

P.E.R.C. NO. 2006-80

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BERGENFIELD BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2006-052

BERGENFIELD EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

_____The Public Employment Relations Commission grants the request of the Bergenfield Board of Education for a restraint of binding arbitration of a grievance filed by the Bergenfield Education Association. The grievance asserts that the Board lacked just cause to withhold a teacher's salary increments. The Commission concludes that the reasons for this withholding relate to engaging student interest during class and teaching techniques and are predominately related to an evaluation of teaching 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, Fogarty & Hara, attorneys (Stephen R. Fogarty, on the brief)

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

DECISION

On January 17, 2006, the Bergenfield Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Bergenfield Education Association. The grievance asserts that the Board lacked just cause to withhold a teacher's salary increments.

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

The Association represents a unit of employees including teachers. The parties' collective negotiations agreement is

effective from July 1, 2003 through June 30, 2006. The grievance procedure ends in binding arbitration.

The Board has employed Salvatore DiBella since 1996. He has taught in the mathematics and social studies departments in the high school.

On April 15, 2005, the Superintendent informed DiBella that he would recommend that the Board withhold DiBella's employment and adjustment increments for the next school year. The letter stated that DiBella's supervisors had deemed his performance during the 2004-2005 school year to be unsatisfactory and that the recommendation to withhold his increments was based on performance deficiencies listed in nine documents prepared during 2004-2005. We will describe the contents of these documents. While the parties have submitted documents from previous years, we will not describe them because they were not cited as a basis for the withholding.

The first document cited is a classroom observation report dated February 23, 2004. The report listed recommendations for how DiBella could add "more student-centered learning opportunities and less note copying" to his lessons.

The second document is DiBella's Professional Improvement Plan (PIP) for the 2004-2005 school year. This PIP was mutually developed and agreed upon by DiBella and his evaluator. It set

forth these goals: increasing knowledge in teaching and learning, child and curriculum development and subject/content area; keeping up to date with technology; enabling students to become more active learners by incorporating cooperative learning techniques; using rubrics that will encourage students to become vocal and active participants in the learning process; providing educational lessons that focus on higher-order thinking skills; and taking graduate courses in teaching methodologies during the summer of 2004. The Board did not offer to pay for the summer courses and DiBella did not take them.

On January 12, 2005, the Director of Mathematics observed an algebra class taught by DiBella and wrote an observation report. This report recommended several teacher techniques and noted that another classroom visit was necessary. It led to the third and fourth documents cited by the Superintendent: a January 25 memorandum from the Director to DiBella (together with DiBella's rebuttal) and a January 27, 2005 observation report prepared by the Director.

The January 25 memorandum referenced a conversation the day before about DiBella's methodology for teaching fractions. According to the Director, DiBella stated that "we'll just take fractions out of the curriculum." The memorandum stressed that the Director was not proposing to take fractions out of the

curriculum and urged DiBella to teach the concept of fractions in their simplest form and then incrementally increase the level of difficulty. The record does not contain copies of DiBella's rebuttal or the January 27 observation report.

The fifth document is an observation report dated February 11, 2005. The report stated in its Summary: "Overall, Mr. DiBella has made an effort to improve his instruction, but more attention is needed in pacing the lesson, creating a student centered classroom and teaching for student understanding." In response, DiBella wrote that he had made a great effort to implement the recommendations and had always taught for the purpose of the student's understanding.

The next document is a memorandum dated March 22, 2005 from the Director concerning her preparation of DiBella's annual evaluation. The memorandum asserted that several recommendations made by the Director and other supervisors had yet to be implemented. These recommendations concerned being more animated, calling on passive students more often, being more aware of surroundings and student actions, reducing lecture time and making students more active participants, and having students progress incrementally to higher levels of cognition.

The next document is a March 29, 2005 memorandum describing an incident on March 24 when DiBella sent a student to the office

for lying on the floor with his head on a pillow. According to the report, the student said he had been bringing a pillow to class and sleeping for some time and DiBella had not said anything about it and DiBella apologized to the principal for letting the student sleep in class.

