

P.E.R.C. NO. 2006-100

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BRIDGETON BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2006-050

ASSOCIATION OF BRIDGETON  
ADMINISTRATORS,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, the request of the Bridgeton Board of Education for a restraint of binding arbitration of a grievance filed by the Association of Bridgeton Administrators. The grievance contests the withholding of an assistant principal's employment and adjustment salary increments. The Commission holds that the allegations that the principal did not observe due process or communicate appropriately during student investigations involve the teaching performance of a school administrator and that those allegations must be reviewed by the Commissioner of Education. The Commission denies a restraint of arbitration over allegations that the contract was violated when the principal was not informed of the possibility that her increment would be withheld or given written reasons for the withholding or an opportunity to appear before the Board. These allegations raise procedural issues that may be arbitrated.

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, Casarow, Kienzle & Raczenbek,  
attorneys (A. Paul Kienzle, Jr., on the brief)

For the Respondent, David Nash, attorney (David Nash,  
on the brief)

DECISION

On January 12, 2006, the Bridgeton Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Association of Bridgeton Administrators. The grievance contests the withholding of an assistant principal's employment and adjustment salary increments.

The parties have filed exhibits and briefs.<sup>1/</sup> These facts appear.

The Association represents principals and other supervisors. The parties' collective negotiations agreement is effective from July 1, 2003 through June 30, 2006. The grievance procedure ends in binding arbitration.

Article IV is entitled Employee Rights. Section 4.3 provides that no employee shall be disciplined without just cause and subjects disciplinary actions to the grievance procedure. Section 4.4 provides that when an employee is required to appear before the superintendent or Board concerning any matter that could affect the employee's employment or increments, the employee shall receive notice of the reasons for such meeting or interview and shall be entitled to have an Association representative accompany and advise the employee.

Dorian Giorgio is an assistant principal at the Bridgeton High School. On December 20, 2004, the principal sent Giorgio a memorandum reprimanding her for her handling of an investigation involving a missing cell phone. Giorgio allegedly searched a

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<sup>1/</sup> On March 8, 2006, we granted the Board's request for an extension of time until March 16 to file its reply brief. The reply brief, dated March 23, was received by fax on March 24. On March 26, the Association requested that the brief not be accepted. On April 3, the Board was asked to file a motion to accept the brief as timely filed, accompanied by an affidavit establishing good cause. No motion was filed so the reply brief will not be considered.

student's pocketbook without the consent of the student's parents. The memorandum stated that "any future behavior of this nature on your part will result in more serious disciplinary action."

On March 21, 2005, the principal sent Giorgio another memorandum reprimanding her for her investigation of an incident involving two students. Giorgio suspended one student, but not the other. According to the memorandum, the Human Resources Director indicated that Giorgio "did not use good judgment in her process . . . [and] that both boys were in the building after the incident, and that both should either have been suspended at the same time, or informed to return the next day with their parents." The suspended boy's parents believed that their son was treated unfairly because the other boy had not been suspended as well. The memorandum concluded that Giorgio had not clearly communicated the facts to the suspended boy's parents and had caused confusion, misunderstanding, and the perception of discrimination. The memorandum directed Giorgio to follow these instructions:

Do not make an immediate decision involving the adjudication of discipline until the facts are available and understood.

Maintain discretion and confidentiality when discussing discipline matters with all parties.

In an evaluation dated April 21, 2005, Giorgio received Outstanding or Satisfactory ratings in all categories except two. She received Unsatisfactory ratings in these categories:

Shows professional competence in dealing with attendance, conduct, health, and safety of pupils.

Deals with parent groups, community agencies, and individuals in the manner to effect good school-community rapport.

In the comments section, the principal noted that Giorgio "deals with hundreds of issues in regard to student discipline, parent contacts and meetings, meetings with staff and students and meetings with supervisors and other administrators to positively affect student behavior and achievement." With respect to the Unsatisfactory ratings, he wrote:

She must show improvement in these areas as previously directed to her. In the course of her job tasks performance, Mrs. Giorgio meets with and administers hundreds of student and parent cases and issues in a competent manner. However, there were two occasions during 2004-2005 that were problematic. For those issues she is directed to use:

Due process must be afforded all students.

Proper judgment should be exercised in dealing with parents and students.

Additionally, she must ensure that situations that she administers must be thoroughly investigated and that all pertinent facts are reviewed objectively.

The same comments were made in her Annual Performance Report dated May 31, 2005. The principal did not recommend withholding her increment.

On July 12, 2005, the Board voted to withhold Giorgio's employment and adjustment increments. The next day, the superintendent called Giorgio to his office and advised her of the withholding.

On August 3, 2005, the Association filed a grievance with the superintendent. The grievance asserts that the Board violated Article IV, Sections 4.3 and 4.4. The grievance further states:

We believe that this action stems from an earlier incident involving a student at Bridgeton High School. This situation was publicly discussed at a Board meeting by the student's parents. Mr. Marshall, Mrs. Giorgio, Mr. Dunkins, and myself met to resolve this issue. It was agreed upon that Mr. Marshall would issue a formal reprimand to Mrs Giorgio regarding this issue. We were assured at the time that this would close the case without any further disciplinary action towards Mrs. Giorgio. Mr. Dunkins assured us of this. Mr. Marshall's APR of Mrs. Giorgio dated June 29, 2005 does not recommend increment withholding.

