

P.E.R.C. NO. 2010-59

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MONTGOMERY TOWNSHIP BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2010-024

MONTGOMERY TOWNSHIP EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the Montgomery Township Board of Education's request for a restraint of binding arbitration of a grievance filed by the Montgomery Township Education Association. The grievance challenges the increment withholding of a teaching staff member. The Board withheld the increment due to concerns regarding the staff member's alleged inappropriate and unprofessional conduct during a student's Individualized Educational Program meeting. Because the withholding is based predominately on an evaluation of teaching performance, the Commission restrains binding arbitration.

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, Fogarty & Hara, attorneys (Stephen R. Fogarty, on the brief)

DECISION

On October 2, 2009, the Montgomery Township Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Montgomery Township Education Association. The grievance challenges the increment withholding of a teaching staff member. We grant the request for a restraint because the withholding was based predominately on an evaluation of teaching performance.

The Board has filed a brief, documents and affidavit of its superintendent of schools. The Association has not responded to the petition. These facts appear.

The Board and Association are parties to a collective negotiations agreement effective from July 1, 2006 through June

30, 2009. The agreement provides for binding arbitration and includes a just cause provision.

On May 13, 2009, the Superintendent informed a teacher by letter that he was recommending that the teacher's employment and adjustment increments be withheld for the 2009-2010 school year. The recommendation was due to concerns regarding alleged inappropriate and unprofessional conduct during the course of the 2008-2009 school year. The recommendation followed an investigation of various allegations of verbally aggressive and unprofessional conduct at a student's Individualized Educational Program ("IEP") meeting. Specifically, the teacher was found by the Superintendent to have made derogatory and potentially discriminatory statements based on the student's recognized disability and resulting classification under the Individuals with Disabilities Education Act.

On June 9, 2009, the Board voted to withhold the teacher's increments substantially for the reasons set forth in the Superintendent's letter.

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]

We conclude that this withholding was based on an evaluation of teaching performance. Teaching performance includes allegedly inappropriate comments to a student during an IEP conference. Greater Egg Harbor Reg. H.S. Bd. of Ed., P.E.R.C. No. 95-58, 21 NJPER 116 (¶26071 1995), recon. den., P.E.R.C. No. 95-84, 21 NJPER 175 (¶26110 1995) (teacher allegedly made repeated negative remarks about capabilities of blonde, female students); Red Bank Reg. Bd. of Ed., P.E.R.C. No. 94-106, 20 NJPER 229 (¶25114 1994) (teacher allegedly told off-color jokes and made demeaning and insensitive comments to and about students). We therefore restrain binding arbitration. Any appeal of the withholding must be filed with the Commissioner of Education.

ORDER

The request of the Montgomery Township Board of Education for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Commissioners Colligan, Eaton, Fuller, Krengel, Voos and Watkins voted in favor of this decision. None opposed.

ISSUED: February 25, 2010

Trenton, New Jersey