P.E.R.C. NO. 2014-25

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BURLINGTON COUNTY INSTITUTE
OF TECHNOLOGY,

Petitioner,

-and-

Docket No. SN-2013-022

BURLINGTON COUNTY INSTITUTE
OF TECHNOLOGY EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Burlington County Institute of Technology for a restraint of binding arbitration of a grievance filed by the Burlington County Institute of Technology Education Association. The grievance contests the withholding of a shop teacher's salary increment. Finding that inadequate monitoring of students in shop class predominately relates to teaching performance, the Commission restrains arbitration of the increment withholding.

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.

P.E.R.C. NO. 2014-25

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BURLINGTON COUNTY INSTITUTE
OF TECHNOLOGY,

Petitioner,

-and-

Docket No. SN-2013-022

BURLINGTON COUNTY INSTITUTE
OF TECHNOLOGY EDUCATION ASSOCIATION,

Respondent.

Appearances:

For the Petitioner, Capehart Scatchard, attorneys (Robert A. Muccilli, of counsel)

For the Respondent, Selikoff & Cohen, P.A., attorneys (Steven R. Cohen, of counsel and on the brief; Kathleen L. Kirvan, on the brief)

DECISION

On November 20, 2012, the Burlington County Institute of Technology (County) filed a scope of negotiations petition. The County seeks a restraint of binding arbitration of grievances filed by the Burlington County Institute of Technology Education Association (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 County filed briefs, exhibits, and the certification of Frank Ranelli, Principal of the Medford campus. The Association

filed a brief, exhibits, the certifications of the grievant and Cynthia Adams, Association President. These facts appear.

The Association represents a broad-based unit including certificated teaching staff. The County and Association are parties to a collective negotiations agreement (CNA) effective from July 1, 2008 through June 30, 2011. The grievance procedure ends in binding arbitration.

The grievant is a tenured auto mechanics teacher. On March 8, 2012, the grievant was summoned to a meeting attended by Principal Ranelli, Superintendent Donald Lucas, and other County representatives to discuss events that allegedly occurred on February 14, 2012. The grievant was questioned about two students who allegedly left his shop class and school property and were subsequently involved in a fatal car accident. By letter of April 16, 2012, Principal Ranelli informed the grievant that he would be recommending to the Superintendent that the grievant's salary increment for the 2012-2013 school year be withheld. The letter provided the following reasons for increment withholding:

> **Memo**
> **To: [Grievant]**
> **From:** Frank Ranelli, Ed.D.
> **Date:** 4/16/2012
> **Re:** Career Major Instruction
> CC: Dr. Lucas, Personnel File
>
> As a result of our meeting it has come to my attention that there have been some incidents where it appears that there was inadequate

supervision and regulation of your shop. Specifically there has been a series of incidents with student [M.N.] going to shop at blocks he was not assigned to be there, leaving school during times he was assigned to shop and being late to shop. There have also been instances of him having an unauthorized car parked behind your shop and on school grounds apparently with your knowledge and also of him leaving school grounds in this car.

The following are the events that have occurred where you are concerned. On November 7, 2011, [M.N.]'s mother contacted the school to inform us that her son had left school grounds without permission. Her call was directed to Mrs. Teifer and she obtained the necessary information from Mrs. Nixon. According to school records, [M.N.] had been marked present in school that day but despite the fact that he was not present in your shop for block three or four, you did not write [M.N.] up for cutting class or contact the office to make anyone aware that he was not present in your class. Mrs. Teifer saw [M.N.] in her office the next day and assigned him an In-School Suspension on the next available date. She also called you to inform you of what had occurred so you were aware and could watch [M.N.]'s movements more closely.

On February 2, 2012, [M.N.] had been in gym class during second block. He asked his teacher for a pass to the nurse that day but then never returned to gym class. The gym teacher followed up with [M.N.] to investigate what had occurred and learned that [M.N.] had been down in your shop working on his car instead of returning to gym. The gym teacher wrote [M.N.] up for that incident and Mrs. Teifer assigned [M.N.] an In-School Suspension for the next day. You allowed [M.N.] to remain in your class and you did not refer [M.N.] for discipline for this incident.

On February 6, 2012 during second block, [M.N.]'s gym teacher noticed that [M.N.] was not in the gym at the end of the class. He looked for him in the gym area but could not locate [M.N.]. During third block, the gym teacher went down to

your shop to investigate. [M.N.] told the teacher that he had gone to the bathroom but he actually had gone down to shop instead. The gym teacher wrote [M.N.] up for that incident as well. This was the day that you said you hadn't realized it until another student stated that [M.N.] was using a particular tool outside to work on his car. You did not refer [M.N.] to the office for this incident either.

Also on February 6, 2012 [M.N.]'s mother had contacted us to inform the school that [M.N.] had left school grounds that day. Mrs. Nixon informed Mrs. Teifer that [M.N.] had left the school grounds that day and that she had also learned that there were other days that he had left the grounds undetected. She also told Mrs. Teifer that [M.N.] was driving his girlfriend's car. Mrs. Teifer had been unaware that there was an ongoing issue with [M.N.] leaving school grounds as there had been no reports of [M.N.] being missing from shop class. The next day when [M.N.] was in school, Mrs. Teifer held a meeting in her office with [M.N.] and his counselors to discuss the recent events where [M.N.] was out of his assigned area. [M.N.] admitted that he had left school grounds on more than one occasion and that he had gone down to shop the previous day to work on his girlfriend's car during second block. [M.N.] was assigned an additional In-School Suspension for February 13, 2012.

