

P.E.R.C. NO. 2015-28

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

FARMINGDALE BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2014-062

FARMINGDALE TEACHERS ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Farmingdale Board of Education for a restraint of binding arbitration of a grievance filed by the Farmingdale Teachers Association. The grievance contests the withholding of a teacher's salary increment. The Commission finds that the alleged teaching-related and classroom management deficiencies underlying the increment withholding are predominately related to the grievant's teaching performance, despite being initiated through a parent's complaint and occurring outside of the formal evaluation process.

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, Campbell & Pruchnik, LLC, attorneys  
(Francis Campbell, of counsel)

For the Respondent, Detzky, Hunter & DeFillippo,  
attorneys (Stephen B. Hunter, of counsel)

DECISION

On February 10, 2014, the Farmingdale Board of Education filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by the Farmingdale Teachers 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 arbitration.

The Board filed briefs and exhibits. The Association filed a brief, exhibits, and the certification of the grievant. These facts appear.

The Association represents a negotiations unit of all certified personnel employed by the Board, excluding

administrative staff members, secretarial/clerical staff, custodians, and substitute teachers. The Farmingdale School District is a K-8 one building school district with approximately twenty five professional staff, and a single administrator serving as both Superintendent of Schools and Principal. The Board and Association are parties to a collective negotiations agreement (CNA) effective from July 1, 2012 through June 30, 2015. The grievance procedure ends in binding arbitration.

The grievant is a tenured teacher who has been employed with the Board since 1990. She has taught multiple grade levels and subjects, mostly math and science in 2nd through 8th grades. During the 2012-13 school year, she was a special education teacher for 2nd through 5th grade science and 8th grade math.

On June 12, 2013, a mother of two children in the grievant's second and fourth grade classes (hereinafter "the Parent"), made a verbal complaint about the grievant during a Board meeting. By letter of June 18, 2013, the Parent detailed her allegations regarding the grievant's alleged inappropriate actions during the 2012-13 school year. The letter alleged that the grievant: yells very loudly at students; eats in the classroom in front of students; told her daughter that it was distracting to say "god bless you" after another student sneezed; told the class that no one got a good grade on a test prior to handing out the graded tests; told the class that she yells at her son at home more than

she yells at the class; and approached the Parent after school to inform her that she had to yell in class that day because she feared a bullying incident was occurring.

On June 20, 2013, two days after the appearance of the parent's letter, Superintendent and Principal Mrs. Cheri-Ellen Crowl (hereinafter "CSA" for Chief School Administrator) concluded the grievant's 2012-13 school year Teacher Evaluation by recommending that the grievant be reappointed and receive a salary increment. Of the ten major areas of evaluation, the grievant's 2012-13 Evaluation rated her "Exemplary"<sup>1/</sup> in these two areas:

- Contribution to Total School Effort
- Monitoring of Pupil Progress

The grievant's 2012-13 Evaluation rated her "Commendable"<sup>2/</sup> in these remaining eight areas:

- Planning and Preparation
- Subject Competency
- Instruction
- Communication Techniques/Qualities
- Classroom/Student Management
- Interpersonal Relationships
- Professional Growth
- Personal Qualities/Characteristics

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1/ The Evaluation Key lists five rating levels; Exemplary, Commendable, Satisfactory, Needs Improvement and Unacceptable. Exemplary is defined as: "the performance is unique and extraordinary and shall serve as a model for colleagues."

2/ The Evaluation Key defines "Commendable" as: "the performance exceeds expectations and is highly effective."

Thereafter the Superintendent/Principal undertook an investigation into the allegations of the parent, although the record before us is unclear as to the extent of that effort. In any event, on August 28, 2013, the Board voted to withhold the grievant's increment, and she was advised of that action in an August 31, 2013 letter written by CSA Crowl. The letter states, in pertinent part:

This is an official written reprimand for your having conducted yourself in a fashion that is unbecoming and unprofessional for a member of the Farmingdale faculty, in your classroom interactions with children which most often occurred in the presence of other students and often in front of colleagues.

This reprimand is generated in response to a report from a parent regarding what she considered to be your inappropriate behavior concerning her two children, aged seven and ten years. A verbal complaint was given by [the Parent] to the Board of Education during an open public session of a Board meeting that took place on June 12, 2013. On June 18 [the Parent] delivered a letter of complaint to the Board, which the Board reviewed in closed session on June 27, 2013.

