

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SADDLE RIVER BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-95-49

SADDLE RIVER EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by a teacher represented by the Saddle River Education Association against the Saddle River Board of Education. The grievance contests the withholding of the teacher's salary increments for the 1994-1995 school year. The Commission finds that it is undisputed that the Board's stated reasons for the withholding predominately involved an evaluation of teaching performance. The Commission will not look behind a Board's stated reasons to see if a discriminatory or improper motive was at work. Such an inquiry would go beyond the Commission's limited gatekeeping function by requiring it to conduct a full-scale hearing and plunge it into judging the merits of the withholding. The Commission assumes that the Board will be bound by its asserted reasons before the Commissioner of Education and that the Commissioner has the power to set aside a withholding induced by an improper motive.

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.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SADDLE RIVER BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-95-49

SADDLE RIVER EDUCATION ASSOCIATION,

Respondent.

Appearances:

For the Petitioner, Sullivan & Sullivan, attorneys (Mark G. Sullivan, on the brief)

For the Respondent, Springstead & Maurice, attorneys (Alfred F. Maurice, on the brief)

DECISION AND ORDER

On November 17, 1994, the Saddle River Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by a teacher represented by the Saddle River Education Association. The grievance contests the withholding of the teacher's salary increments for the 1994-1995 school year.

The parties have filed certifications, exhibits and briefs.^{1/} These facts appear.

The Association represents the Board's certified teaching personnel with certain exceptions. The parties entered into a

^{1/} The Board has also requested an evidentiary hearing. We deny that request.

collective negotiations agreement effective from July 1, 1994 until June 30, 1997. The grievance procedure ends in binding arbitration of increment withholdings for predominately disciplinary reasons. See N.J.S.A. 34:13A-26; 29.

James Furno has been employed by the Board since 1977 and is a tenured teacher. During the 1993-1994 school year, he taught social studies in the junior high school. His evaluator was the school principal, who also serves as the superintendent.

According to his certification, Furno was charged with selecting students for an academic convocation with three neighboring school districts. This activity required a field trip to a neighboring district where 25 students from each district would discuss the subject of Entrepreneurship. Furno was required to submit the list of participating students by March 8, 1994. Students interested in participating in the convocation were required to submit an essay on the subject (prepared in class) on March 4. On March 7, after reviewing the essays, Furno announced the participants in class.

On March 10, 1994, a parent requested a meeting with Furno to discuss the omission of her child from the list of convocation participants. According to Furno, that meeting was the catalyst for all the negative reports that followed. The principal conducted a prompt vigorous investigation of the selection process. This investigation included daily requests for written information which Furno found overbearing in light of his other responsibilities.

Furno was first observed on March 25, 1994. He was again observed on March 29. A meeting with the student's parents was also conducted on March 29. At that meeting the parents accused Furno of deliberately excluding the student from the field trip. The meeting was attended by the superintendent who, Furno asserts, did not support him and permitted the parents to attack him freely.

On June 21, 1994, the Board voted to withhold Furno's employment and adjustment increments for the 1994-1995 school year. The superintendent wrote Furno a letter citing these reasons for the withholding:

As you know, you have been observed on four separate occasions this year -- March 25, March 29, May 19 and June 1 -- which observations have been reduced to writing, copies of which have been given to you in addition to the March 29 observation report dated April 6.

As a result of these observations, certain deficiencies in your teaching performance have become obvious.

The reasons for the Board's decision to withhold your increment are set forth in such records and include but are not limited to the following:

As set forth in your 1994 annual evaluation under B -- teaching skills -- your performance needs improvement in items 1(a) through (f), 2(b), 3(a), 4(a) and (b).^{2/}

^{2/} Items 1(a) through (f) are:

- A. Plans successfully
- B. Evaluates his own work as an on-going part of the learning process
- C. Evaluates the children's work as an on-going part of the learning process.

Your plans, if any, for use of student/teacher contact time are unsatisfactory. To increase the likelihood that students are learning, interesting lessons should be planned which are related to previous and subsequent lessons and to student's own life experiences.

Your evaluation of student work in oral presentations has reinforced undesirable behavior.

You have lost important student work.

