

P.E.R.C. NO. 2003-72

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ATLANTIC CITY BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2003-36

ATLANTIC CITY EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Atlantic City Board of Education for a restraint of binding arbitration of a grievance filed by the Atlantic City Education Association. The grievance contests the withholding of an increment from a maintenance department employee. The Commission holds, consistent with its recent holding in Flemington-Raritan Bd. of Ed., P.E.R.C. No. 2003-64, 29 NJPER ____ (¶____ 2003), that the parties could have legally agreed to submit this dispute 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, Eric M. Bernstein & Associates,
LLC, attorneys (Eric Martin Bernstein, on the brief)

For the Respondent, Selikoff & Cohen, P.A., attorneys
(Steven R. Cohen, of counsel; Carol H. Alling, on the
brief)

DECISION

On January 21, 2003, the Atlantic City Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Atlantic City Education Association. The grievance contests the withholding of an increment from a maintenance department employee.

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

The Association represents teaching staff members including maintenance shop employees. The parties' collective negotiations agreement is effective from July 1, 2001 through June 30, 2004.

The grievance procedure ends in binding arbitration. A grievance is defined as a claim by an employee that he has suffered harm by the interpretation, application, or violation of policies, agreements or administrative decisions affecting him. Article 5.2 provides that no teacher or other employee under individual contract shall be disciplined or reprimanded without just cause. It further provides that any action asserted by the Board or any agent or representative thereof shall be subject to the grievance procedure, except that the provision shall not apply to the dismissal or termination of tenured staff members according to statute.

Article 13.8.1 provides:

For support personnel only, any . . . twelve-month employee continuously employed for six (6) months (inclusive of probationary period) of any school year to the closing of that school year shall be given full credit for one (1) year of service toward the next increment step for the following year.

Nicholas Crosson is employed by the Board in the maintenance department. On May 18, 2002, the Board voted to withhold Crosson's adjustment and employment increases for the 2002-2003 school year. The Board's reason for the withholdings was based on "evaluations of your job performance including unsatisfactory attendance during the 2001-2002 school year."

On May 23, 2002, the Association filed a grievance contesting the withholding as violating Article 5.2 of the

agreement. The grievance was denied at all levels. On July 26, 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 (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 this dispute or any contractual defenses the Board may have.

The Board asserts that this increment withholding cannot be arbitrated because it is based on Crosson's performance. It relies on Randolph Tp. Bd. of Ed. v. Randolph Tp. Ed. Ass'n, 306 N.J. Super. 207 (App. Div. 1997), and asks us to transfer this case to the Commissioner of Education.

The Association argues that the Board's reliance on Randolph is misplaced and that the parties can legally agree to binding arbitration of increment withholdings involving school board maintenance employees.

In Flemington-Raritan Bd. of Ed., P.E.R.C. NO. 2003-64, 29 NJPER ____ (¶____ 2003), we addressed this very issue in denying a restraint of binding arbitration of an increment withholding of a payroll secretary. We stated:

In East Brunswick Bd. of Ed., P.E.R.C. No. 84-149, 10 NJPER 426 (¶15192 1984), aff'd 11 NJPER 334 (¶16120 App. Div. 1985), certif. den. 101 N.J. 280 (1985), we held N.J.S.A. 34:13A-5.3 permits binding arbitration over the withholding of increments from non-teaching staff members.

* * *

Randolph addressed whether the 1990 amendments to the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., mandated binding arbitration of an increment withholding of a non-teaching staff member in a case where the parties had not otherwise contractually agreed to binding arbitration of such a withholding. The Court recognized that where the 1990 amendments did not mandate arbitration, withholdings would nevertheless be subject to the grievance procedures established by agreement between the parties. Id. at 545.

* * *

We believe that Randolph does not bar parties from agreeing to binding arbitration of all increment withholdings involving non-teaching staff members. The opportunity to seek such agreements through negotiations existed under section 5.3 prior to the 1990 amendments and those amendments do not restrict or limit any 5.3 rights. N.J.S.A. 34:13A-28. The 1990 amendments were intended to provided additional rights and Randolph clarifies that the additional right to mandatory binding arbitration extends only to increment withholdings that are "disciplinary" as defined by that amendment.
[Footnote omitted]


Under Flemington-Raritan, the parties could have legally agreed to submit this dispute to binding arbitration. Accordingly, we decline the Board's request for a restraint of binding arbitration.

We also decline the Board's request that we transfer this matter to the Commissioner of Education. As we stated in Flemington-Raritan, non-teaching staff members have no alternate statutory appeal procedure that replaces their right under N.J.S.A. 34:13A-5.3 to negotiate for binding arbitration over all increment withholdings. See East Brunswick.

ORDER

The request of the Atlantic City Board of Education for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, DiNardo, Katz, Ricci and Sandman voted in favor of this decision. None opposed. Commissioner Mastriani was not present.

DATED: April 24, 2003
Trenton, New Jersey
ISSUED: April 25, 2003