

P.E.R.C. NO. 2003-47

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

KNOWLTON TOWNSHIP BOARD  
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2003-14

KNOWLTON TOWNSHIP EDUCATION  
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Knowlton Township Board of Education for a restraint of binding arbitration of grievances filed by the Knowlton Township Education Association. The grievances contest the transfer of a teacher to a new grade level and assignment, withholding of her increment, and comments and ratings on her annual evaluation. The Commission concludes that below standard ratings do not transform an evaluation of teaching performance into a reprimand that can be challenged through binding arbitration. The Commission also concludes that the transfer was intended to move the teacher to a more appropriate setting rather than intended to punish her. Finally, the Commission concludes that the increment withholding centers on the Board's concerns about parental complaints and the teacher's interactions with students in class. These reasons involve an evaluation of teaching performance that can be challenged only before 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.

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Appearances:

For the Petitioner, Morris, Downing & Sherred, attorneys  
(Craig U. Dana, on the brief)

For the Respondent, Oxfeld Cohen, P.C., attorneys  
(Arnold Shep Cohen, on the brief)

DECISION

On August 12, 2002, the Knowlton Township Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of three grievances filed by the Knowlton Township Education Association. The grievances contest the transfer of a teacher to a new grade level and assignment, withholding of her increment, and comments and ratings on her annual evaluation.

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

The Association represents teachers and certain other employees. The parties' collective negotiations agreement is effective from July 1, 2002 through June 30, 2005. The grievance procedure ends in binding arbitration.

Linda Liebler is a teacher employed by the Board. On May 1, 2002, the superintendent wrote to Liebler raising concerns about her problems with her students' parents. The letter referred to three of Liebler's annual evaluations where this issue was raised and then stated, in part:

Turning to this current school year, it is fair to say that Mrs. Mooney and I have spent more time "putting out fires" with parents of students in your class than for the rest of the faculty combined. A brief review follows:

November '01: Mr. & Mrs. C. . . met with you and Mrs. Mooney over alleged "humiliating treatment" of their son (notes placed on his papers, punishments given, humiliating him in front of others, etc.). They requested to have their son removed from your class. They also cited "dissatisfaction" from other parents and reported an evolving plan among parents "to rally" and approach the Board (which we ultimately averted). As a result of the parent-teacher conference held and mediated by Mrs. Mooney, the situation appeared to have been resolved at that time, although some additional time on "damage control" was needed by administrators.

The superintendent's letter cited three incidents in January, February and March of 2002 where parents complained that their children were humiliated in class and asked to have their children removed from the class. The letter added:

The recurring theme embedded in so many of the parents' complaints that we've heard over the years is the "humiliation" that some students suffer through your classroom procedures, actions and/or words. Remarkably, parents report that even some of the "good kids" (those who do not get into trouble) are emotionally upset by what they witness in your classroom. Seven year olds are young and impressionable, and their psyches are somewhat fragile; it is

disconcerting to think that such an atmosphere could exist in the classroom of a teacher with over 20 years of experience and a Master's Degree. While we are firm believers that there are always two sides to a story and that children often embellish reports of a classroom incident, the frequency of complaints can no longer be ignored. To make matters worse, all too often your reaction to the issues reported in this memo has been to become angry, defensive, and to place the focus on your upsetment. This makes it all the more difficult for administrators to bring about a proper resolution.

Quite frankly, you just don't seem to learn from your frequent mistakes. Despite many previous warnings about the need for improvement, you continue to cause an inordinate number of problems involving parents and students. Therefore, I intend to seek the Board's approval of two administrative recommendations:

1. You should be reassigned to a teaching position involving older students in the remedial reading position in grades 4, 5, & 6, effective September, 2002. In this assignment, you will interact with students in a small group setting, meeting each group for 90 minutes per day. With a Master's degree in reading, you are ideally suited for this assignment. I do not believe that your continued involvement with young children is in their best interests nor the school's.

2. Your salary adjustment and increment for the 2002-03 school year should be permanently withheld. Just as you believe in consequences for students who can't follow your rules, I believe in consequences for employees who fail to improve in specified areas of their professional performance.

On May 14, 2002, the Board adopted the superintendent's recommendation to withhold Liebler's increments for the 2002-2003 school year. The Resolution stated that the Board found the

reasons set forth in the superintendent's May 1 letter to be "good and sufficient grounds for the withholding of both of said increments" and that the "teacher has not met the standards of professional performance as a teacher acceptable to the District."

On June 4, 2002, the Association filed two grievances. The first alleged that the "District violated Article IV, Employee Rights, Section C, Just Cause Provisions, in that it lacked just cause for the withholding of Linda Liebler's employment and adjustment increments for the 2002-2003 school year." The second challenged comments in her June 1, 2002 professional evaluation. It stated:

This grievance alleges that the District, through the action of its administrator, has violated Article IV, Employee Rights, Section C, Just Cause, in that the District lacked just cause for the negative comments and "below requirements" ranking contained in the above referenced evaluation. Specifically the Association alleges that inappropriate weight was given to the unsubstantiated claims of a vocal minority of parents whose children were in Ms. Liebler's charge during this school year, as well as reference to administrative "admonitions" from prior years concerning situations which were previously resolved.

As a remedy, the grievance sought the removal of the negative comments and the adjustment of the "below requirements" ranking to a "meets requirements" ranking.

On June 11, 2002, the Association filed a third grievance. It challenged a transfer and stated:

[T]hat the District lacked just cause for its acceptance of your recommendation to transfer Ms. Liebler to a position of grades 4, 5 and 6

language arts. Specifically the Association alleges that your comments in your Memo to Ms. Liebler dated May 1, 2002 indicate that this reassignment is in essence punitive and based upon the inappropriate weight given to the unsubstantiated claims of a vocal minority of parents whose children were in Ms. Liebler's charge during this school year, as well as reference to administrative "admonitions" from prior years concerning situations which were previously resolved.