You have apparently not heeded observation recommendations. You have failed to make an appointment to discuss the observation of May 4, 1994, although you were directed to do so.

The annual evaluation regarding relationships shows that your relationships with pupils, administrators and parents all need improvement.

You have consistently failed to meet expectations of the administration which were brought to your attention.

The manner in which you have conducted yourself, with both students and parents, has resulted in complaints being issued.

With regard to professional spirit, your performance needs improvement. You have failed to manifest an enthusiasm for teaching. You have not shown frankness and honesty in your criticisms and you have not evidenced active

2/ Footnote Continued From Previous Page

- D. Tests values of new procedures
- E. Sensitive to individual needs and differences
- F. Creative ability

Item 2(b) is:

Provides opportunity for self-discipline

Item 3(a) is:

Academic competence

Items 4(a) and (b) are:

- a. Quality and accuracy of reporting and
- b. Prompt attention to office communications

interest in your own educational competence as stated before. You have consistently failed to act upon, and in fact have generally ignored recommendations made in observations of your professional performance.

As set forth in your professional improvement plan, you need to plan lessons more effectively and make more efficient use of classroom, student/teacher contact time as noted in your 1993 professional improvement plan. You need to pursue the use of alternative instruction strategies such as cooperative learning, peer tutoring, collaborative teacher and/or multi-media projects, also an area for improvement set forth in your June 15, 1993 professional improvement plan.

Furno denies these deficiencies.

The Association asserts that the reasons cited by the superintendent were not the real reasons for the withholding. Instead, it believes that the withholding stems solely from the parental complaints and pressure. The parents are influential members of a tax-sheltered foundation providing substantial financial support to the district. The superintendent denies that the parents pressured him or that their complaints motivated the withholding.

The Association notes that Mr. Furno was not observed until March 25, 1994, when two thirds of the school year was completed, and claims that it is highly unusual for a tenured teacher to be observed four times within nine weeks. It states that even if the administrator's comments were legitimate, there was very little time to correct any deficiencies deemed to be significant. It notes that Furno's 1993 annual evaluation (Board's Exhibit "C") checklist

contains no marks in the unsatisfactory boxes and some "good" and "excellent" grades.^{3/} That evaluation recommended that Furno receive his increment.

On June 27, 1994, Furno filed a grievance contesting the withholding. The grievance was denied and the Association demanded arbitration. 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.

Thus, we do not consider whether the Board had cause to withhold Furno's increments.

Under N.J.S.A. 34:13A-26, increment withholdings of teaching staff members for predominately disciplinary reasons are to be reviewed through binding arbitration. But not all withholdings can go to arbitration. Under N.J.S.A. 34:13A-27(d), if the reason for a withholding is related predominately to an evaluation of teaching performance, any appeal shall be filed with the

^{3/} Comments in the evaluation express dissatisfaction in some areas.

Commissioner of Education. If there is a dispute over whether the reason for a withholding is 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 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]

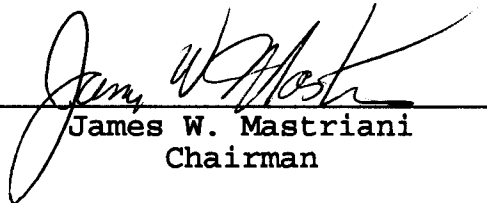
It is undisputed that the Board's stated reasons for the withholding predominately involve an evaluation of Furno's teaching performance. In Paterson School Dist., P.E.R.C. No. 95-39, 21 NJPER 36 (¶26023 1994), we declined to look behind a board's stated reasons to see if a discriminatory or improper motive was at work.

Such an inquiry in this case would go beyond our limited gatekeeping function by requiring us to conduct a full-scale hearing and plunging us into judging the merits of the withholding. We therefore restrain arbitration in this case. We assume that the Board will be bound by its asserted reasons before the Commissioner of Education and that the Commissioner has the power to set aside a withholding induced by an improper motive. Kopera v. West Orange Tp. Bd. of Ed., 60 N.J. Super. 288, 294 (App. Div. 1960).

ORDER

The request of the Saddle River Board of Education for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioner Boose abstained from consideration.

DATED: February 29, 1996
Trenton, New Jersey
ISSUED: March 1, 1996