

P.E.R.C. NO. 2005-65

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ORANGE TOWNSHIP BOARD
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2005-027

ORANGE EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Orange Township Board of Education for a restraint of binding arbitration sought by the Orange Education Association. The Association contests the withholding of a teaching staff member's salary increment. The Commission concludes that this withholding was based on both performance and non-performance reasons. However, given three observation/evaluation reports and one letter from the principal noting alleged deficiencies in classroom management and a reprimand that alleged both performance deficiencies and insubordination, the withholding was based predominately on 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, Love & Randall, attorneys
(Chandra L. Rainey Cole, on the brief)

For the Respondent, Bucceri & Pincus, attorneys
(Mary J. Hammer, on the brief)

DECISION

On November 9, 2004, the Orange Township Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration sought by the Orange Education Association. The Association contests the withholding of a teaching staff member's salary increment.

The parties have filed briefs and exhibits. The employer has filed certifications of a principal and a supervisor. These facts appear.

The Association represents teachers and other employees. The parties' most recent collective negotiations agreement is

effective from July 1, 2002 through June 30, 2005. The grievance procedure ends in binding arbitration.

John Morgan was hired July 20, 1999 to teach language arts at the Orange Middle School. On March 26, 2002, Morgan received his annual evaluation report. His performance was rated satisfactory and a recommendation was made that tenure be granted.

On November 17, 2003, Morgan's class was observed. He received Satisfactory ratings in Instructional Planning, Implementation of Instruction, and Evaluation. He received a Needs Improvement rating in Classroom Climate.

On January 30, 2004, the principal wrote a memorandum to Morgan concerning classroom management. The memorandum stated:

Let me first start by re-stating that I am disappointed with your inability to manage your Language Arts classes on a consistent basis. Your malfeasance has resulted in what I consider a poor working environment for students, which is unacceptable. In our November 2003 meeting Dr. Young and I expressed serious concerns about the frequency of physical altercations, and verbal confrontations among students in your class. We recommended strategies to help you (i.e. classroom management workshops, behavior modification incentives, involving parents more, using Mr. Rahmon and Mr. Chirichiello, and/or after school detention). Not only do the problems persist, I believe they are getting worse, as evidenced by three separate incidents that occurred in your classes throughout the day in which I was called away from other assignments to resolve your classroom management issues. The most serious was a female student who was jabbed

with an ink pen! Your lack of classroom management in this case has potentially exposed our school and district to legal liability. You have not shown any evidence of utilizing available school resources to improve classroom climate. And your most recent choice of professional development was a technology conference?

As a result we will meet next week to develop a revised professional improvement plan to help focus your efforts on more effective classroom management strategies.

On February 25, 2004, Morgan's class was again observed. He received a Satisfactory rating in Instructional Planning and Implementation of Instruction, and Needs Improvement ratings in Classroom Climate and Evaluation. Under Classroom Climate, the observer wrote:

Mr. Morgan's classroom is beset with constant classroom disruptions, student confrontations and disorderly behavior due to poor classroom management. During this observation, it is clear that two problems exist. 1) Mr. Morgan does not have presence of the entire class when assisting individual students. For example, while he was helping one student at the black board, another student was thumbing through his grade book. 2) Mr. Morgan does not set the expectation for classroom climate (class rules) at the beginning of the class and follow up throughout the year. For example, as the class entered the room, Mr. Morgan was helping two students at their desks while two other students began a disruptive argument over a seat in the class. Mr. Morgan was unaware of this activity.

During both informal and this formal observation, I have observed that the classes take an inordinate amount of time to settle down, and there is bickering among students that disrupts student learning.

Areas for improvement:

Develop a professional improvement plan for Mr. Morgan

Physical Space:

Rearrange room to face the blackboard.
Remove chairs that are not being used to create more work space in classroom.
Student's work is falling off the wall.
Develop a nicer presentation of student's work.
Remove the clutter that is in the left corner of the room near the teacher's desk.

On March 5, 2004, Morgan's class was again observed. He received a Satisfactory rating in Instructional Planning, Needs Improvement ratings in Implementation of Instruction and Evaluation, and an Unsatisfactory rating in Classroom Climate. The observer noted that Morgan would be attending a workshop in May on the "Hard to Handle Student" and in April would be visiting the classroom of another teacher to observe a lesson. The observer noted that student conversations continued while Morgan was teaching; his statements to the class seemed random and disconnected from the point of the lesson; and the lesson was not well-prepared or cohesive.