The purpose of this letter is to reprimand you for ineffectually acting as a professional in your teaching position and for your failure to exercise appropriate professional judgment expected of a Farmingdale Public School teacher. As you know, I investigated [the Parent]'s complaint alleging inappropriate behavior by you during the school day and I gave you the opportunity to tell your side of the story. This letter of reprimand is based on the results of that investigation.

In [the Parent]'s letter she made complaints about you, including the following:

1. That you eat in class in front of students;
2. That you issue unreasonable reprimands to students for minor infractions
3. That you fail to review tests with students, and
4. That you yell at students

1. In my interviews you told one staff member that the reason you eat during class time is that "you are hyperglycemic and need to eat." Another staff member noted you asked that teacher to secure you bottles of milk and snacks from our cafeteria account so you could take medicine. Asking a staff member to act on your behalf during school time takes that person away from his or her duties; in addition the food products in the cafeteria are not free to staff and must be purchased. The students themselves felt it was "not fair" that you ate in front of them without sharing. One student noted that "Mrs. Wicks reprimanded the class for looking at her while she was eating and told them that they had "better get to work."

Instead of eating in front of students, another course of action as with any health-related condition would be to contact our school nurse, secure a note from your physician, and set up a method to provide a more professional protocol for the management of your health needs...

\* \* \*

2. When asked about your classroom rules in the interview you stated that you use the rules that the homeroom teacher sets up in each of the classrooms you visit. When prompted about other types of rules you use, such as following along or book covering, you stated that you did have the students follow along in their books with their fingers. Not following these rules involved giving your students infractions....

Every classroom teacher should use a classroom management style that is best suited to the need of their class of students, considering the complexion of the class, and reflecting the behavior standards of the Farmingdale Public School as a whole. A well known behaviorist, Lee Cantor believes that you, as the teacher, have the right to determine what is best for your students, and to expect compliance... There is an appropriate time and place for imposing negative consequences for misbehavior.

Requiring a student to do additional work or reports as part of a punishment for a skill deficit, for incomplete work, or for misbehavior when the child is able to control his behavior, is unacceptable. If a child is unprepared for the next days work, he or she should not be punished by not being unable to participate in the scheduled lesson or lab. Your classroom rule of following along using one's finger during oral reading and with noncompliance resulting in negative consequences such as re-reading the chapter or completing a "full report" for homework, according to one student, is also unacceptable....

\* \* \*

3. In response to the review of tests and quizzes question, you talked about your schedule and how within a 45-minute period, 'you're in/you're out' and you did not review test questions with students. In each interview, students and teachers stated that tests and quizzes were not reviewed with students, either as a whole or individually. When making general comments about a particular test to the whole group, most students interviewed felt apprehensive while waiting for your remarks, even though many of those students were average and above-average students.

\* \* \*

During my interviews, one teacher commented that on one quiz you administered to the students, the entire class did poorly. Based on that result you told the teacher you were going to "throw the test out." When I mentioned this you said that you referred to the teacher's comment as "a multiple choice test being more difficult than you thought." You never stated that you re-taught the information and reassessed the students.

The job of a teacher is to be faithful to authentic and verifiable student learning. Assessing students is part of every teacher's responsibilities.....

\* \* \*

4. As to the concern of yelling and screaming. You stated that you do not scream, but do talk loud, and more sternly than other teachers. You noted to [the Parent] that it was your voice volume that her children are not used to. During your interview on July 10, according to you, in what you described to me, "that you had a conversation with [the Parent], explaining to her, that you were justified in raising your voice when yelling at two students, in order to prevent a bullying situation from happening." You, [grievant] indicated to me that your explanation to [the Parent] appeared to have satisfied her, and you said, "The conversation ended well and was not confrontational; and that you were surprised by the letter from [the Parent]." With all due respect, this precisely is my point. You need to use better judgment and diplomacy in dealing with circumstances that may cause a scene in front of students. In the above situation, matters could have been handled differently and still attained the result that was needed without yelling. At this time I believe you need to rectify these concerns that reveal insensitivity and lack of care for the feelings of young children and the fact that you often do not consider the consequences of your behavior.



In the interviews, all children and some staff members stated that you do yell during class and that it makes them feel uncomfortable. The students also felt uncomfortable even when the "yelling" was directed to other students. One student commented that she felt the students "who are yelled at a lot, are just unhappy. They do other things like drawing (on their papers), and because the teacher feels they are not listening, she takes things away from them. But they are really smart."

