

P.E.R.C. NO. 2004-30

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PARAMUS BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2004-7

EDUCATION ASSOCIATION OF PARAMUS,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Paramus Board of Education for a restraint of binding arbitration of a grievance filed by the Education Association of Paramus. The grievance alleges that the withholding of a teacher's salary increment is in violation of the contract and without just cause. The Commission concludes that this increment withholding was based on an evaluation of teaching performance, including an alleged failure to develop lesson plans and allegedly inadequate classroom performance. Any appeal of this withholding must be filed with 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, Sills, Cummis, Radin, Tischman, Epstein & Gross, P.C., attorneys (Lester Aron, of counsel and on the brief; Steven M. Fleischer, on the brief)

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

DECISION

On July 24, 2003, the Paramus Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Education Association of Paramus. The grievance alleges that the withholding of a teacher's salary increment is in violation of the contract and without just cause.

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

The Association represents professional, non-supervisory teaching staff members. The parties' agreement is effective from

July 1, 2000 through June 30, 2003. The grievance procedure ends in binding arbitration.

Robert Natiello is a full-time tenured sixth grade teacher. Natiello's classroom was observed almost monthly during the 2002-2003 school year.

On March 25, 2003, Natiello received his annual summary evaluation. The evaluation states that Natiello satisfied all continuing education requirements for the year, but failed to: complete all of the goals in his Professional Improvement Plan; submit weekly lesson plans as instructed; align lesson plans and teaching with the Board's approved curriculum and New Jersey curriculum standards (since the beginning of the 2002-03 school year Natiello's lesson plans were the subject of several meetings with the principal, memoranda and post-observation meetings); work with and observe other teachers during the year; improve classroom environment; improve instruction and planning; improve professional responsibilities; maintain a classroom free of clutter, safety hazards, and student distractions; and follow the principal's suggestions and directions to focus on the improvement of instruction as outlined in the PIP. At the end of the evaluation, the principal stated:

I have met throughout the evaluation year with Mr. Natiello to discuss my concerns with his performance. We have spent a large amount of time discussing planning. Although his plans now follow an accepted format, they still lack a student-centered objective and a

closure that relates to the lesson objective stated in the plans. There is a lack of connection between the plans and the lesson taught. The plans do not list essential questions, and the observers of his lessons note teacher directed, low level teaching and learning. Lesson plans vary in quality from week to week, and from the conversations we have had, Mr. Natiello by his own admission has said "that the plans do not always indicate what is being taught."

During the school year there was a time when the administration requested the grade books of all teachers. The grade book is a district document that has important student information that is needed to take attendance during fire drills or emergency evacuations and to discuss student's performance with parents and colleagues. When Mr. Natiello's grade book was requested it took him a week to produce the book. He told Mr. Seifert that the grade book was at home and he would not be able to get it for a few days. The importance of having the grade book readily available is reviewed during the opening day faculty meeting each year. As a veteran teacher Mr. Natiello should understand the importance of having the grade book in his possession at all times.

My assessment of Mr. Natiello's performance is based on my classroom observations of his teaching performance, meeting with Mr. Natiello and his colleagues to discuss his dealing with students and modifications, and the observations of my colleagues, Mr. Maramaldi, Assistant Superintendent, and Mr. Cotterell, Social Studies Supervisor. In addition, I have met with Mr. Natiello on numerous occasions to discuss his professional improvement plan and student concerns.

Based on your failure to substantially improve your performance during the 2002-2003 school year, I have recommended to Dr. Dime, Superintendent of Schools, that your

increment for the 2003-2004 school year be withheld.

On March 31, 2003, the Association filed a grievance stating:

Bob has been aggressively targeted by his principal, Bill Freeman, for over a year, in evaluations and memos. He has just been notified that his increment for the upcoming year will be withheld. This violates his contractual rights in the following categories: Article XV - Personal Academic Freedom, Article XVIII, Sec. C - Just Cause, Article XIX, Sec. E - Non-Discrimination, and any other areas of the contract that apply.

On May 13, 2003, the Board advised Natiello that his increment would be withheld for the 2003-2004 school year. Its stated reasons were:

1. Failure to develop lesson plans with clear and measurable objectives.
2. Failure to follow lesson plans based on the approved curriculum which meet New Jersey Core Curricular Standards.
3. Failure to differentiate instruction to meet the learning needs of regular and special education students.
4. Failure to develop, utilize, or modify instruments for assessing the knowledge and skill level of students in your charge.
5. Failure to plan units, lesson plans, or assessment instruments and criteria with other grade level teachers in order to provide a common learning experience for all 6th grade students.

6. Failure to maintain a classroom free of clutter, safety hazards, and student distractions.
7. Failure to follow the suggestions and directions of the principal focusing on the improvement of instruction as outlined in the Professional Improvement Plan.

On June 16, 2003, 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. [Id. at 154]

We do not consider the contractual merits of the grievance or whether there was just cause for this withholding.

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 Natiello's increment was withheld based on an evaluation of his teaching performance, including his allegedly poor lesson plans and inadequate classroom performance.

The Association argues that this withholding arose out of incidents involving the principal and unrelated to teaching performance. It maintains that Natiello's prior annual evaluations show that he has consistently performed his duties in an effective and professional manner and that the principal blamed Natiello for concerns raised by parents concerning the principal's judgment.

The Board replies that we cannot decide whether its reasons for a withholding are meritorious or pretextual as that determination lies with the Commissioner of Education. It asserts that all documents in the record relate overwhelmingly to performance issues.

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 selecting a forum 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. Saddle River Bd. of Ed., P.E.R.C. No. 96-61, 22


NJPER 105 (¶27054 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).

There is no dispute that the Board's stated reasons and its supporting exhibits predominately relate to an evaluation of Natiello's teaching performance. Whether or not those reasons are pretextual is for the Commissioner of Education to decide. Greater Egg Harbor Reg. Bd. of Ed.; East Orange Bd. of Ed., P.E.R.C. No. 99-102, 25 NJPER 292 (¶30122 1999) (arbitration restrained where cited basis for increment withholding included negative teaching performance evaluations, despite allegations that the negative evaluations were pretextual and in response to grievances). We accordingly restrain arbitration.

ORDER

The request of the Paramus 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, Ricci and Sandman voted in favor of this decision. None opposed. Commissioner Katz was not present.

DATED: November 17, 2003
Trenton, New Jersey
ISSUED: November 18, 2003