

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ORANGE TOWNSHIP BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2005-069

ORANGE EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies 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 school nurse's salary increment. The Commission concludes that this increment withholding was triggered by the nurse calling the police; behavior the principal believed to be outside her area of responsibility. The Commission therefore cannot conclude that the alleged misconduct predominately involves the performance of nursing duties reserved by education law statutes to certificated nurses. The Commission concludes that under the circumstances this withholding may be reviewed by an arbitrator.

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.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ORANGE TOWNSHIP BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2005-069

ORANGE EDUCATION ASSOCIATION,

Respondent.

Appearances:

For the Petitioner, Love & Randall, attorneys (Chandra L. Rainey Cole and Melvin C. Randall, on the brief)

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

DECISION

On March 23, 2005, 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 certificated employees including nurses. The parties' most recent collective negotiations agreement is effective from July 1, 2002 through June 30, 2005. The grievance procedure ends in binding arbitration.

Lynn Jacobs is a tenured school nurse who was assigned to the Oakwood Avenue School during the 2003-2004 school year. Jacobs is currently assigned to a different school.

On May 14, 2004, Principal Eula Penn sent a memorandum to Jacobs in reference to "Behavior Unbecoming Of A Professional - Recommendation to Withhold Increment." The memorandum stated:

On May 13, 2004 at approximately 9:10 a.m., a police officer of the Orange Police Department reported to Oakwood Avenue School. Having informed Ms. Willis that you called him to the facility, he was directed to your office.

I reported to the nurse's station at approximately 9:15 a.m., introduced myself to the officer, and asked who had summoned him to the building, and the time which the request was made. Officer Anderson indicated that he had been summoned by the school nurse and the request had been made sometime that morning.

I informed the officer that I was the building principal and requests for police assistance/presence were to be made by my office. He was further informed that any report was to be left in the principal's office.

I questioned why you had summoned the police to the building and you said that the paramedics, who responded to your 911 call on May 12, 2004, told you the police should be called.

You do not have the authority to investigate incidents at the school, nor do you have the authority to summon the police to the building.

You were cited on November 24, 2003 for behavior unbecoming of a professional and for

continued infringement upon the authority of the principal.

I have informed Mrs. Belinda Smiley and Ms. Barbara Clark of your pattern of behavior which has caused interruptions to the administration and intervention by Central Office.

You continue to engage in a pattern of behavior which is unbecoming of a professional. Although you have been cited several times this year for behavior which is inappropriate and disrespectful to both parents and the administrator, you have failed to exercise restraint.

Therefore, I am recommending that you be denied an increment for the 2004-2005 school year. Be advised that I have ample documentation to support the recommendation. Additionally, I am further recommending that the feasibility of revoking your tenure be fully explored.

Any further infractions by you to incite parents or to exercise authority over matters that are under my purview will result in a request to the Superintendent of Schools that you be immediately removed from the school.

On May 24, 2004, Jacobs responded to the May 14 memorandum and asked Penn to reconsider the withholding recommendation. She stated that she had telephoned the police in accordance with the instructions from the EMS workers who had responded to the 911 call. When the police did not come to the school to take a report that same day, she telephoned them again the next day and informed the principal's office that the police were coming. She denied summoning the police to the building or investigating incidents at the school, but stated that she had completed her

responsibility concerning an injured child. She further stated that she believed she performed her responsibilities in accordance with State laws and the guidelines of the Board's Health Services Policies and Procedures Manual.

Penn certifies that she recommended the withholding for "unsatisfactory performance," which included numerous complaints by parents and staff concerning Jacobs' alleged lack of tact or respect; her failure to meet the requirements of her Professional Improvement Plan; her failure to maintain accurate records of student information; and her continued infringement on the authority of the principal.

On June 7, 2004, the superintendent notified Jacobs that the Board had withheld her increment.^{1/}

Thomas Kennedy is the supervisor of special services. On June 8, 2004, he conducted Jacobs' formal observation. In a certification, Kennedy states that during the observation, Jacobs indicated to him that she did not have up-to-date emergency cards for all students. On June 11, Penn issued an Annual Evaluation Report. Jacobs was rated as unsatisfactory in these categories:

- Meets pre-planned written objections;
- Gears instructional/educational techniques towards the needs of individual students;
- Meets pre-planned objectives;

^{1/} The Board has submitted a portion of the minutes of the Board's June 8, 2004 meeting. It indicates that the withholding of a nurse's increment was on the agenda for that meeting.

- Is cooperative and supportive of parents;
- Is cooperative and helpful with staff and other team members; and
- Brings humor and good-naturedness to professional tasks.

Kennedy recommended that Jacobs' increment be withheld. We note, however, that the observation was conducted and the Final Evaluation was issued after the Board had already voted to withhold Jacobs' increment. Accordingly, we cannot rely on it or any other post-withholding documents as a basis for this withholding.

