

P.E.R.C. NO. 98-80

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NORTH CALDWELL BOARD OF
EDUCATION,

Petitioner,

-and-

NORTH CALDWELL EDUCATION
ASSOCIATION,

Respondent.

Docket No. SN-97-44

SYNOPSIS

The Public Employment Relations Commission grants the request of the North Caldwell Board of Education for a restraint of binding arbitration of a grievance filed by the North Caldwell Education Association. The grievance asserts that the Board withheld a teacher's 1996-1997 salary increment without just cause. The Commission finds that this case centers on the appropriateness of a teacher's interactions with her students during class and is therefore based on the evaluation of teaching performance. The withholding must be reviewed by 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. 98-80

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NORTH CALDWELL BOARD OF
EDUCATION,

Petitioner,

-and-

NORTH CALDWELL EDUCATION
ASSOCIATION,

Respondent.

Docket No. SN-97-44

Appearances:

For the Petitioner, Gaccione, Pomaco & Beck, attorneys
(Frank Pomaco, of counsel; Kelly Ann Guariglia, on the
brief)

For the Respondent, Bucceri & Pincus, attorneys
(Gregory T. Syrek, of counsel).

DECISION

On November 20, 1996, the North Caldwell Board of
Education petitioned for a scope of negotiations determination.
The Board seeks a restraint of binding arbitration of a grievance
filed by the North Caldwell Education Association. The grievance
asserts that the Board withheld the 1996-1997 salary increment of
teacher Teresa Nighland without just cause.

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

The Association represents the Board's regular teachers,
nurses, librarians, learning disability teachers, consultants,
speech therapists, social workers and guidance counsellors. The

parties entered into a collective negotiations agreement that expired on June 30, 1997. The agreement's grievance procedure ends in factfinding and/or advisory mediation. N.J.S.A. 34:13A-29 provides for binding arbitration with respect to disputes concerning reprimands and discipline of school employees.

Teresa Nighland is a tenured teacher who teaches art in grades kindergarten through six. On May 1, 1992, the superintendent reprimanded Nighland based on his determination that she had slapped a student on the back. He warned that:

such actions by an employee will not be tolerated, and any future allegation, if substantiated, will result in swift and deliberate punitive action.

Nighland was also directed to develop a professional improvement plan to ensure satisfactory performance in classroom management, lesson planning, and student-teacher relationships.

On March 13, 1996, Nighland disciplined a child during class by pasting a piece of paper to the child's face after that child had pasted the same piece of paper on another child's back. Nighland reported the incident to her school principal and the child's parents.

On March 18, 1996, the principal wrote a letter to Nighland. That letter stated that Nighland had reported that she had "lost it." The letter further stated that her actions were "inappropriate, unacceptable and in violation of N.J.S.A. 18A:6-1" (prohibiting corporal punishment) and advised Nighland that such behavior would not be condoned and that the superintendent and

Board would discuss what action, if any, would be taken. A copy of the letter was placed in Nighland's personnel file.

On March 20, 1996, the superintendent sent a letter to Nighland confirming that she had been placed on administrative leave with pay. The letter stated that her actions were inappropriate and noted that she had been reprimanded for a similar incident in 1992. The superintendent advised Nighland that since this was the second infraction, the Board would be reviewing the March 13 incident at its next meeting; that she would receive a notice; and that she should report to the superintendent's office on March 27 and could bring an Association representative.

On May 15, 1996, the superintendent informed Nighland by letter that based on his recommendation, the Board had voted to withhold her 1996-1997 salary increment. The superintendent's letter stated: "This recommendation stems from the incident on Wednesday, March 13, 1996."

On June 5, 1996, the Association filed a grievance alleging that the withholding was discipline imposed without just cause.

On June 12, 1996, the principal issued Nighland's Annual Evaluation Report. The report is generally positive. The incident that triggered the increment withholding is not specifically identified. However, under "Comment/Suggestions," the principal wrote that Nighland should "[t]reat individual

students with respect, invoking appropriate consequences for inappropriate behavior."

The Board denied the grievance contesting the withholding and the Association demanded arbitration. This petition ensued.