The grievance alleges that the Board violated the contract by not informing Giorgio of the possibility that her increment was in jeopardy or giving her written notice of the events that transpired.

The superintendent denied the grievance, stating that the contract had not been violated because Giorgio was not required to appear before the superintendent or the Board. The Board also denied the grievance.

N.J.S.A. 18A:29-14 requires a board to give a teaching staff member a statement of reasons for a withholding. We asked the Board to provide a copy of that statement to us.<sup>2/</sup> The Board responded that the "[p]etitioner never requested a statement of reasons." It then submitted a December 8, 2005 letter the superintendent wrote to the Board's counsel explaining the withholding. He wrote:

- (1) The annual performance evaluation of Ms. Giorgio indicated that she was rated "Unsatisfactory" in a Management indicator requiring her to "Show professional competence in dealing with attendance, conduct, health, and safety of pupils."
- (2) The same annual performance evaluation indicated that Ms. Giorgio was rated "Unsatisfactory" in a Pupil Personnel indicator requiring her to "Deal with parent groups, community agencies, and individuals in the manner to effect good school-community rapport."
- (3) Ms. Giorgio exercised poor judgment when she chose to suspend a black student immediately and delay suspension of a

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<sup>2/</sup> Effective June 19, 2006, N.J.A.C. 19:13-2.2(a)(3) requires that in increment withholding cases, a scope of negotiations petition shall be accompanied by a copy of the statement of reasons issued to the teaching staff member at the time the increment was withheld.

white student. In her role of Assistant Principal, Ms. Giorgio has a duty to treat students fairly, equitably and use good judgment when dealing with students who have been involved in alleged or factual physical and/or verbal disputes. Ms. Giorgio should exercise particular diligence when disputes involve students of different races. The white student was eventually suspended, but the day after she had suspended the black student. Ms. Giorgio's comments at the time of the incident led the parent to believe her child was being treated differently because Ms. Giorgio had a better relationship with the parent(s) of the white student.

- (4) Ms. Giorgio showed unsatisfactory judgment when she searched a female student's pocketbook, outside the students' presence, despite protests from the student that she had not stolen a missing cell phone. Ms. Giorgio then poorly handled the situation with the student and parent, who were very upset over the accusation and search. As it turned out, the student did not steal the missing cell phone.
- (5) Ms. Giorgio's "Unsatisfactory" evaluation in two very important areas caused her increment to be withheld.

The Association demanded arbitration. This petition ensued.

The parties have postponed arbitration pending this decision.

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 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]

In Middletown Tp. Bd of Ed., P.E.R.C. No. 92-54, 18 NJPER 32 (¶23010 1991), we applied the tests of N.J.S.A. 34:13A-27 and Scotch Plains-Fanwood to an increment withholding involving a principal. We recognized that principals are teaching staff members, although they do not teach classes. We stated:

[Principals] have broad responsibility for managing and supervising students, staff, facilities and community relations. When determining whether withholding a principal's increments relates predominately to an evaluation of that "teaching staff member's teaching performance" we must therefore ask

whether the withholding relates predominately to an evaluation of the quality of the principal's performance as an educational leader and manager. 18 NJPER at 34.

In that case, we held that the withholding was predominately based on an evaluation of the principal's leadership, judgment and management and thus the appropriate forum for reviewing its propriety was before the Commissioner of Education. See also Phillipsburg Bd. of Ed., P.E.R.C. No. 2003-8, 28 NJPER 340 (¶33119 2002); Butler Bd. of Ed., P.E.R.C. No. 96-24, 21 NJPER 358 (¶26222 1995); Brigantine Bd. of Ed., P.E.R.C. No. 95-54, 21 NJPER 110 (¶26067 1995); Paterson School Dist., P.E.R.C. No. 95-39, 21 NJPER 36 (¶26023 1994).

The parties cite cases involving teachers and their interactions with parents, but these cases do not apply in the context of a school administrator withholding. Instead, this case, like Phillipsburg, involves an evaluation of the assistant principal's judgment and management in handling her investigations of student incidents, including her responses to parental concerns about the investigations. The allegations that Giorgio did not observe due process or communicate appropriately during the investigations involve the "teaching performance" of a school administrator. We will therefore restrain binding arbitration over the decision to withhold Giorgio's increments.

The Association has also asserted that the Board violated the contract by not informing Giorgio of the possibility that her

increments would be withheld or giving her written reasons for a possible withholding or an opportunity to appear before the Board prior to the withholding. These allegations raise procedural issues that may be arbitrated. Englewood Bd. of Ed., P.E.R.C. No. 2006-34, 31 NJPER 355 (¶141 2005); Washington Tp. Bd. of Ed., P.E.R.C. No. 2005-81, 31 NJPER 179 (¶73 2005).

ORDER

The request of the Bridgeton Board of Education for a restraint of binding arbitration over the decision to withhold increments from Dorian Giorgio is granted. The request is otherwise denied.

BY ORDER OF THE COMMISSION

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

ISSUED: June 29, 2006

Trenton, New Jersey