

P.E.R.C. NO. 2006-88

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WILLINGBORO BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2006-056

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.

Patricia Crawford is a science/social studies teacher. On August 18, 2005, the interim superintendent notified her that the Board had voted to withhold her increment for the 2005-2006 school year. The letter set forth these reasons for the withholding:

Poor rapport with co-workers in classroom.

Parental complaints.

Breach of confidentiality of special education student names.

Lesson plans not appropriately geared to students' IEP.

Lesson plans and instruction very poor, not grade/age appropriate.

Unacceptable and incomplete grade book.

Unable to substantiate students' grades.

Students' performance/scores not documented or substantiated.

Refused to meet with principal on any matter without a union representative.

Weak in all subjects.

Grade book lists grade "fractions" but unable to explain the meaning of source of the grade fractions.

District inclusion coordinator assigned to assist but without results.

On numerous occasions throughout the year, problems were discussed at parent and principal meetings.

Received unsatisfactory rating in every performance area.

The Association unsuccessfully grieved the withholding and demanded arbitration.^{1/} The Board 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 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.

^{1/} Neither party submitted any grievance documents.

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 the evaluation of Crawford's teaching performance. The allegation that she would not meet with the principal without a union representative is not a teaching performance reason, but we have restrained arbitration over withholdings based on such reasons as poor lesson plans and instruction, incomplete and improper grading, inadequate knowledge of subjects taught, and unsatisfactory ratings in teaching performance areas. See, e.g., Woodbury Bd. of Ed., P.E.R.C. No. 2006-81, _____ NJPER _____ (¶_____

2006); Wood-Ridge Bd. of Ed., P.E.R.C. No. 98-41, 23 NJPER 564 (¶28281 1997); South Harrison Bd. of Ed., P.E.R.C. No. 96-36, 22 NJPER 20 (¶27007 1995); Bernardsville Bd. of Ed., P.E.R.C. No. 94-83, 20 NJPER 82 (¶25037 1994). Even if we assume, as the Association argues, that educational expertise is not required to review the validity of some of these reasons; that consideration cannot control when the reasons given so clearly center on teaching performance concerns under our case law. We will accordingly restrain arbitration over the decision to withhold Crawford'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 Patricia Crawford'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