On March 26, 2004, the principal again wrote a memorandum to Morgan. It stated:

I must remind you of your responsibility to maintain the appropriate classroom management in your classes. I once again am disappointed in your apparent inability to follow specific instructions not to allow any student to leave your classroom for any

reason other than a direct emergency. Why then, less than 2 minutes after I gave you that directive, did . . . [a student] come into my office stating that you put him out of class! Not only did you not follow my immediate directive, and my formal written directive of the same nature, but to send the student to Dr. Young's office gives the appearance of trying to circumvent my authority! It is clear that you do not possess the capacity to maintain a classroom environment that is conducive to learning, because the class was chaotic when I arrived, and you were at your desk trying to explain something to a student, doing nothing to curb the noise and commotion. Your Professional Improvement Plan is very specific in the expectations that you must meet. To date, you have not complied with any of the recommendations for your own professional improvement.

In addition, on March 25, 2004 you were advised to report to the auditorium to provide coverage for Susan Gamba during your Duty period, an assignment given by me and relayed by my secretary Bernice Budhu. Although it was your Duty period, you claimed to use that period for Prep time and you did not report to your assignment. This neglect constitutes insubordination and does not reflect the Guiding Principle of Collaboration. Therefore, I am forwarding this information to Central Office with a recommendation for further disciplinary action.

Morgan did not receive an annual performance evaluation for the 2003-2004 school year.

According to the principal, he relied on Morgan's observations, evaluations, reprimands and deficient lesson plans, in recommending that Morgan's increment be withheld for "unsatisfactory performance." Specifically, "unsatisfactory

performance" was based on Morgan's alleged inability to maintain an appropriate classroom climate, his alleged failure to correct his classroom management issues, indications that the classroom climate affected the students' ability to learn as evidenced by student and parent complaints, and Morgan's alleged deficient lesson plans.

On May 6, 2004, the superintendent advised Morgan that the withholding of his increment due to unsatisfactory performance might be discussed at the Board's May 10 meeting. On June 7, the superintendent informed Morgan that the Board had confirmed his decision to "deny your SY 2004-05 employment increment, due to your unsatisfactory performance." On September 10, 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 whether the Board had cause to withhold the teacher's increment.

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 the reasons for this withholding are based predominately on the evaluation of Morgan's teaching performance and that review of this withholding should be before the Commissioner of Education. The Board asserts that the withholding was based on Morgan's observations, evaluations and reprimands centering on his unsatisfactory teaching performance, especially his problems with classroom management. The Association maintains that the withholding is a disciplinary act based on Morgan's alleged insubordination in refusing to follow an administrative directive to cover a duty assignment.

We agree with the Board that the deficiencies raised in Morgan's three observation/evaluations involve his teaching performance. See, e.g., Dennis Tp. Bd. of Ed., P.E.R.C. No. 98-50, 23 NJPER 605 (¶28297 1997) (poor classroom management of students involves teaching performance). We agree with the Association that the principal's March 26, 2004 memorandum involves an issue of alleged insubordination: Morgan's alleged failure to report to an assignment during his duty period.

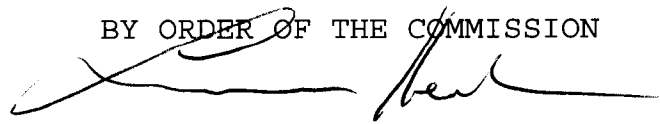
However, that memorandum also raises issues of teaching performance. Morgan is criticized for not maintaining a classroom environment that is conducive to learning and for not complying with the recommendations for his own professional improvement.

We find this withholding was based on both performance and non-performance reasons. However, given three observation/evaluations and one letter from the principal noting alleged deficiencies in classroom management and a "reprimand" that alleged both performance deficiencies and insubordination, we also conclude that the withholding was based predominately on the evaluation of teaching performance. We therefore restrain binding arbitration.

ORDER

The request of the Orange Township Board of Education for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION



Lawrence Henderson
Chairman

Chairman Henderson, Commissioners Buchanan, DiNardo, Fuller and Watkins voted in favor of this decision. None opposed. Commissioners Katz and Mastriani were not present.

DATED: April 28, 2005
Trenton, New Jersey
ISSUED: April 28, 2005