The Board asserts that the withholding was based on its determination that Nighland's teaching performance, specifically her inappropriate classroom behavior, was unacceptable. The Board maintains that it has a managerial prerogative to determine classroom management and discipline methods which further district goals and reflect sound educational practice. The Board asserts that Nighland has used inappropriate disciplinary methods in the past and that the district had expressed a desire for her to develop a "positive classroom climate" and had offered instructional and classroom management support. The Board further asserts that a withholding cannot be regarded as disciplinary if it is based on a teacher's classroom performance, e.g., inadequate discipline and supervision, insufficient attention to safety, instructional difficulties, confronting a student, failure to adhere to school policies for disciplining a student or poor classroom management.

The Association argues that the withholding is disciplinary because the Board's sole reason for the withholding is "the incident on Wednesday, March 13, 1996" and that the predominate basis for this withholding is punishment of Nighland for that one alleged transgression. It contends that the reasons

for the withholding are unrelated to subjective educational judgments.

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]

This withholding was triggered by Nighland's allegedly inappropriate disciplining of a student during class. The Board determined that Nighland improperly disciplined the student and that her increment should be withheld. The Association disagrees and seeks review of the withholding through arbitration. Our task is not to assess the merits of the withholding, but simply to determine the appropriate forum for reviewing the Board's determination. If

the withholding was based on the evaluation of teaching performance, review must be before the Commissioner of Education. If it was not, review can be before an arbitrator.

We conclude that this withholding was based predominately on the evaluation of teaching performance. In 1992, Nighland had been reprimanded for an alleged act of inappropriate student discipline and directed to develop a professional plan to ensure, among other things, satisfactory performance in classroom management and student-teacher relationships. In 1996, Nighland informed her principal of a classroom incident and stated that she had "lost it." After the second incident, the Board withheld Nighland's increment. Thus, this case centers on the appropriateness of a teacher's interactions with her students during class.

We agree with the Association that the withholding was a disciplinary action. However, the issue is not whether a withholding is a disciplinary action, but whether the disciplinary action was based predominately on the evaluation of teaching performance. Our decisions have not turned on whether a school board intended to punish the teacher. See, e.g., Edison Tp. Bd. of Ed. (Commission holds that withholding based on absenteeism is not predominately based on evaluation of teaching performance and may be arbitrated even though principal was seriously ill and withholding was not intended to punish him); Saddle River Bd. of Ed., P.E.R.C. No. 96-61, 22 NJPER 105 (¶27054 1996) (Commission did not look behind stated reason to see if discriminatory or improper motive was at

work). Instead, we have looked at the reasons cited by a school board and have determined, from an objective perspective, whether those reasons predominately relate to the evaluation of the teaching performance. We have thus restrained arbitration in cases involving teaching performance judgments about allegedly inappropriate interactions with students, language, discussions, and disciplinary techniques during classes. See, e.g., Newton Bd. of Ed., P.E.R.C. No. 96-3, 21 NJPER 271 (¶26175 1995); River Edge Bd. of Ed., P.E.R.C. No. 95-76, 21 NJPER 161 (¶26099 1995); Red Bank Reg. Bd. of Ed., P.E.R.C. No. 94-106, 20 NJPER 229 (¶25114 1994); Roxbury Tp. Bd. of Ed., P.E.R.C. No. 94-80, 20 NJPER 78 (¶25034 1994); Wayne Tp. Bd. of Ed., P.E.R.C. No. 93-107, 19 NJPER 272 (¶24137 1993); Florham Park Bd. of Ed., P.E.R.C. No. 93-76, 19 NJPER 159 (¶24081 1993); Upper Saddle River Bd. of Ed., P.E.R.C. No. 91-69, 17 NJPER 148 (¶22059 1991).^{1/} For these reasons, we restrain arbitration.

^{1/} Morris Hills Reg. Bd. of Ed., P.E.R.C. No. 92-69, 18 NJPER 59 (¶23025 1991) is distinguishable. In that case, the arbitrator's role was limited to determining whether or not the teacher engaged in what would have been indisputably improper conduct if proven. Here, the appropriateness of the conduct, not whether or not it took place, is in dispute.

ORDER

The request of the North Caldwell 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, Ricci and Wenzler voted in favor of this decision. Commissioner Klagholz voted against this decision. Commissioner Boose was not present.

DATED: December 18, 1997
Trenton, New Jersey
ISSUED: December 19, 1997