binding arbitration.

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, Bucceri & Pincus, attorneys
(Louis P. Bucceri, on the brief)

For the Respondent, Sills, Cummis, Radin, Tischman,
Epstein & Gross, attorneys (Philip Stern, on the brief)

DECISION

On October 19, 1998, the Lakeland Custodial Association petitioned for a scope of negotiations determination. The Lakeland Regional High School District Board of Education withheld the 1997-1998 salary increment of custodian William D. Anderson Sr. The Association's petition seeks a determination that an advisory arbitration award directing restoration of the increment is binding under N.J.S.A. 34:13A-26 and 29.

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

The Association represents all full-time custodial, utility, groundskeepers and maintenance personnel. The Board and the Association are parties to a collective negotiations agreement effective from July 1, 1996 through June 30, 1998. Article XI(B)

provides that increments are not automatically granted and are conditioned upon receiving a satisfactory evaluation. The grievance procedure ends in advisory arbitration.

The Board withheld Anderson's salary increment based on an "unsatisfactory annual evaluation." That evaluation asserted that Anderson required constant instruction and made careless mistakes. It recommended that Anderson's increment be withheld until he could function without a "constant monitor."

The Association grieved the withholding. The Board denied the grievance and the dispute was submitted to advisory arbitration. The arbitrator rejected the testimony of the Board's main witnesses as unworthy of belief and found no just cause for the withholding. The arbitrator directed the Board to restore the increment. The Board did not do so. The Association then filed the instant petition asserting that the withholding was disciplinary and the award was therefore binding under N.J.S.A. 34:13A-26 and 29.

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 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.

Thus, we do not consider the contractual merits of the arbitration award.


In Randolph Tp. Bd. of Ed., P.E.R.C. No. 99-45, 25 NJPER 14 (130005 1998), app. pending App. Div. Dkt. No. A-2541-98T3, we recently addressed the question of whether increment withholdings involving non-professional school board employees are subject to binding arbitration under N.J.S.A. 34:13A-29. We held that, under that provision, all such withholdings are disciplinary and subject to binding arbitration.

We have asked the parties to comment on Randolph's applicability to this case. The Association asserts that it controls this case and the Board has not responded. Randolph is on point. We therefore hold that this withholding was disciplinary under Randolph and subject to binding arbitration.

ORDER

The increment withholding of William D. Anderson was disciplinary and subject to binding arbitration under N.J.S.A. 34:13A-26 and 29.

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: March 25, 1999
Trenton, New Jersey
ISSUED: March 26, 1999