

P.E.R.C. NO. 2007-47

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CAMDEN COUNTY VOCATIONAL
TECHNICAL BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2007-024

CAMDEN COUNTY VOCATIONAL TECHNICAL
SCHOOL TEACHERS ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Camden County Vocational Technical Board of Education for a restraint of binding arbitration of a grievance filed by the Camden County Vocational Technical School Teachers Association. The grievance contests the withholding of a teacher's salary increments for the 2006-2007 school year. The Commission hold that because the majority of the reasons given for this withholding do not relate to an evaluation of teaching performance, the withholding may be reviewed by an arbitrator.

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, Marissa Patterson, LLC, attorneys
(David C. Patterson, on the brief)

For the Respondent, Selikoff & Cohen, PA, attorneys
(Michael C. Damm, on the brief)

DECISION

On November 21, 2006, the Camden County Vocational Technical Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Camden County Vocational Technical School Teachers Association. The grievance contests the withholding of a teacher's salary increments for the 2006-2007 school year. Because the withholding is not based predominately on an evaluation of teaching performance, we decline to restrain arbitration.

The parties have filed briefs and exhibits. The Board has submitted four affidavits. These facts appear.

The Association represents teachers and certain other employees. The parties' collective negotiations agreement is effective from July 1, 2005 to June 30, 2008. The grievance procedure ends in binding arbitration.

Mary Meloni is a cosmetology teacher on the Gloucester Township campus. Charles Buchheim was the principal at the time of the relevant events in this case, but has since retired. On April 12, 2006, he recommended withholding Meloni's increments for the 2006-2007 school year for unsatisfactory performance. His recommendation refers to ten formal evaluations issued between March 24, 1999 and February 6, 2006 as well as twenty-one "Memos of Concern" prepared between May 25, 1999 and April 4, 2006. His affidavit recites that his recommendation was based primarily on events occurring during the 2003-2004, 2004-2005 and 2005-2006 school years. He discusses incidents occurring within that time frame and two that took place in the Spring of 2003. Affidavits with supporting documents were also submitted from Rosa Brockington, the vice-principal, Victoria Hampton-Turner, a guidance counselor, and Teri Stallone, who administers afternoon and evening classes.

On May 11, 2006, the Board adopted a resolution withholding Meloni's increment. The next day, the superintendent sent Meloni a letter advising her of the withholding and attaching Buchheim's April 12 recommendation.

On June 1, 2006, the Association filed a grievance alleging that the withholding was without just cause. As a remedy, the grievance seeks restoration, back pay, expungement of all documents from Meloni's personnel file and such other relief as appropriate. The Board denied the grievance and the Association demanded arbitration. The parties agreed to hold arbitration proceedings in abeyance pending the filing of this petition.

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]

As amended effective May 25, 2006, N.J.A.C. 19:13-2.2(a)(3) provides in relevant part that:

[I]n cases involving the withholding of an increment of a teaching staff member, [the 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.

The principal's April 12, 2006 recommendation constitutes the pertinent "statement of reasons." That memorandum cites documents going back to March 24, 1999. However, the arbitration hearing was limited to events occurring during the 2003-2004,

2004-2005 and 2005-2006 school years and the principal's affidavit asserts that the primary focus of his recommendation was events during those school years. Only two documents submitted by the Board and discussed by the principal precede that time period, and one is not referenced in the April 12, 2006 recommendation and will not be considered. With the exception of a May 27, 2003 memorandum, we consider only the documents covering events during the three school years at issue, provided they are also referenced in the April 12 recommendation.

What follows is an assessment of each of the stated reasons, which were not prioritized by the Board. We deal with them in chronological order.

A May 27, 2003 memo recites that two of Meloni's students were in a hallway at 8:20 a.m. without proper identification. Buchheim escorted them to Meloni's class where he saw two students eating, another violation of school rules. Although eating in class by students might be an example of poor classroom management that involves teaching performance, the focus of this memorandum is a violation of school procedures and is unrelated to teaching performance.

A September 30, 2003 memorandum from the principal advises Meloni to park her vehicle in an area for staff and not next to the building next to a handicap spot. This memorandum was placed

in Meloni's personnel file and is unrelated to teaching performance.

An October 27, 2003 memorandum from the principal is addressed to both Meloni and the other cosmetology instructor. It chastises them for filing separate budget forms for their department rather than collaborating on a single submission. It was placed in the employees' personnel files and is not related to teaching performance.

A November 11, 2003 memorandum to Meloni from Stallone recites that Meloni wrote a note to evening instructors that told them to give out nail kits to their students, contradicting Stallone's instructions that were memorialized in a note left by the other cosmetology instructor. As a result, students were given the kits before they had paid for them. The memorandum recites that Meloni did not have the authority to allow pre-payment distribution of the kits. We find this incident not to be related to teaching performance.

