

P.E.R.C. NO. 2012-22

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

READINGTON TOWNSHIP BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2011-040

READINGTON TOWNSHIP EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Readington Township Board of Education for a restraint of binding arbitration of a grievance filed by the Readington Township Education Association. The grievance contests the increment withholding of a teaching staff member. Because the reasons cited by the Board 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, Fogarty & Hara, attorneys (Stephen R. Fogarty, of counsel)

For the Respondent, Oxfeld Cohen, P.C., attorneys (Randi Doner April, of counsel)

DECISION

On November 8, 2010, the Readington 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 Readington Township Education Association. The grievance asserts that the Board withheld a teacher's salary and adjustment increments without just cause. We grant the request for a restraint.

The parties have filed briefs. The Board has filed a certification of the superintendent with attached exhibits. These facts appear.

The Association represents teachers and certain other employees. The Board and Association are parties to a collective

negotiations agreement effective from July 1, 2008 through June 30, 2011. The grievance procedure ends in binding arbitration.

On June 17, 2010, the superintendent wrote to an art teacher, who has been teaching for over 25 years, advising that he intended to recommend to the Board at its June 2010 meeting that her salary and adjustment increment for the 2010-2011 school year be withheld. The letter advised that the recommendation was for the teacher displaying a pattern of behavior demonstrating questionable judgment, negative interactions with students and a lack of professionalism. Specifically, the superintendent wrote:

[I]t has been reported that in discussing a student with another teacher, you portrayed the student in a negative manner in front of the student, embarrassing the student and making her reluctant to return to art class. You did this despite several previous discussions, including an official reprimand, with respect to the need for you to develop positive interactions with students. In addition, you failed to provide a substitute teacher with sufficient information to provide suitable and meaningful instruction to the students in your absence.

The letter continued with a list of the evidence the superintendent planned to present to the Board in support of his recommendation:

1. A letter of reprimand, dated November 4, 2008, regarding your displaying a video of ring tailed lemurs to a class for the purpose of drawing an analogy between the animals' behavior and the behavior of a student in your class;

2. A letter of reprimand, dated October 21, 2009, in which you embarrassed a student by portraying her request to draw "dead baby heads" in a negative manner, in front of the student;
3. A letter of reprimand, dated January 29, 2010, regarding your failure to provide the substitute teacher with a note, schedule, duty roster, coherent plans and other related materials which would have enabled the substitute to provide instruction to the students in your absence; and
4. A Summative Evaluation Report, dated May 3, 2010.

Subsequently, the Board adopted a Resolution approving the withholding and the Association filed a grievance asserting that the decision to withhold the increment constituted discipline without just cause. The Board denied the grievance and this petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978), states:

The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations. Whether that subject is within the arbitration clause of the agreement, whether the facts are as alleged by the grievant, whether the contract provides a defense for the employer's alleged action, or even whether there is a valid arbitration clause in the agreement or any other question which might be raised is not to be determined by the Commission in a scope proceeding. Those are questions appropriate for determination by an arbitrator and/or the courts.

[Id. at 154]

Thus, we do not consider the merits of the grievance or any contractual defenses the employer may have.

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]

In determining the predominate basis for a withholding, we ordinarily look to the official statement of reasons given in the letter notifying a teaching staff member of a withholding. Here the letter states that the increment withholding was based on the teacher's alleged pattern of behavior demonstrating questionable judgment, negative interactions with students and a lack of professionalism. We are satisfied that the merits of this dispute must be reviewed by the Commissioner of Education.

Allegations stemming from in-class interactions with students predominately relate to teaching performance. 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). Allegations regarding insufficient instructional planning also concern 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). We cannot accept the Association's argument that the allegations against the grievant predominately concern violations of work rules where a determination must be made regarding the appropriateness of a teacher-student interaction. Any appeal of the withholding must be filed with the Commissioner of Education.

ORDER

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

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Eskilson, Jones, Kregel and Wall voted in favor of this decision. None opposed. Commissioner Voos was not present.

ISSUED: October 27, 2011

Trenton, New Jersey