Mrs. Teifer then contacted you on the afternoon of February 7, 2012 to share this information with you. She informed you that the car was [M.N.]'s girlfriend's car and it was not to be on school grounds. She also told you that if you ever saw that [M.N.] was not present, you were to report that to her immediately. Mrs. Teifer directed you that it would be imperative for you to institute daily periodic "[M.N.] checks" at different time intervals, whether it was a 2:00 check, a 2:15 check or a 2:30 check, or other times that would be appropriate depending on class activities. She also indicated to you that there would need to be a tightening-up of procedure and students' comings and goings from class.

On February 14, 2012, [M.N.] and another student left your shop area prior to dismissal and were involved in an unfortunate car accident. This tragic incident prompted further investigation which yielded additional information regarding the days that [M.N.] had left school grounds during times he was assigned to your shop area. The school security camera in the outside area of your shop yielded the following information:

- On January 23, 2011, [M.N.] was dropped off by his girlfriend in that same unauthorized car behind your shop at 12:14 p.m. This means that [M.N.] was 20 minutes late for block 3B when [M.N.] is assigned to your class. There was no notation that [M.N.] was late to class and no referral submitted to the office for this incident.

- On January 26, 2011, the same security camera indicated that [M.N.] left your shop area in that same unauthorized car at 11:57 a.m. This was a half-day, so that means that [M.N.] left your class 35 minutes prior to school dismissal. There was no referral submitted to the office for this incident.

- On February 14, 2012, another security camera indicated that during their assigned lunch period, [M.N.] and the other student left your classroom during 3A and then left the school grounds. The same security camera behind your shop indicates that the two students returned in the same white car at 11:42 and entered your shop area carrying a bag that appeared to contain food. This would mean that the students were ten minutes late to block 3B when they are assigned to your class. There was no indication of the students being marked late and no discipline referral to the office for this incident. The unauthorized car remained parked behind your shop area for approximately 2 ½ hours.

- On February 14, 2012, the same security camera indicated that [M.N.] and the other student left your shop area through the door

> leading to the outside, got into the unauthorized car and left school grounds at 2:12. No discipline referrals were received for these two students until late afternoon, after dismissal, on February 15, 2012. Mrs. Teifer found the two referrals in her mailbox at approximately 5:00 p.m. but her secretary had obtained her mail multiple times during the school day, with the last check occurring at approximately 2:30 p.m.

Moving forward, it is very important that these issues be rectified. It is my expectation that you take attendance at the beginning of every class and verify that all students are accounted for throughout the time they are assigned to your class or under your supervision during lunch or activity period. It is also my expectation that if students are late to your class you collect a late pass from these students to verify their whereabouts. If they cannot produce a late pass please submit a discipline referral form to their appropriate administrator. If a student is not present at any time please follow the absence up with a discipline referral that same day if you cannot verify in writing the location of the student. In the particular case of student [M.N.] it is also required for you to immediately call an administrator any time he is not in your class when assigned. If a student is in your class during your lunch it is expected that they stay under your supervision the entire period. Also, please do not allow any student assigned to another academic or shop class to be in your classroom during the time they assigned elsewhere. Moreover, please do not allow any unauthorized vehicle to be parked outside of your career major area at any time. Only vehicles that are being repaired should be in that location.

Due to the above incidents explained I will be recommending to the Superintendent that your salary increment for the 2012-2013 be withheld.

The letter was signed by Principal Ranelli and by the grievant, with an asterisk noting that the grievant saw the document but does not necessarily agree with it.

By letter of April 19, 2012, Superintendent Lucas notified the grievant that, based on the concerns identified by Principal Ranelli, he intended to recommend the withholding of his increment for the 2012-13 school year. At its April 24, 2012 Board meeting, the County approved a resolution withholding the grievant's increment for the 2012-13 school year. By letter of April 25, the grievant was notified of the County's action.

The Association filed a grievance challenging the increment withholding. The County denied the grievance at each step, and at step four reaffirmed the decision at its September 27, 2012 Board meeting. By letter of October 1, the grievant was notified that the Board affirmed the Superintendent's decision to withhold his 2012-13 increment. On October 12, the Association informed the County that it was submitting the grievance to binding arbitration; on November 15 the Association filed a demand for arbitration with the Commission. 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 County 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. It asserts that the County's supporting documentation shows that it withheld the grievant's increment based upon deficiencies pertaining to inadequate student supervision and regulation of his shop.

The Association argues that the reasons for the grievant's increment withholding were predominately disciplinary rather than predominately related to evaluation of teaching performance. It asserts that Principal Ranelli's April 16, 2012 letter outlining the reasons for the withholding does not mention the grievant's ability to teach, but only criticize him for not knowing the whereabouts of a particular student and not following procedures for marking students late or absent from class. The Association contends that these critiques are not evaluative of teaching, and that the Commission has previously found that a teacher's increment withholding for poor supervision of students was not based predominately on an evaluation of teaching performance.

The Board withheld the increment based on a history of concerns about the grievant's alleged poor supervision and failure to properly monitor students in his shop. There is a long history of the Board's concerns regarding grievant's alleged

failure to monitor one student in particular, M.N., who is asserted to be in the shop when he should be in other classes, not to be in the shop when he is scheduled to be there. We find that inadequate monitoring of students in the shop predominately relates to teaching performance and therefore restrain arbitration. Bergen County Vocational Schools, P.E.R.C. No. 91-70, 17 NJPER 150 (¶22060 1991) and Somerset County Vocational and Technical Schools, P.E.R.C. No. 95-55, 21 NJPER 112 (¶26068 1995). Contrast with Franklin Township Board of Education, P.E.R.C. No. 2001-64, 27 NJPER 389 (¶32144 2001)(finding that increment withholding was predominately disciplinary where the grievant failed to follow administrative directives but no assertion was made regarding her ability to manage students).

ORDER

The request of the Burlington County Institute of Technology for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

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

ISSUED: October 31, 2013

Trenton, New Jersey