A March 1, 2004 memorandum to Meloni asserts that she made threatening remarks to the other cosmetology instructor. This allegation does not involve Meloni's teaching performance.

A March 2, 2004 memorandum involves an incident a week earlier involving Meloni, a custodian and Stallone.^{1/} Meloni had

^{1/} The Association argues that this incident was not referenced in the April 12 memorandum and should not be considered.

(continued...)

a student take a broken chair to a custodian. After the student found the custodian and as she was handing over the chair, Stallone appeared and told the custodian it should be fixed by a maintenance employee. Stallone and the custodian then took the chair back to Meloni, who was summoned from her class into the hallway. With the custodian present, Stallone told Meloni to fill out a maintenance form and told the custodian to put down the chair and leave. The incident upset Meloni. When the same custodian came to Meloni's class the following day to perform his duties, Meloni allegedly threatened, yelled and cursed at him in the presence of students. This incident involves alleged inappropriate use of language in the classroom and therefore teaching performance. Upper Saddle River Bd. of Ed., P.E.R.C. No. 91-69, 17 NJPER 148 (¶22059 1991).

An October 8, 2004 memorandum to Meloni from the principal concerns the allegedly overdue submission to him of a copy of her locker assignments. It does not involve teaching performance.

A September 16, 2005 memorandum asserts that Meloni grabbed a student's hair and pulled it. The document also includes Meloni's statement that she walked by the student, who was singing out loud during class, and tapped her on the head to get

1/ (...continued)

However, a portion of a May 12, 2004 memorandum, summarizing several previous incidents, refers to this encounter with the custodian. We will consider it.

her attention. This dispute over what constitutes appropriate contact with students in class involves an evaluation of teaching performance. Essex Cty. Voc. Schools Bd. of Ed., P.E.R.C. No. 2000-23, 25 NJPER 427 (¶30188 1999) (whether teacher used appropriate disciplinary technique involves evaluation of teaching performance).

A September 22, 2005 memorandum describes a meeting with a parent about Meloni's interaction with her daughter, who takes medication to help control a condition related to behavior. The meeting reviewed a day when the child came home and had a severe meltdown allegedly because of the way she was treated in Meloni's classroom. This matter concerns Meloni's teaching performance.

A September 23, 2005 memorandum relates to one of Meloni's students whose parent is also a Board employee. It summarizes a meeting two days before concerning Meloni's calls to the parent, prompted by the student's classroom misbehavior. The memorandum describes a protocol that was developed at the meeting to handle the student's problems without phone calls to the parent/employee while she is at work. It does not relate to or criticize Meloni's teaching performance.

A September 27, 2005 document involves classroom management issues and the need for Meloni to obtain additional training in that area. We find that it relates to teaching performance.

A November 4, 2005 memorandum to Meloni from Brockington advises Meloni to send any student violating the dress code to the office. This issue does not concern teaching performance.

Meloni was formally evaluated on February 6, 2006. She was rated as acceptable in all items under Preparation and all but one item under Instruction. She was rated as "Needs Improvement" in "Maintained positive learning atmosphere." Under the Class Management section, Meloni received four "Needs Improvement" ratings. This evaluation relates to Meloni's teaching performance.

A March 10, 2006 memorandum from the principal to Meloni describes a recent parent conference and refers to other incidents occurring earlier in the school year. The parent alleged that Meloni intimidates the students, pulls hair, gets in their face, asks the students questions that should be asked in private, and is insensitive when dealing with students and parents. This memorandum covers a variety of classroom management issues and therefore relates to teaching performance.

A March 21, 2006 document discusses Meloni's alleged practice of remaining in her class area into the next period and/or entering other teachers' classrooms. While these

incidents, if true, may reflect inconsiderate conduct, they do not relate to Meloni's teaching performance.^{2/}

Of the 15 documented incidents or concerns that are referenced in the Board's statement of reasons and are within the time frame to be considered by the arbitrator, we find that six relate to teaching performance and nine do not. Because most of the reasons do not relate to the evaluation of Meloni's teaching performance, the withholding may be reviewed by an arbitrator. The arbitrator must consider all reasons advanced in support of the withholding. Bergenfield Bd. of Ed., P.E.R.C. No. 2006-069, 32 NJPER 83 (¶42 2006), app. pending App. Div. Dkt. No. A-004519-05T2.

ORDER

The request of the Camden County Technical School Board of Education for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

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

ISSUED: February 22, 2007

Trenton, New Jersey

^{2/} Memoranda dated April 4, 13 and 24, 2006 address the same incidents. The April 4 memorandum also cites complaints relating to the same alleged conduct that occurred before the time frame that formed the basis for the increment withholding.