

P.E.R.C. NO. 92-125

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PASSAIC COUNTY REGIONAL HIGH SCHOOL  
DISTRICT #1 BOARD OF EDUCATION,

Petitioner

-and-

Docket No. SN-92-75

PASSAIC VALLEY EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Passaic County Regional High School District #1 Board of Education for a restraint of binding arbitration of a grievance filed by the Passaic Valley Education Association. The grievance contests the withholding of three teachers' increments. The Commission determines that the increment withholdings predominately involve evaluations of teaching performance.

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Appearances:

For the Petitioner, DeMaria, Ellis, Hunt, Salsberg &  
Friedman, attorneys  
(Richard H. Bauch and Mark A. Tabakin, of counsel)

For the Respondent, Bucceri & Pincus, attorneys  
(Louis P. Bucceri, of counsel)

DECISION AND ORDER

On February 10, 1992, the Passaic County Regional High School District #1 Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Passaic Valley Education Association. The grievance contests the withholding of three teachers' increments.

The parties have filed an affidavit, exhibits and briefs. These facts appear.

The Association represents the Board's teachers and other non-supervisory certificated personnel. The parties entered into a collective negotiations agreement effective from July 1, 1989 to

June 30, 1992. Binding arbitration is the terminal step of the grievance procedure with respect to increment withholdings that are predominately disciplinary. N.J.S.A. 34:13A-29(a).

Thomas Patierno, Cathleen Marquis and Joseph Mazza are physical education teachers at Passaic Valley Regional High School. On June 11, 1992, the Board resolved to withhold their employment and adjustment increments for the 1991-92 academic year. The superintendent sent each of them the same letter explaining the reasons for the withholding. The letter stated:

You are advised that on June 11, 1991, the Board of Education voted to withhold your increment for the 1991-92 school year due to your failure to properly implement the Board's physical education curriculum and schedule during the third marking period of the 1990-91 school year.

Specifically, without Board authorization as required by Board policy and the collective bargaining agreement with the Passaic Valley Education Association, you deviated from the established physical education curriculum and schedule by unilaterally implementing a rotating, student elective, cross-graded schedule, thus failing to maintain responsibility for those students specifically assigned to you. Further, the Board's physical education curriculum does not provide for either student electives or cross-graded activities. Also, no written format was presented to the Board or Administration detailing how the curriculum's scope and sequence were being followed or how grades were being devised. Moreover, a day of instruction was lost each time students selected their activities. Finally, your lesson plans for the above format were deficient under Board policy in that they did not provide sufficient detail to enable a substitute to carry on the program in the event you were absent. You will be expected to adhere to Board curriculum and policy in the future.

The Board also withheld the increment of the associate principal-humanities because he had not properly supervised the physical education teaching staff or ensured that they would implement the Board's physical education curriculum.

On June 25, 1991, the Association filed a grievance on behalf of Patierno, Marquis and Mazza contesting the increment withholdings. The Board denied the grievance; the Association demanded binding arbitration; and 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 defenses the Board may have. We simply determine whether the Board is legally bound to submit the grievance to binding arbitration.

In Scotch-Plains-Fanwood Bd. of Ed., P.E.R.C. No. 91-67, 17 NJPER 144 (¶22057 1990), 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. 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 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. and Tenafly Ed. Ass'n, 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. Schools Bd. of Ed., P.E.R.C. No. 91-70, 17 NJPER 150 (¶22060 1991); Greater Egg Harbor Reg. H.S. Bd. of Ed., P.E.R.C. No. 92-9, 17 NJPER 384 (¶22181 1991); Morris Hills Reg. Dist. Bd. of Ed., P.E.R.C. No. 92-69, 18 NJPER 59 (¶23025 1991); South River Bd. of Ed., P.E.R.C. No. 92-70, 18 NJPER 61 (¶23026 1991); Hunterdon Central Reg. H.S. Dist. Bd. of Ed., P.E.R.C. No. 92-72, 18 NJPER 64 (¶23028 1991).

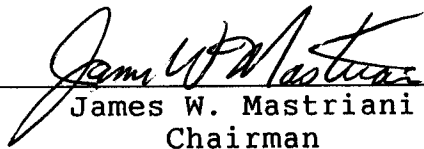
In Holmdel Tp. Bd. of Ed., P.E.R.C. No. 92-6, 17 NJPER 378 (¶22178 1991), we restrained binding arbitration over a memorandum asserting that a teacher had not carried out the French 1B curriculum and reviewing strategies for remedying that situation.

We concluded that the memorandum centered on the supervisor's educational judgment about what the students should be learning. Similarly, in this case the increments were withheld because the superintendent believed that the teachers had not carried out the curriculum mandated by the Board and had instead adopted a student elective, cross-graded schedule. Under all the circumstances, we conclude that these withholdings predominately involved an evaluation of teaching performance. A petition of appeal may be filed pursuant to N.J.S.A. 18A:6-9 and N.J.S.A. 18A:29-14.

ORDER

The request of the Passaic County Regional High School District #1 Board of Education for a restraint of binding arbitration is granted.

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: June 25, 1992  
Trenton, New Jersey  
ISSUED: June 26, 1992