

P.E.R.C. NO. 2003-49

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NORTHERN HIGHLANDS REGIONAL
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2003-10

NORTHERN HIGHLANDS EDUCATION
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Northern Highlands Regional Board of Education for a restraint of binding arbitration of a grievance filed by the Northern Highlands Education Association. The grievance contests the withholding of a teacher's salary increment. The Commission concludes that the Board's cited reasons for the withholding (inappropriate classroom behavior and inappropriate instructional methodology) predominately relate to an evaluation of teaching performance.

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

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

DECISION

On August 23, 2002, the Northern Highlands Regional Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Northern Highlands Education Association. The grievance contests the withholding of a teacher's salary increment.

The parties have filed briefs and exhibits. The Board has filed the certification of Superintendent Robert M. McGuire. These facts appear.

The Association represents all certificated teaching personnel. The Board and the Association are parties to a collective negotiations agreement effective from July 1, 2000 through June 30, 2003. The grievance procedure ends in binding arbitration.

On June 25, 2002, Superintendent McGuire advised a tenured business teacher that the Board had approved his recommendation to withhold the teacher's salary increment for the 2002-2003 school year. The Board's stated reasons were "inappropriate classroom behavior and inappropriate instructional methodology."

The Board states and the superintendent certifies that this withholding was a result of an investigation into complaints by a number of female students relating to the manner in which the teacher assists students at their computers, the comments he makes to female students, and his demeanor with the entire class. Following the investigation, the Board determined that he had not handled his class appropriately with respect to instructional methodology and his interactions with students. The teacher had previously been warned about the proper decorum to use with students and had been reprimanded the prior year for a comment made to a student. He was ordered to write an apology to the student and attend sensitivity training. The letter of reprimand warned that if similar inappropriate statements or actions occur, "more significant discipline will be imposed, including, but not limited to, withholding of increment and/or tenure charges."

On June 27, 2002, the Association filed a grievance alleging that the increment withholding was arbitrary, capricious, in direct contradiction to the parties' agreement and without just cause. The Association chose to waive a Board hearing at step

three of the grievance procedure and 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.

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 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 withholding is based on predominately evaluative reasons and any appeal must be to the Commissioner of Education.

The Association argues that this increment withholding is based on the letter of reprimand for a comment allegedly made to a student in the hallway outside the classroom and that there is no

factual support for any of the Board's claims. It states that the teacher's annual evaluations do not disclose any inefficiency or other good cause for any adverse administration action. It contends that the withholding was a disciplinary measure either for the comment in the hallway or for perceived insubordination in not following the Board's directives in the reprimand. It also maintains that there is no evidence of a performance deficit and that the predominate basis for this withholding is disciplinary.

The Board responds that it is not our role to decide whether the withholding was justified. The Board states that it cited the letter of reprimand to show that the teacher failed to heed prior warnings, not as a basis for the withholding. The Board asserts that the withholding was the result of an extensive investigation into the teacher's classroom conduct and performance. It argues that it has no obligation to prove in this proceeding the appropriateness of the increment withholding. It states that the reasons stated by the Board and the superintendent address the teacher's classroom behavior and performance.

In increment withholding cases, the school board ordinarily provides us with the same statement of reasons it was required to give the teacher under N.J.S.A. 18A:29-14. In discharging our forum selection function under N.J.S.A. 34:13A-27, we accept that statement of reasons and do not consider contentions that those reasons are pretextual or unsupported.

1996); accord North Caldwell Bd. of Ed., P.E.R.C. No.2001-76, 27 NJPER 290 (¶32105 2001); Greater Egg Harbor Reg. Bd. of Ed., P.E.R.C. No. 2000-85, 26 NJPER 214 (¶31088 2000); cf. Boonton Bd. of Ed., P.E.R.C. No. 99-101, 25 NJPER 288 (¶30121 1999) (where Board did not give teacher statement of reasons, we reviewed parties' submissions to determine the predominant basis for the withholding). Therefore, under Saddle River, we assess whether the stated reasons for the withholding predominately relate to the evaluation of teaching performance. We conclude that they do.^{1/}

Inappropriate instructional methodology is a core example of a teaching-performance reason for a withholding. See South Harrison Bd. of Ed., P.E.R.C. No. 96-36, 22 NJPER 20 (¶27007 1995) (arbitration restrained where withholding based on alleged deficiencies in preparing lessons and instructing students -- as well as difficulty in maintaining classroom discipline); Wood-Ridge Bd. of Ed., P.E.R.C. No. 98-41, 23 NJPER 564 (¶28281 1997) (restraining arbitration of withholding based on ineffective instruction).

Further, we have often held that withholdings based on a teacher's allegedly inappropriate in-class conduct or remarks cannot be submitted to binding arbitration. See Willingboro Bd.

^{1/} We make no judgment as to whether a withholding based on the incident described in the February 2001 reprimand would be predominately related to the evaluation of teaching performance. The stated reasons for the withholding do not cite this reprimand.

of Ed., P.E.R.C. No. 2001-68, 27 NJPER 236 (¶32082 2001) (teacher allegedly made inappropriate sexual comments during class); Greater Egg Harbor Reg. H.S. Bd. of Ed., P.E.R.C. No. 95-58, 21 NJPER 116 (¶26071 1995), recon. den., P.E.R.C. No. 95-84, 21 NJPER 175 (¶26110 1995) (teacher allegedly made repeated negative remarks about capabilities of blonde, female students); Red Bank Reg. Bd. of Ed., P.E.R.C. No. 94-106, 20 NJPER 229 (¶25114 1994) (teacher allegedly made off-color jokes, made demeaning comments to and about students, and was insensitive to the needs of lower ability students); Roxbury Bd. of Ed., P.E.R.C. No. 94-80, 20 NJPER 78 (¶25034 1994) (increment withheld because of allegedly improper remarks to female pupils and inappropriate physical contact with pupils). We have restrained arbitration in these cases on the theory that they -- like classroom control or disciplinary technique cases -- involve a board's subjective educational judgment as to what is appropriate in a classroom environment. That analysis pertains here.

Our conclusion is not altered by the fact that the conduct referred to in the Board's June 25, 2002 statement of reasons might not have been described in the teacher's evaluations, which neither party has submitted. See Ramsey Bd. of Ed., P.E.R.C. No. 2000-59, 26 NJPER 94 (¶31038 2000) (deficient teaching performance does not necessarily have to be described in an evaluation); Roxbury Bd. of Ed., P.E.R.C. No. 94-80, 21 NJPER 78 (¶25034 1994) (increment withheld based upon State agency

investigation, rather than evaluations revealing alleged improper remarks to and contact with female students).

The Board's cited reasons for the withholding predominately relate to the evaluation of teaching performance.

ORDER

The request of the Northern Highlands Regional High School Board of Education for a restraint of binding arbitration is granted.

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