Another student said that when the teacher yells at one person, they (the whole class) all go into yellow [sic]. Furthermore your statement, that "I follow the individual teacher's classroom rules, and therefore do not apply my own rules", is quite different from what is reflected from others whom I interviewed. In fact, on an informal visit to a classroom, where you were teaching science, I felt that the climate of the classroom was one of apprehension. If the students feel uncomfortable with the classroom conditions, then they will have less concentration on the lesson and will get little information from the teacher. This climate will affect attitudes and grade results. Students also felt sad for those students who were reprimanded by you. Students who were interviewed felt that there were a few students who were consistently reprimanded; these same students were named in each interview.

\* \* \*

In the course of my interviews other topics that concerned me came to light. When asked what good things the students liked or that the staff thought were positive ideas, the answer often was the labs. However, the students were disappointed that the labs stopped in February. One student stated that she was asked to bring in materials for a lab but that the lab was never done. Science labs are certainly an effective part of the science curriculum and they were noted in

your plans. Often plans will be interrupted which postpone lessons, but no interruption should permanently change the weekly curriculum.

Maintaining collegial relationships among faculty is critical to a school's success especially in small districts. This year, disagreements among staff members have been addressed and I had hoped that all was going well. Current educational programs are one of an inclusive model and, therefore, more than ever teachers must work together harmoniously. Since students learn from example, you should demonstrate civility and respect towards co-teachers, aides and students. The teachers you work in class with are there for academic support and using them for non-instructional duties should not occur on a regular basis or at times when you are not prepared.

You need to consider the ultimate result of decisions that are acted upon without thinking clearly of other actions that may have been a better course to take. Problems can be handled effectively and appropriately without reflecting anger and frustration. You need to take necessary steps to deal effectively with parental concerns. You need to be more aware of the feelings displayed by your actions in front of other staff members.

In review of my investigation of this complaint, in the upcoming school year you will need to make an effort to maintain an appropriate classroom management style.

\* \* \*

When the faculty is scheduled to return to school on September 3, I will set up a meeting to discuss and form your Professional Development Plan as a "needs improvement plan" regarding your classroom management skills and the development of effective teaching strategies for the 2013-2014 school year.

This letter is being placed in your personnel file as a written reprimand for your instructional shortcomings and failings as a teacher. This letter also serves as written notice from the Board of Education of the action that was taken at the Board of Education meeting on August 28, 2013 to withhold your 2013-2014 employment increment and adjustment increment, which increments will be withheld starting with your first paycheck issued in the 2013-2014 school year, pursuant to the action taken by the Board of Education in accordance with N.J.S.A. 18A:29-14. Your actions reflect a continuation of poor teaching techniques and deficient conduct as an instructor. This reprimand follows a reprimand that was given to you last year. Your failings and shortcomings as a teacher in consecutive school years as related in this letter constitute the reasons why I recommended withholding your salary increment and adjustment for the coming school year. These failings cannot be repeated by you or I will recommend further measures that could have additional negative financial consequences.

The reprimand from the prior school year referred to by CSA Crowl in her August 31, 2013 reprimand and increment withholding letter to the grievant was an April 19, 2012 "Letter of Reprimand" alleging: "inappropriate behavior toward a member of the faculty in the presence of students and in front of another teacher, on March 26, 2012." Following that reprimand, the grievant's June 14, 2012 Teacher Evaluation for the 2011-12 school year rated her "Exemplary" in all ten major areas of

evaluation, and recommended her for reappointment and salary increment.<sup>3/</sup>

On September 17, 2013, the grievant wrote a rebuttal letter to the Board and Mrs. Crowl regarding the August 31 Letter of Reprimand and Increment Withholding. The Association filed a grievance contesting the increment withholding as being without just cause. On January 27, 2014, the Association demanded binding grievance 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

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<sup>3/</sup> The Evaluation noted that the increment for 2012-13 was "pending contract negotiations." The grievant received her 2012-13 salary increment.

forum for resolving a withholding dispute. We do not and cannot consider whether a withholding was with or without just cause, or whether the Supervisors involved provided the teaching staff member with whatever guidance or assistance was due to the teacher. In sum, our role is limited to that of "gatekeeper" and does not include the responsibility of determining the merits of the increment withholding.

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 asserts that arbitration must be restrained because the decision to withhold the grievant's increment was based predominately on classroom instructional deficiencies. It argues that even if some of the reasons for the withholding are

not related to teaching performance, that the majority of reasons underlying the increment withholding relate to poor teaching techniques and deficient conduct in the classroom as stated in the August 31, 2013 reprimand letter regarding the investigation into a parental complaint.

