

P.E.R.C. NO. 2010-83

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PATERSON STATE-OPERATED SCHOOL DISTRICT,

Petitioner,

-and-

Docket No. SN-2010-032

PATERSON EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Paterson State-Operated School District for a restraint of binding arbitration of a grievance filed by the Paterson Education Association. The grievance challenges the increment withholding of a teaching staff member. Because the reasons cited by the District for the withholding relate predominately to an evaluation of teaching performance, the Commission grants the request for a restraint.

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, Paterson Public Schools (Mark S. Tabenkin, of counsel)

For the Respondent, Sasha Wolf, NJEA UniServ Representative

DECISION

On October 26, 2008, the Paterson State-Operated School District petitioned for a scope of negotiations determination. The District seeks a restraint of binding arbitration of a grievance filed by the Paterson Education Association. The grievance challenges the increment withholding of a teaching staff member. Because the reasons cited by the District for the withholding relate predominately to an evaluation of teaching performance, we grant the request for a restraint.

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

The Association represents the District's teaching staff members. The parties' collective negotiations agreement is

effective from July 1, 2008 through June 30, 2010. The grievance procedure ends in binding arbitration.

Ann Marie Shaw is a fourth grade teacher at Public School No. 14. According to Shaw's principal, Dr. Michelle James, shortly after Shaw arrived at School No. 14 in November 2008, James began to receive complaints about poor classroom management. In March 2009, there was an incident that James felt the need to report to the New Jersey Division of Youth and Family Services. Also that month, James issued Shaw a performance evaluation that rated her as "Needs Improvement" in the areas of Skill in the Use of a Variety of Methods, I.E. Problem; Classroom Organization and Management; Social Control; Professional Relationships, Achievements and Traits; and Effectiveness in Relating to Students. James recommended that Shaw's increments be withheld based on her alleged unsatisfactory job performance and classroom management.

On May 22, 2009, the State District Superintendent advised Shaw that her employment and adjustment increments for the 2009-2010 school year were being withheld "due to your inadequate/unsatisfactory job performance and classroom management as reflected in written observation(s) and/or evaluation(s).

According to Shaw, her increment was withheld in retaliation for a grievance she filed against James claiming that she was improperly reprimanded.

On June 11, 2009, the Association filed a grievance contesting the withholding and on October 5, the Association submitted the grievance to binding 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.

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 Board's reasons for the withholding are based predominately on an evaluation of teaching performance.

Parsippany-Troy Hills Bd. of Ed., P.E.R.C. No. 2000-28, 25 NJPER 442 (¶30194 1999) (arbitration restrained where withholding centered on classroom management, organization, and preparation of lesson plans, instruction, and communication with students). The Association argues that the Board's stated reasons were not the real reason. However, in selecting a forum under N.J.S.A.

34:13A-27, we accept the board's reasons for a withholding and do not consider contentions that those reasons are pretextual or unsupported. Paramus Bd. of Ed., P.E.R.C. No. 2004-30, 29 NJPER 508 (¶161 2003); Saddle River Bd. of Ed., P.E.R.C. No. 96-61, 22 NJPER 105 (¶27054 1996). We assume the Board will be bound by its asserted reasons before the Commissioner of Education and that the Commissioner has the power to entertain allegations that the asserted reasons are pretextual. Mahwah Tp. Bd. of Ed., P.E.R.C. No. 2008-71, 34 NJPER 262 (¶93 2008); Fanella v. Washington Tp. Bd. of Ed., 1977 S.L.D. 383 (Comm'n of Ed. 4/11/77) (withholding set aside where recommendation to withhold for failure to complete task was made before deadline for task completion). Accordingly, we restrain binding arbitration.

ORDER

The request of the Paterson State-Operated School District for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Commissioners Eaton, Kregel, Voos and Watkins voted in favor of this decision. None opposed. Commissioners Colligan and Fuller were not present.

ISSUED: May 27, 2010

Trenton, New Jersey