

P.E.R.C. NO. 92-112

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CLIFTON BOARD OF EDUCATION,

Respondent,

-and-

Docket No. SN-92-39

BARBARA WELLINGTON,

Petitioner.

SYNOPSIS

The Public Employment Relations Commission determines that a grievance filed by Barbara Wellington against the Clifton Board of Education may legally be submitted to binding arbitration. The grievance contests an increment withholding. The Commission finds that the reasons for the withholding are predominantly disciplinary.

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Appearances:

For the Petitioner, Robert T. Tessaro, attorney

For the Respondent, Anthony P. Sciarrillo, attorney

DECISION AND ORDER

On October 3, 1991, Barbara Wellington, a tenured teaching staff member employed by the Clifton Board of Education, petitioned for a scope of negotiations determination. The petitioner asserts that the Board has refused to arbitrate her grievance contesting an increment withholding. She seeks a declaration that the withholding was disciplinary and may be submitted to binding arbitration.

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

The Clifton Teachers' Association represents the Board's certified teachers. The Association has authorized the petitioner's attorney to represent her.

On March 27, 1991, the Board resolved to withhold Wellington's increments for the 1991-1992 school year. The resolution stated that there were multiple reasons for the withholding, any one of which would have resulted in the withholding. These were the reasons listed:

being absent, having left the middle school before the end of the contract day despite prior written reprimands and prior counselling, and falsification of the sign-out sheet on the same day;

failure to attend back-to-school nights, as contractually required, and having been counselled for failing to attend back-to-school nights for 1985, 1986, 1987, 1988, and 1989, before additionally failing to attend in 1990;

extreme insubordination to a superior, to wit, threatening that superior by stating several times that she would "take care" of him, and subsequently threatened to disseminate rumors concerning a superior of an extremely damaging and slanderous nature.

The resolution concluded by warning that further inappropriate action could result in tenure charges.

The Board has submitted memoranda concerning the incidents cited in the resolution. It has also submitted Wellington's annual evaluation which states under the section entitled Observes proper channels of communications: "Needs improvement in cooperation using tact in dealing with building administration, specifically in the area of sign in/out district policy. It is also recommended that she make a greater effort to attend Back-to-School night."

The Association asked the Board to waive the grievance procedure and to proceed to arbitration. The Board agreed, provided it could file a post-arbitration scope petition, asserting that the grievance was not legally arbitrable. The Association did not accept the proviso; the Board withdrew its consent to arbitration; and the arbitrator withdrew from the case. The Board then wrote Wellington's attorney a letter stating that the grievance was not arbitrable because Wellington had not followed the contractual grievance procedure and the grievance was outside the scope of negotiations. This petition ensued.

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. [Id. at 154]

Thus, we do not consider whether the grievance is contractually arbitrable or whether the petitioner must exhaust the prior steps of the grievance procedure before filing for arbitration. Nor do we consider the merits of this grievance.^{1/}

^{1/} We reject the Board's contention that this pre-arbitration scope petition was untimely. Ocean Tp. Bd. of Ed., P.E.R.C. No. 83-164, 9 NJPER 397 (¶14181 1983).

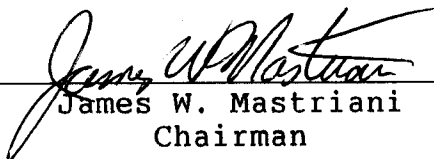
Pursuant to N.J.S.A. 34:13A-26, teaching staff increment withholdings that are for predominately disciplinary reasons shall be reviewed through binding arbitration. But not all withholdings can go to arbitration. Under N.J.S.A. 34:13A-27(d), if the reasons for a withholding are related predominately to the evaluation of a teaching staff member's teaching performance, any appeal shall be filed with the Commissioner of Education. If there is a dispute over whether the reasons are predominately disciplinary, we must make that determination. N.J.S.A. 34:13A.27(a). Our power is limited to determining the appropriate forum for resolving an increment withholding dispute. We do not consider whether an increment withholding was with or without just cause. See generally Scotch Plains-Fanwood Bd. of Ed., P.E.R.C. No. 91-67, 17 NJPER 144 (¶22057 1991).

We believe that the reasons for this withholding are predominately disciplinary. The reasons involve alleged violations of work rules and other misconduct -- leaving work early, falsifying a sign-out sheet, repeatedly missing back-to-school nights, and insubordination. That some of these reasons were cited in the annual evaluation as well as the resolution does not transform these reasons into assessments of teaching performance rather than accusations of misconduct. This dispute may legally be submitted to binding arbitration.

ORDER

This dispute may legally be submitted to binding arbitration.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Goetting, Grandrimo and Smith voted in favor of this decision. None opposed. Commissioner Bertolino abstained from consideration. Commissioners Regan and Wenzler were not present.

DATED: April 28, 1992
Trenton, New Jersey
ISSUED: April 29, 1992