The next document is DiBella's annual evaluation dated March 30, 2005 and prepared by the Director. The evaluation asserted that DiBella had not made significant progress in improving his teaching methodology or correcting the problems cited in his evaluation the previous year. Classroom management was cited as a major issue and allowing the student to sleep was specified as an example of the problem. According to the evaluation, DiBella had made a minimal effort to follow suggestions and five areas set forth in his PIP remained largely unfulfilled. The evaluation also stated that many parents had requested that their children be taught by another teacher.

DiBella disputed the evaluation. He wrote that he had no difficulty dealing with parents; had demonstrated improvement in his teaching methodology; monitored students, making sure they took notes, and called on students who did not raise their hands; and dealt with the pillow incident on a day-to-day basis until he finally had to remove the student from the class. He also stated that he had received favorable evaluations in the past eight

years; had attended two conferences and been turned down for a third; and had observed another teacher's teaching methods. He added that he continues to improve his teaching methodology and classroom management and intends to continue to do so and to take a graduate course in teaching methods or classroom management.

The last document is a memorandum dated April 5, 2005 from the high school principal to the assistant superintendent. The memorandum recommended that DiBella's increments be withheld for the 2005-2006 school year. It asserted that DiBella had failed to bring his teaching performance up to an acceptable level, use effective teaching strategies, or meet the goals of his Professional Growth Plan (PGP), which included taking graduate courses on teaching methodologies, classroom management and delivery of instruction. The memorandum stated that DiBella was continuing to have difficulty with basic classroom management, as evidenced by the student sleeping in class. The report also asserted that DiBella appeared unable and unwilling to improve and that his response to criticisms of his teaching was to say: "This is how I teach."

On April 15, 2005, the superintendent sent DiBella the letter citing the documents just described and recommending a withholding. The letter concluded:

Unfortunately, your performance over the course of the 2004-2005 school year indicates that you are either unable or unwilling to remediate your teaching deficiencies. I am

particularly concerned about the incident involving a student who you permitted to bring a pillow to your class, repeatedly, so that he could put his head down and go to sleep. Such conduct by a teaching staff member in this School District shall not be countenanced and any reoccurrence of this or the other deficiencies identified in your evaluation documents will result in my recommendation to the Board that further action be taken, including the certification of Tenure Charges.

On May 11, 2005, the Board voted to withhold DiBella's employment and adjustment increments for the next school year.

On May 24, 2005, the Association filed a grievance contesting the withholding. The Superintendent and the Board denied the grievance for the reasons set forth in the Superintendent's letter. The letter stated that these reasons included: "failure to manage his classroom effectively, failure to motivate students in his class, failure to engage in higher-level thinking and learning techniques, use of ineffective techniques in communicating with parents and a lack of concern for students in his classes."

On September 15, 2005, the Association demanded arbitration alleging that the increment withholding was discipline without just cause. This petition ensued.

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 reasons for this withholding relate predominately to DiBella's teaching performance. The concerns cited in the April 15 letter and supporting documents center on the teaching performance matters of engaging student interest during class and teaching techniques. See, e.g., Washington Tp. Bd. of Ed., P.E.R.C. No. 2005-81, 31 NJPER 179 (¶73 2005); Paramus Bd. of Ed., P.E.R.C. No. 2004-30, 29 NJPER 508 (¶161 2003). The Association cites DiBella's not taking the summer graduate courses cited in his PGP as the basis of the withholding, but the documents relied upon by the Board do not give significant weight to that reason and it is clear from reading all the documents that what mattered to the evaluators was DiBella's teaching in the classroom, not any activity or lack of activity outside the classroom.

The Association also maintains that the withholding was based on personal preferences of administrators concerning teaching styles and what had been acceptable for years was no longer acceptable. That argument presents a reason for challenging the Board's evaluation of DiBella's teaching

performance. It does not present a reason for determining that this withholding was not predominately based on that evaluative judgment. For these reasons, we will restrain arbitration.

ORDER

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

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Buchanan, DiNardo, Fuller, Katz and Watkins voted in favor of this decision. None opposed.

ISSUED: April 27, 2006

Trenton, New Jersey