

P.E.R.C. NO. 2007-29

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WILLINGBORO BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2006-057

WILLINGBORO EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, 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 salary increment for the 2005-2006 school year. The Commission concludes that the majority of reasons for this withholding involve allegedly inappropriate interactions with students in class and allegedly unjustifiable refusals to meet with parents about the academic performance of their children. These reasons predominately relate to teaching performance and any review of this withholding must be before the Commissioner of Education. The Commission holds that the alleged procedural violations 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, 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 salary increment for the 2005-2006 school year.

The parties have filed briefs, exhibits, and certifications and have responded to our requests for additional information. 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.

Hope Houston is an English teacher. She teaches seventh grade at the Levitt Middle School and also holds a stipended position as leader of an inter-disciplinary team. On August 18, 2005, the interim superintendent notified Houston that the Board had voted to withhold her salary increment for the 2005-2006 school year. The letter set forth these reasons for the withholding:

Refusing to follow lunch duty procedures.

In spite of advance notice, refusal to attend parent/teacher conference.

Screaming at students in hallways.

Yelling at student in class as the student arrived late in spite of the fact he had a pass and legitimate reason to be late.

Yelling at student in class in the presence of a parent and teacher.

Student Activity Mid-Year Report not submitted to supervisor.

Refusing to meet with a parent after having received notice from the supervisor to do so, complaining that you were not informed of the specific topics for discussion, and telling the parent to leave his telephone number. Parent complained about your confrontational attitude.

Informed the Principal that you do not make calls to parents after 3:00 p.m. because "that was your time."

In spite of meetings you had with several administrators about your role as team leader and the necessity for collegial relationships, you continued to refuse to cooperate with colleagues, parents and students.

Meetings with principal did not effect any change.

The Association unsuccessfully grieved the withholding and demanded arbitration. The Board filed this scope 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.

We specifically do not consider the merits of the allegations cited in the documents and certifications submitted by the Board or the responses set forth in the certification submitted by the Association.

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 Houston's teaching performance. The majority of these reasons involve allegedly inappropriate interactions with students in class and allegedly unjustified refusals to meet with parents about the academic performance of their children. We have restrained arbitration over withholdings based on such

reasons. 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. 2003-47, 29 NJPER 19 (¶5 2003); 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 these reasons, that consideration cannot control when the reasons predominantly center on teaching performance concerns. We will accordingly restrain arbitration over the decision to withhold Houston'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 Hope Houston'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, Fuller and Watkins voted in favor of this decision. None opposed. Commissioner DiNardo was not present.

ISSUED: November 21, 2006

Trenton, New Jersey