

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ENGLEWOOD BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2006-011

ENGLEWOOD EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, the request of the Englewood Board of Education for restraint of binding arbitration of a grievance filed by the Englewood Teachers Association. The Association claims that the Board violated contractual requirements that it give a teacher written notice of the alleged cause for an increment withholding and an opportunity to correct problems. The Commission grants a restraint of arbitration to the extent, if any, the grievance challenges the merits of the withholding. The Commission concludes, however, that procedures associated with the withholding of increments of teaching staff members are mandatorily negotiable, so long as the procedures do not significantly interfere with the substantive right to withhold an increment. The Commission concludes that there is no showing that compliance with alleged procedural requirements to notify teachers of deficiencies and provide an opportunity to correct problems would significantly interfere with the Board's asserted prerogatives.

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. 2006-32

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Appearances:

For the Petitioner, Weiner Lesniak, LLP, attorneys
(Mark A. Tabakin, of counsel and on the brief)

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

DECISION

On August 8, 2005, the Englewood Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Englewood Teachers Association. The Association claims that the Board violated contractual requirements that it give a teacher written notice of the alleged cause for an increment withholding and an opportunity to correct problems.

The parties have filed briefs and exhibits. The Board has submitted the certification of its Superintendent, Carol A. Lisa. 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.

Article VIII is entitled Teacher Compensation and Section B is entitled Withholding of Employment Increment Procedure. That section provides, in part:

1. The Board of Education may withhold, for inefficiency or other just cause, the employment increment of any teacher in any year. The Board of Education, within ten (10) school days shall give written notice of any such action, together with the reasons thereof, to the teacher concerned.

2. Employment increments may be withheld only in accordance with the following:

- a. That the procedure be adhered to as outlined in Article XXVII of this Agreement.

- b. The immediate superior and/or the principal shall not forward any recommendation to withhold a teacher's employment increment or a part thereof through the Superintendent to the Board unless the principal has given the teacher, against whom the recommendation shall be made, written notice of the alleged cause(s) for the recommendations specifying the nature thereof with such particulars as to furnish to the teacher an opportunity to correct and overcome the same.

Brian Luke is a tenured bilingual elementary teacher at the Lincoln Elementary School. His principal reported concerns about alleged poor performance, inappropriate classroom management techniques, and negative performance evaluations. The principal

also recommended a review of his performance history for possible increment withholding. District administrators reviewed the recommendation and the superintendent orally recommended an increment withholding to the Board. On June 21, 2004, Luke was notified that, upon the superintendent's recommendation, the Board had voted to withhold his increment for the 2004-2005 school year. It stated that "this action was based on your performance in your current assignment that was judged by the administration as insufficient to foster student learning toward district and state standards."

On August 23, 2004, the Association filed a grievance alleging that Luke's increment withholding was without just cause. Among other things, the grievance alleges that the building principal violated Article VIII, Section B. The grievance states:

The building principal forwarded a recommendation to the Superintendent to withhold Mr. Luke's increment without giving him written notification of the alleged causes for the withholding. The building principal did not "make recommendations specifying the nature thereof with such particulars as to furnish the teacher an opportunity to correct and overcome the same." There was no evidence that Mr. Luke was in any way inefficient. The Association contends that the withholding was disciplinary without just cause.

The grievance was denied at all levels. On January 15, 2005, 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.

We specifically do not consider the Board's argument that any procedural issues are not contractually arbitrable because they were not specified in the demand for arbitration.

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.

The Association does not dispute that the Commissioner must review the merits of this withholding. It contends, however, that the alleged procedural violation can proceed to binding

arbitration. The Board accepts that notice and an opportunity to correct deficiencies may be subject to negotiated procedures, but it maintains that Article VIII impermissibly infringes on its authority to communicate regarding matters of educational policy and to bestow on its administrators and supervisors the authority to recommend a withholding.

Applying the negotiability balancing test in Local 195, IFPTE v. State, 88 N.J. 393 (1982), we have held that procedures associated with the withholding of increments of teaching staff members are mandatorily negotiable, so long as the procedures do not significantly interfere with the substantive right to withhold an increment. Greater Egg Harbor Reg. H.S. Dist. Bd. of Ed., P.E.R.C. No. 88-37, 13 NJPER 813 (¶18312 1987). In particular, in Greater Egg Harbor we found mandatorily negotiable a provision requiring that in the event deficiencies were detected during an evaluation, specific recommendations to overcome those deficiencies had to be made. In Passaic Bd. of Ed., P.E.R.C. No. 2003-66, 29 NJPER 117 (¶36 2003), we held mandatorily negotiable a clause requiring that proper evaluation procedures be followed before any recommendations to withhold an increment. In Montclair Bd. of Ed., P.E.R.C. No. 2002-3, 27 NJPER 321 (¶32114 2001), we held that an arbitrator could consider the Association's procedural claim that the board did not provide timely notice of a withholding; that issue did not

significantly interfere with the board's decision to withhold an increment. See also Washington Tp. Bd. of Ed., P.E.R.C. No. 2005-81, 31 NJPER 179 (¶73 2005); Willingboro Bd. of Ed., P.E.R.C. 2001-68, 27 NJPER 236 (¶32082 2001); Willingboro Bd. of Ed., P.E.R.C. No. 2000-68, 26 NJPER 117 (¶ 31050 2000). These precedents apply here and permit arbitration of the alleged procedural violation. No showing has been made in this case that compliance with the alleged requirement that the teacher be notified of deficiencies and given an opportunity to correct problems would have significantly interfered with the Board's asserted prerogatives.

ORDER

The request of the Englewood Board of Education for a restraint of binding arbitration is granted to the extent, if any, the grievance challenges the merits of Brian Luke's increment withholding. The request is otherwise denied.

BY ORDER OF THE COMMISSION

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

ISSUED: November 22, 2005

Trenton, New Jersey