

P.E.R.C. NO. 2015-39

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ELIZABETH BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2014-082

ELIZABETH EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Elizabeth Board of Education for a restraint of binding arbitration of a grievance filed by the Elizabeth Education Association. The grievance contests the withholding of a teacher's salary increment. Finding that the reasons for the withholding predominately relate to evaluation of teaching performance, the Commission restrains 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, Schwartz Simon Edelstein & Celso,
LLC, attorneys (Nicholas Celso, III, of counsel)

DECISION

On March 26, 2014, the Elizabeth Board of Education filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by the Elizabeth Education Association. The grievance contests the withholding of a teacher's salary increment. Because the increment withholding is based predominately on an evaluation of teaching performance, we restrain binding arbitration.

The Board filed a brief, exhibits, and the certifications of Olga Hugelmeyer, Superintendent of Schools and Alina M. Stewart, Vice-Principal of Mabel G. Holmes Annex 5B. The Association did not respond to the scope of negotiations petition. These facts appear.

The Association represents a broad-based negotiations unit of teachers and other certified personnel, as well as non-certified personnel. The Board and Association are parties to a collective negotiations agreement (CNA) effective from July 1, 2009 through June 30, 2012, as well as a memorandum of agreement (MOA) covering the period of July 1, 2012 through June 30, 2015. The grievance procedure ends in binding arbitration.

Grievant is a Pre-Kindergarten teacher assigned to the Mabel G. Homes Annex 5 B. Her date of hire is September 1, 1988. During the course of the 2012-2013 and 2013-2014 school years, Stewart conducted observations of the grievant's class. Grievant received several observation reports rating her teaching performance as "unsatisfactory" and a corrective action plan to improve her teaching performance was developed in December 2012. Via memorandum dated January 16, 2013, grievant was informed by Stewart that two out of the eight areas set forth in the action plan had been implemented - and only one with consistency. In addition, grievant received numerous corrective memos and warnings regarding her classroom environment and student behavior - including an incident where the class was left unattended and a student was found walking alone in the hallway.

On March 4, 2013, Stewart recommended to Aaron Goldblatt, Director of Personnel that the grievant's increment be withheld for the 2013-2014 school year. In her recommendation, Stewart

advised that grievant has "been given the support to improve over several years. I [Stewart] am concerned for the safety of the children." On May 9, the Board voted to withhold grievant's increment. On September 24, the Association filed a grievance asserting the increment was withheld without just cause. On October 29, 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 (¶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]

The Board has provided us with the documentation that led to Stewart's decision to withhold grievant's increment. The Association has not responded to the petition. Nevertheless, we have independently reviewed the documentation provided by the Board. Nothing in the record indicates that the increment was withheld for disciplinary reasons. Thus, the Association must challenge the increment withholding before the Commissioner of Education.

ORDER

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

BY ORDER OF THE COMMISSION

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

ISSUED: December 18, 2014

Trenton, New Jersey