

P.E.R.C. NO. 2013-40

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW PROVIDENCE BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2012-066

NEW PROVIDENCE EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the New Providence Board of Education for a restraint of binding arbitration of a grievance filed by the New Providence Education Association. The grievance contests the increment withholding of a teacher. The Commission holds that the reasons for the withholding predominately relate to teaching performance which must be reviewed by the Commissioner of Education.

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, Lindabury, McCormick, Estabrook & Cooper, P.C., attorneys (Anthony P. Sciarrillo, of counsel)

For the Respondent, Oxfeld Cohen, P.C., attorneys (Timothy C. King, of counsel)

DECISION

On May 2, 2012, the New Providence Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the New Providence Education Association. The grievance asserts that the Board withheld the salary increment of a teacher without just cause. We restrain arbitration as we find that the reasons given for the withholding relate predominately to teaching performance.

The parties have filed briefs and exhibits. The Association has filed the certification of the teacher whose increment was withheld. These facts appear.

The Association represents teaching staff employed by the Board. The Board and the Association are parties to a collective negotiations with sets forth a grievance procedure that ends in binding arbitration.

By letter dated February 1, 2012, the teacher was advised that the Board had passed a resolution to withhold the teacher's salary increment for the 2012-2013 school year. The letter advised that the increment was withheld due to the following reasons:

1. Your comment during class to a student about having his brother the prior year and neither of them being "scholars";
2. Your inquiry about the same student to a group of students and your comments about his absence;
3. Grabbing the same student's straps to his backpack and detaining him from leaving the area at the end of class; and
4. Your comments to the same student when he approached you with a hall pass to go to the bathroom. Those comments included remarks about not getting lost and counting the steps to the bathroom.

On February 1, 2012, the Association filed a grievance alleging that the increment was withheld without just cause. After the Board denied the grievance at all stages, the Association demanded arbitration. This petition ensued.

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, 146 (¶22057 1991), 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.

The Board argues that the teacher's increment was withheld for predominately performance based reasons. The Association responds by disputing the truthfulness of the allegations, and asserts that the alleged events stem from one parent's complaint only. The Association also responds that the alleged incidents were disciplinary in nature and occurred outside of the classroom. Finally, the Association asserts that the Board did not act in a timely manner to withhold the increment.

While the Association disputes the truthfulness of the allegations, 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. The statement of reasons provided by the Board set forth allegations that this teacher made improper comments about a student on three occasions and had an inappropriate physical interaction with that same student. Of the four alleged incidents, it appears that at least two happened in the classroom setting. The words used by a teacher during verbal exchanges with students, as well as the level of physical interaction used with students, involves the use of judgment that goes to the

center of a teacher's teaching performance. Ridgewood Bd. of Ed., P.E.R.C. No. 2011-27, 36 NJPER 359 (¶140 2010); Newton Bd. of Ed., P.E.R.C. No. 96-3, 21 NJPER 271 (¶26175 1995); and Dumont Bd. of Ed., P.E.R.C. No. 2007-17, 32 NJPER 356 (¶134 2007). This withholding is predominately based on the Board's determination-whether accurate or not- that this teacher had several instances of inappropriate and unprofessional behavior. While the Association is correct that the allegations center around one student only, the allegations assert a pattern of inappropriate comments and behavior with regard to that student. Finally, the Association's allegation that the Board's withholding of the increment was untimely is outside of our jurisdiction to determine the appropriate forum for resolving this withholding dispute.

ORDER

The request of the New Providence Board of Education for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson, Jones, Voos and Wall voted in favor of this decision. None opposed.

ISSUED: November 19, 2012

Trenton, New Jersey