The grievance seeks continuance of Liebler's second grade assignments.

The grievances were denied. On August 12, 2002, the Association demanded arbitration.<sup>1/</sup> 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]

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<sup>1/</sup> On July 1, 2002, the Association filed an unfair practice charge alleging that the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-5.3(a)(1), (3) and (5), when the superintendent harassed Liebler for prevailing in a previous grievance, transferred her from grades 4, 5 and 6 to another building, and withheld her increment. That charge is being processed. We will not entertain the Board's request in this case that the charge be dismissed.

Thus, we do not consider the contractual merits of this dispute or any contractual defenses the Board may have.

We first address the standards for determining the arbitrability of the evaluation narrative and ranking. 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 distinguished between evaluations of teaching performance and disciplinary reprimands. Only reprimands may be submitted to binding arbitration. We found that by enacting the discipline amendment to N.J.S.A. 34:13A-5.3, the Legislature had not meant to make an evaluation, as opposed to a reprimand, a form of discipline. We then stated:

We realize that there may not always be a precise demarcation between that which predominantly involves a reprimand and is therefore disciplinary within the amendments to N.J.S.A. 34:13A-5.3 and that which pertains to the Board's managerial prerogative to observe and evaluate teachers and is therefore non-negotiable. We cannot be blind to the reality that a "reprimand" may involve combinations of an evaluation of teaching performance and a disciplinary sanction; and we recognize that under the circumstances of a particular case what appears on its face to be a reprimand may predominantly be an evaluation and vice-versa. Our task is to give meaning to both legitimate interests. Where there is a dispute we will review the facts of each case to determine, on balance, whether a disciplinary reprimand is at issue or whether the case merely involves an evaluation, observation or other benign form of constructive criticism intended to improve teaching performance. While we will not be bound by the label placed on the action taken, the context is relevant. Therefore, we will presume the substantive comments of an evaluation relating to teaching performance are not disciplinary, but that statements or actions

which are not designed to enhance teaching performance are disciplinary. [Id. at 826]

The Board argues that the Liebler's June 1, 2002 evaluation cannot be challenged in binding arbitration. The Association responds that the superintendent's May 1, 2002 letter to Liebler is an arbitrable disciplinary reprimand. The Board replies that the Association does not address the June 1, 2002 evaluation and that the May 1 letter is not the subject of its scope petition.

We restrain arbitration over the challenge to the June 1, 2002 evaluation. Such documents are presumptively evaluative, not disciplinary, and the Association has not rebutted that presumption. Below standard evaluative ratings do not transform an evaluation of teaching performance into a reprimand that can be challenged through binding arbitration. Holland Tp. Bd. of Ed.

We next address the standards for deciding the arbitrability of the transfer. Our case law does not provide a bright line test for assessing whether a transfer was disciplinary. We will consider such factors as whether the transfer was intended to accomplish educational, staffing or operational objectives; whether the Board has explained how the transfer was so linked; and whether the employee was reprimanded for any conduct or incident that prompted the transfer. West New York Bd. of Ed., P.E.R.C. No. 2001-41, 27 NJPER 96 (¶32037 2001). Disciplinary transfers can be challenged through binding arbitration.<sup>2/</sup>

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<sup>2/</sup> Disciplinary transfers between work sites are governed by a special statute. N.J.S.A. 34:13A-25.



The Board points to Liebler's history of difficulty in properly relating to her second grade students and their parents as the reason for her reassignment to teaching remedial reading to fourth, fifth and sixth grade students. The Association argues that the transfer from one grade to another was part of a three-pronged discipline imposed because of the way Liebler interacted with parents. It argues that under Mt. Arlington, transfers which are predominately disciplinary are arbitrable. It asserts that this transfer is closely linked in time to unsubstantiated parental complaints and that the Board has not explained how the transfer has furthered its educational or operational needs.

We restrain arbitration over the transfer to another grade in the same school. On this record, it does not appear that the transfer was intended to punish Liebler. Rather it was intended to move her to a more appropriate educational setting. That educational decision cannot be challenged through binding arbitration.

Finally, we address the standards for deciding the arbitrability of increment withholdings. 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 (127211 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.

N.J.S.A. 34:13A-26. 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]

The Board states that the withholding was prompted by "Liebler's continuing and well-documented unwillingness to

appropriately interact with both students and their parents." It states that her evaluations have frequently noted this problem and that despite its attempts to offer her assistance, her professional failings persisted and worsened.


The Association argues that the withholding is disciplinary and based on unsubstantiated claims by a vocal minority of parents whose children were in Liebler's class during the 2001-2002 school year. The Association objects to the Board's reliance on old evaluations which it states were addressed and resolved in prior school years. It states that these reviews did not precipitate the withholding but were added to "pad the charges against" Liebler.

We restrain binding arbitration over the withholding. It centers on the Board's concerns about parental complaints about Liebler's interactions with students in class. Allegations that a teacher has difficulty in properly relating to second grade students and their parents, including humiliating students in class, involve an evaluation of teaching performance. That evaluation can be challenged only before the Commissioner of Education.

ORDER

The requests of the Knowlton Township Board of Education for restraints of binding arbitration are granted.

BY ORDER OF THE COMMISSION

  
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Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, DiNardo, Mastriani, Ricci and Sandman voted in favor of this decision. Commissioner Katz was not present.

DATED: January 30, 2003  
Trenton, New Jersey  
ISSUED: January 31, 2003