

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HACKETTSTOWN BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2003-12

HACKETTSTOWN EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Hackettstown Board of Education for a restraint of binding arbitration of a grievance filed by the Hackettstown Education Association. The grievance contests the increment withholding of a school nurse who failed to attend a field trip. The Commission concludes that the increment withholding centers on the nurse's alleged insubordinate refusal to perform, not an evaluation of her performance as a school nurse.

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. 2003-48

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Appearances:

For the Petitioner, Apruzzese, McDermott, Mastro & Murphy, P.C., attorneys (Robert J. Merryman, on the brief)

For the Respondent, Oxfeld Cohen, P.C., attorneys (Nancy I. Oxfeld, on the brief)

DECISION

On September 3, 2002, the Hackettstown Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Hackettstown Education Association. The grievance contests the withholding of a school nurse's salary increment.

The parties have filed briefs and exhibits. The Board has submitted the certification of superintendent Joanne Calabro. These facts appear.

The Association represents teachers, librarians, nurses and certain other personnel. The Board and the Association are parties to a collective negotiations agreement effective from July

1, 1999 through June 30, 2002. The grievance procedure ends in binding arbitration.

Board policy 6153 covers field trips and sets forth guidelines which provide, among other things, that student safety is a prime concern and that adequate staff and chaperones are necessary for supervision. The policy also provides that the Board will allow pupil self-administration of medication on field trips for asthma and other potentially life-threatening illness by pupils in grades K through 12 based on the conditions established by law and board policy 5141.21. It further provides that "epinephrine shall be administered via epi-pen to pupils in emergencies on field trips by the school nurse, his/her designee(s), the student's parent/guardian or the student himself/herself, in accordance with policy 5141.21 Administering Medication."

Policy 5141.21 provides:

On Board of Education approved overnight field trips for the Hackettstown Middle School, the school nurse may dispense the following over-the-counter medications to students following signed, parent approval.

1. Tylenol (325) mg tablets
(1-2) orally every 4 hours, if necessary,
for mild pain or fever.
2. Advil (200) mg tablets
(1) orally every 4-6 hours, if necessary,
for mild pain or fever.
3. Cough drops
(1) orally every hour, if necessary, for
cough.

Colleen Ashley is a tenured school nurse assigned to the middle school. On April 16, 2002, Ashley was notified that the eighth grade class trip to Washington, D.C. was scheduled for May 16 and 17 and that "as you have done in the past (95-96, 96-97, 97-98, 98-99), you are directed to accompany the students on this trip." Ninety-five students were scheduled to attend, three to four of whom required medication on a daily basis. The school nurse has accompanied the students on the eighth grade class trip for the past 30 years.

On April 26, 2001, the superintendent wrote to Ashley stating that it had come to his attention that she did not intend to go on the middle school field trip. He stated:

Your failure to go on this trip, as directed, and as part of your professional duties, will be considered insubordination and you will be subject to disciplinary action up to and including the withholding of increment.

Ashley's requests to both the superintendent and the Board to be excused from the trip were denied. Ashley did not go on the trip and the Board used a substitute nurse at a cost of over \$450.

On May 29, 2002, the superintendent notified Ashley that he was recommending to the Board that her salary increment be withheld for the 2002-2003 school year based on the conduct and deficiencies of failing to perform assigned duties and insubordination.

On June 26, 2002, the Board approved the recommendation to withhold Ashley's increment for the reasons stated by the superintendent.

On July 9, 2002, the Association filed a grievance asserting that the withholding was a disciplinary action in violation of the contract and without just cause. The grievance sought restoration of the increment. The grievance was denied at all levels. On August 19, the Association demanded arbitration. This petition ensued.

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 made 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 argues that this increment was withheld due to Ashley's failure to perform her duties as school nurse. It further argues that under Franklin Bor. Bd. of Ed., P.E.R.C. No. 99-2, 24 NJPER 407 (¶29186 1998); Middletown Tp. Bd. of Ed., P.E.R.C. No. 92-54, 18 NJPER 32 (¶23010 1991); and Readington Tp. Bd. of Ed., P.E.R.C. No. 95-38, 21 NJPER 34 (¶26022 1994), increment withholdings of teaching staff members who do not actually teach, but who allegedly fail to perform their duties, must be reviewed by the Commissioner of Education.

The Association disputes that the school nurse is required to attend all class trips, but asserts that that determination is not germane to a scope of negotiations determination. It argues that increment withholdings for insubordination or non-attendance at functions are considered disciplinary. It relies on Clifton Bd. of Ed., P.E.R.C. No. 92-112, 18 NJPER 269 (¶23115 1992). It further argues that an increment withholding involving a teaching staff member who does not teach is not automatically evaluative.

The Board replies that Ashley failed to perform her duties as a school nurse by not attending the field trip. It argues that the Commissioner of Education must review disputes over the performance of nursing duties reserved by education law statutes to certificated nurses. Wildwood Bd. of Ed., P.E.R.C. No. 2000-67, 26 NJPER 116 (¶31049 2000).

N.J.S.A. 34:13a-22 defines "teaching staff member" for purposes of determining which employees are covered by N.J.S.A. 34:13A-27 and its increment withholding provisions. That definition states that a school nurse is a teaching staff member.

Ashley failed to perform duties the Board believed that she was required to perform. The superintendent recommended that her increment be withheld for failure to perform assigned duties and insubordination. The Board adopted that recommendation.


Under these circumstances, we decline to restrain binding arbitration of the grievance contesting the increment

withholding. The withholding centers on a school nurse's alleged insubordinate refusal to perform, not an evaluation of her performance as a school nurse. See Clifton Bd. of Ed. (alleged violations of work rules and other misconduct -- leaving work early, falsifying a sign-out sheet, repeatedly missing back-to-school nights, and insubordination -- not assessments of teaching performance). Contrast Franklin Bd. of Ed. (withholding based on alleged performance deficiencies directly tied to nursing duties). An arbitrator may consider whether there was just cause for the withholding.

ORDER

The request of the Hackettstown 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, Mastriani and Ricci voted in favor of this decision. Commissioner Sandman abstained from consideration. Commissioner Katz was not present.

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