

P.E.R.C. NO. 2006-87

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WILLINGBORO BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2006-055

WILLINGBORO EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Willingboro Board of Education for a restraint of binding arbitration of a grievance filed by the Willingboro Education Association. The grievance contests the withholding of a teacher's increment for the 2005-2006 school year. The Commission concludes that the reasons for this withholding predominately involve teaching performance and review must therefore be before the Commissioner of Education. The Commission holds that although some of the reasons may not involve teaching performance, most of the reasons, such as communicating with parents concerning academic performance, not submitting lesson plans or leaving plans for substitute teachers, and not helping students to learn, relate to 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.

P.E.R.C. NO. 2006-87

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WILLINGBORO BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2006-055

WILLINGBORO EDUCATION ASSOCIATION,

Respondent.

Appearances:

For the Petitioner, Parker McCay, attorneys  
(James F. Schwerin, on the brief)

For the Respondent, Selikoff & Cohen, P.A., attorneys  
(Steven R. Cohen, on the brief)

DECISION

On February 3, 2006, the Willingboro Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Willingboro Education Association. The grievance contests the withholding of a teacher's increment for the 2005-2006 school year.

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

The Association represents certificated teachers and other employees. The parties' collective negotiations agreement is effective from July 1, 2003 through June 30, 2007. The grievance procedure ends in binding arbitration.

Henry Barlow is a science teacher. On August 18, 2005, the interim superintendent notified him that the Board had voted to withhold his increment for the 2005-2006 school year. The letter set forth these reasons for the withholding:

Parents had a difficult time reaching you. Complaints received from parents that you did not return their phone calls or advise them of the academic status of their children.

Did not submit a Student Activity Mid-Year Report.

Did not leave substitute folders with lesson plans for a substitute when absent.

Absence occurs frequently on Fridays and Mondays.

Did not hand in your lesson plans, which are necessary for implementation of the New Jersey Core Curriculum and imperative for effective lesson execution.

Refused to assist one of your students with their application for the Science Fair, which required another teacher to take over.

Inappropriate comments to students.

Meetings with the Principal did not effect any change.

The Association unsuccessfully grieved the withholding and demanded arbitration.<sup>1/</sup> The Board has filed this petition seeking a restraint of arbitration.

Under N.J.S.A. 34:13A-26 et seq., all increment withholdings of teaching staff members may be submitted to binding arbitration

---

<sup>1/</sup> Neither party submitted any grievance documents.

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 cited in the August 18 letter predominately involve Barlow's teaching performance. The allegation that Barlow was often absent on Fridays and Mondays is not a teaching performance reason, Edison, but we have restrained arbitration over withholdings based on such reasons as not communicating with parents about their child's academic performance; not submitting lesson plans or leaving plans for substitute teachers; and not helping students to learn. See, e.g., Readington Tp. Bd. of Ed., P.E.R.C. No. 2006-5, 31 NJPER 242 (¶93 2005); Washington Tp. Bd. of Ed., P.E.R.C. No. 2005-81, 31 NJPER 179 (¶73 2005); Knowlton Tp. Bd. of Ed., P.E.R.C. No. 2003-48, 29 NJPER 19 (¶5 2003); Bernardsville Bd. of Ed., P.E.R.C. No. 94-83, 20 NJPER 82 (¶25037 1994).<sup>2/</sup> Even if we assume, as the Association argues, that educational expertise is not required to review the validity of these reasons; that consideration cannot control when the reasons given so clearly center on teaching performance concerns under

---

<sup>2/</sup> Inappropriate comments to students in class also involve teaching performance, but the Board has not specified that the comments in question occurred in class so we will not consider that reason further.

our case law. We will accordingly restrain arbitration over the decision to withhold Barlow's increment.

The Association has also asserted that the Board violated its procedural obligation under N.J.S.A. 18A:29-14 to provide written notice and specified reasons within ten days of the withholding. That contention may be arbitrated. Englewood Bd. of Ed., P.E.R.C. No. 2006-34, 31 NJPER 355 (¶141 2005).

ORDER

The request of the Willingboro Board of Education for a restraint of binding arbitration over the decision to withhold Henry Barlow's increment for the 2005-2006 school year is granted. The request for a restraint is otherwise denied.

BY ORDER OF THE COMMISSION

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

ISSUED: May 25, 2006

Trenton, New Jersey