In addition to the observation/evaluation and certifications, the Board has submitted the following exhibits:

1. May 29, 2001 Annual Evaluation Report. Jacobs received outstanding or satisfactory ratings in all categories. The attached statement noted that she brought quality medical care to the school and was a competent and skilled practitioner who delivers care with compassion. Continued tact and diplomacy in communicating with parents was recommended.
2. March 22, 2002 School Nurse Observation Report.
3. May 31, 2002 Annual Evaluation Report. Jacobs received outstanding and satisfactory ratings in all categories, except "Is cooperative and supportive of parents." The attached statement recommended continued and sustained improvement in cordial and clear communications with parents.
4. November 21, 2002 parent complaint that Jacobs reported her to DYFS for failure to have proper immunizations.
5. May 6, 2003 parental complaint about the way they were treated by Jacobs.
6. June 14, 2003 School Nurse Observation Report.

7. June 16, 2003 Annual Evaluation Report. Jacobs received outstanding and satisfactory ratings in all but the following three categories: Is cooperative and supportive of parents; Is cooperative and helpful with staff and other team members; and Brings humor and good-naturedness to professional tasks. The attached statement noted several instances of parental complaints during the school year as well as insensitivity toward staff.
8. The 2003-2004 Professional Improvement Plan. The goal of the plan was for Jacobs to develop her skills as a nurse and health office information manager for the school that she is assigned by fully utilizing the Medical Records capabilities of the Pentamations software.
9. November 21, 2003 parental complaint that Jacobs telephoned a parent about a student being sent to school dirty.
10. 2003 parental complaint about Jacobs' rude treatment to a parent in front of other parents.
11. November 17, 2003 letter of reprimand to Jacobs for failure to adhere to the chain of command by directly contacting a parent.
12. November 17, 2003 letter of reprimand for, without authority, excluding a child from school for not having a Hepatitis B shot.
13. November 17, 2003 note from a parent stating that she was told to pick up her child because the child did not have the shot.
14. November 24, 2003 reprimand for continued infringement upon authority of the principal by contacting the Division of Youth and Family Services about a student's absences. This reprimand was referenced in the May 2004 recommendation for an increment withholding.
15. December 8, 2003 reprimand relating to a parental complaint. The reprimand states that there has been a pattern of insensitive treatment and frequent miscommunications with parents which are substantiated in observation and evaluation

reports dating back to Jacobs' first year (2001) with the district. Jacobs was advised to modify her behavior and that further miscommunications and poor treatment of parents were not to occur, and that if there was no improvement, further disciplinary action could be taken.

16. March 22, 2004 parent's letter to the principal complaining about Jacobs' actions.
17. June 2, 2004 letters from other teachers to the principal about the confusion about students needing medication during school hours and the need for clear directives about the medication prior to school class trips.
18. June 8, 2004 School Nurse Observation/Evaluation Report.
19. June 16, 2004 parent complaint about a phone call from Jacobs.

On November 15, 2004, the Association demanded arbitration over the withholding. 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 asserts that Jacobs has been given several unsatisfactory performance evaluations concerning her interactions and communications with parents and that her evaluations document a pattern of insensitive treatment as well as frequent miscommunications with parents.

The Association argues that this withholding is based on Jacobs' alleged infringement on the principal's authority. The Association asserts that the only notice of the withholding provided to Jacobs' was Penn's May 14 memorandum. The Association argues that the Board may not rely on additional evaluation reports and documents. The Association notes that the annual evaluation took place after the increment was withheld and could therefore not have been the basis for the withholding.

The Board responds that the Association is attempting to obfuscate the employee's deficient performance by asserting that

the withholding is primarily based on the letters of reprimand. The Board notes that Kennedy also evaluated Jacobs' performance and found it to be unsatisfactory.

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 specifically states that a school nurse is a teaching staff member.

We have recognized that the "teaching performance" standard used in N.J.S.A. 34:13A-27 cannot be applied literally when an increment withholding dispute involves a "teaching staff member" who does not teach. School nurses are -- by statute -- teaching staff members, but they do not have full-time teaching responsibilities. Thus, we have formulated a performance standard that is not limited to classroom teaching. See Franklin Bor. Bd. of Ed., P.E.R.C. No. 99-2, 24 NJPER 407 (¶29186 1998). This standard focuses on whether a nurse is performing nursing duties reserved by education law statutes to certificated nurses. In Franklin Bor. Bd. of Ed., we held that the Commissioner of Education, not an arbitrator, must review disputes over the performance of nursing duties reserved by education law statutes to certificated nurses.

This withholding was triggered by Jacobs' calling the police. The principal criticized her for alleged "behavior which

is inappropriate and disrespectful to both parents and the administrator." Because the principal believed that calling the police was outside Jacobs' areas of responsibility, we cannot conclude that the alleged misconduct predominately involves the performance of nursing duties reserved by education law statutes to certificated nurses. In addition to this triggering event, the documentary record includes complaints, reprimands, and evaluations that allege a long history of problems in Jacobs' interactions with parents and staff. Those allegations do not center on Jacobs' primary duties as a certificated school nurse. Under these circumstances, this withholding may be reviewed by a grievance arbitrator. Consistent with our jurisdiction, we express no opinion on the merits of the withholding.

ORDER

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

BY ORDER OF THE COMMISSION

A handwritten signature in black ink, appearing to read "Lawrence Henderson", is written over a horizontal line.

Lawrence Henderson
Chairman

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

DATED: September 29, 2005
Trenton, New Jersey
ISSUED: September 29, 2005