

P.E.R.C. NO. 2014-15

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HAINESPORT TOWNSHIP BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2013-021

HAINESPORT EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Hainesport Township Board of Education for a restraint of binding arbitration of a grievance filed by the Hainesport Education Association. The grievance contests the withholding of a teacher's salary increment. Finding that an inability to keep a classroom clean and organized primarily relates to teaching performance, the Commission holds that the withholding was based predominately on an evaluation of teaching performance and therefore 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, Capehart Scatchard, P.A., attorneys
(Robert A. Muccilli, of counsel)

For the Respondent, Selikoff & Cohen, P.A., attorneys
(Steven R. Cohen, of counsel)

DECISION

On November 19, 2012, the Hainesport Township Board of Education filed a scope of negotiations petition. The Board seeks a restraint of binding arbitration of grievances filed by the Hainesport Education Association. The grievance contests the withholding of a teacher's salary increment. Because the withholding is based predominately on an evaluation of teaching performance, we restrain arbitration.

The Board filed briefs, exhibits, and the certification of Joseph Miller, the interim Superintendent. The Association filed a brief. These facts appear.

The Association represents a broad-based unit including certificated teaching staff. The Board and Association are

parties to a CNA effective from July 1, 2009 through June 30, 2012. The grievance procedure ends in binding arbitration.

The grievant is a tenured elementary school teacher. She taught kindergarten during the 2011-12 school year, and currently teaches first grade. The grievant's June 2011 Annual Performance Report marked the following item (out of sixteen categories) as an "Area of Concern": "Takes all necessary and reasonable precautions to protect students, equipment, materials and facilities." The grievant's June 14, 2011 Professional Appraisal contained the following recommendation:

It has been noted that the level of clutter in your classroom is presenting a safety issue regarding student egress as well as distraction in the learning environment. Please use this action plan to improve the level of material organization for student safety in your classroom.

An Action Plan was provided with goals and timelines for improvement of classroom clutter and safety. The Action Plan stated:

If the conditions and timeline of this action plan are not met and evidenced in the classroom environment, observations, and anecdotal notes; a recommendation will be made to the Board of Education to withhold your increment for the 2012-2013 school year.

The grievant's November 16, 2011 Teacher Observation Report included the following recommendation from her supervisor:

The physical space in your classroom is not conducive for learning. Materials are in various places throughout the classroom.

This makes it so that all materials are not accessible to students. You might want to read Classroom Spaces That Work from the Northeast Foundation for Children.

The grievant's January 30, 2012 Teacher Observation Report included the following recommendation from her supervisor:

I am pleased to see that the shelf we ordered in the fall is in use under the white board. Although there is less clutter in the front of the room, there are several areas in need of your immediate attention to help the classroom become more organized:

- There is an area of clutter in the back closet in need of removal
- The tops of shelving units should be cleared piled of books and papers
- The shelf behind the teacher's computer area needs to be arranged neatly
- The pile under the teacher's desk needs removal
- Several bins are stored on the floor in front of the word wall shelf. They need to be organized as well.

The grievant's February 28, 2012 Teacher Observation Report included the following recommendation from her supervisor:

Continue to organize your classroom materials to create an environment conducive to learning for students. Nice work!

The grievant's May 2012 Annual Performance Report for the 2011-2012 school year again marked the following as an "Area of Concern": "Takes all necessary and reasonable precautions to protect students, equipment, materials and facilities." The evaluator's comments stated, in pertinent part:

Ms. [Grievant] has made strides in reducing some of the clutter in her classroom. There are still several boxes in the children's

coat closet, and the bookshelf areas are disorganized. Clutter remains in the corners of the room. Throughout the school year, recommendations were made to reduce clutter to afford all students accessibility to materials in a way that is most conducive to learning. As unused materials are not neatly stored and organized on shelving units, your Action Plan has not been fulfilled. I have recommended to the Board of Education that your increment be withheld for the 2012-2013 school year. (emphasis added)

At its June 28, 2012 meeting, the Board approved a resolution withholding the Grievant's increment for the 2012-13 school year. The grievant was notified of the Board's action by letter dated June 29, 2012.

On June 29, 2012, the Association filed a grievance challenging the increment withholding. The Board denied the grievance at each step of the process, and reaffirmed the decision at its regular September monthly meeting. By letter dated September 25, 2012, the Board's President, Ronald Napoli, notified the Grievant of the Board's refusal to rescind its increment withholding decision. The letter supplied the following explanation of reasons for the withholding:

The decision is substantiated by the fact that, over the course of the past 29 years of your employment here, there is documentation from at least seven different administrators who have written critical comments in their evaluations of your job performance referencing your organizational skills and/or the unacceptable condition of your classroom and its contents, creating hazards and distractions for your students. This position is further supported by the fact

that you failed to achieve the goals and objectives which were established as part of a corrective action plan to address your deficit this past school year.

On October 12, the Association demanded binding 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 its decision to withhold salary increments relates predominately to the evaluation of the Grievant's teaching performance, and thus arbitration should be restrained. The Board states that its May 2012 annual review of the Grievant indicated that lack of adequate progress in correcting her documented deficiencies in classroom organization was the reason for the recommended increment withholding.

The Association argues that the increment withholding was predominately disciplinary and not evaluative. It asserts that even though several directives to improve classroom safety appear in the Grievant's teaching evaluations, the ability to teach students was not at the center of the matter. The Association contends that the Board's comments about the state of her classroom refer primarily to student safety and visual appeal,

and not to her actual teaching performance. Accordingly, it argues that arbitration should not be restrained.

There is a long history of criticism dating back to 1974 of grievant's clutter and lack of organization in her classroom space. While the Board's most recent evaluation notes that the clutter was providing a safety hazard for the students, the overall theme of the criticism is that the clutter and lack of organization provide visual distractions in the classroom environment which are detrimental to students' learning. Therefore, we find that an inability to keep a classroom clean and organized primarily relates to teaching performance, and restrain arbitration. Vernon Township Bd. of Ed., P.E.R.C. No. 98-44, 23 NJPER 569 (¶28,284 1997) and Paramus Bd. of Ed., P.E.R.C. No. 2004-30, 29 NJPER 508 (¶161 2003).

ORDER

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

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson and Wall voted in favor of this decision. Commissioner Jones voted against this decision. Commissioner Voos was not present.

ISSUED: September 26, 2013

Trenton, New Jersey