The Association asserts that the increment withholding was not predominately related to an evaluation of her instructional performance, but was based on one parent's unsubstantiated complaints and was not supported by her actual Performance Evaluations which rated her "commendable" and "exemplary." It argues that the Commission has found that issues regarding parent interactions do not involve evaluations of teaching performance. It asserts that neither the eating in class incident nor the verbal dispute between the grievant and another teacher referred to in the Board's 2012 reprimand letter predominately relate to an evaluation of her teaching performance. Citing Mansfield Tp. Ed. Ass'n, P.E.R.C. No. 96-65, 22 NJPER 134 (¶27065 1996), rev'd and rem'd 23 NJPER 209 (¶28101 App. Div. 1997), the Association argues that the Appellate Division has found that where the regular evaluation process rated a teacher completely satisfactory, an incident arising outside of the formal evaluation process that causes an increment withholding is not predominately teaching performance related.

We believe that decision to be inapposite to the instant matter. There the teacher was accused of insubordination in

failing to follow certain Board directives and we held that the insubordination arose out of litigation that relates or indirectly arises out of teaching responsibilities and therefore was not disciplinary. The court found that since her evaluations were satisfactory, the withholding related to something outside of her performance and was therefore disciplinary.

By contrast, in the instant matter the deficiencies found by the Superintendent/Principal related to classroom management, including giving students infractions for not following rules, and using additional assignments or reports for skill deficits, not allowing student participation in labs if she deemed them unprepared, lack of appropriate review of test results with students, yelling at students during class, creating a climate of apprehension among the students in the class, and failure to teach labs despite their appearance in the teacher's plans.

The Board replies that although the way in which the grievant's alleged teaching performance problems came to the attention of the Board was unusual and occurred after she had already been given a good evaluation in June 2013, such annual evaluation should not preclude the Board from further probing a teacher's performance when prompted by a parent's complaint.

We find that the alleged deficiencies underlying the increment withholding are predominately related to the Board's evaluation of the grievant's teaching performance despite being initiated through a parental complaint and subsequent

investigation occurring outside of the formal evaluation process. We have frequently recognized that deficient teaching performance does not necessarily have to appear on evaluation documents, and that even after all observations of a teacher have been completed, an increment may still be withheld for teaching performance reasons which must be reviewed by the Commissioner of Education. In Old Bridge Bd. of Ed., P.E.R.C. No. 2004-57, 30 NJPER 77 (¶28 2004), a tenured middle school teacher had his increment withheld even after his annual evaluation indicated he had fulfilled all duties and recommended he receive his increment. Late in the school year, a hostile work environment claim alleging harassment toward students prompted an investigation involving interviews with the teacher, students, and other teachers/staff. The investigation concluded that the teacher's behavior was at times inappropriate, and the Board voted to withhold his increment for the following school year. Holding that the Board withheld the increment for reasons predominately related to the evaluation of teaching performance, the Commission restrained arbitration and stated:

Our conclusion is not altered by the fact that the teacher's annual evaluation did not describe the conduct referred to in the statement of reasons and the July 11, 2002 letter. The allegations came to the Board's attention through student complaints, not the regular evaluation process, but nevertheless involved the in-classroom interactions of the teacher with his students.

[30 NJPER at 79]



The facts in Old Bridge, as in the instant case, were distinguishable from Mansfield, and the Commission's conclusion was consistent with years of precedent finding increment withholdings to be predominately evaluative under similar circumstances. See Northern Highlands Reg. Bd. of Ed., P.E.R.C. No. 2003-49, 29 NJPER 24 (¶7 2003) (withholding based on investigation into student complaints of teacher's allegedly inappropriate conduct and demeanor); Ramsey Bd. of Ed., P.E.R.C. No. 2000-59, 26 NJPER 94 (¶31038 2000) (despite positive annual evaluation and recommendation to receive increment, increment was withheld based on multiple student and parent complaints received in final month of school year regarding teacher's alleged inappropriate interactions with students throughout the school year); Greater Egg Harbor 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) (after positive draft evaluation report and positive observations, increment withheld based on investigation of student complaints of harassing remarks); and Roxbury Bd. of Ed., P.E.R.C. No. 94-80, 21 NJPER 78 (¶25034 1994) (withholding not based on observations or annual evaluation, but on investigation into student complaints of teacher's remarks and conduct).

The State Commissioner of Education's views on increment withholdings arising from outside of the regular evaluation process are not inconsistent:

Further, a satisfactory year-end evaluation does not preclude the Board's making a separate determination regarding an employee's performance so long as the independent grounds upon which it makes its determination are reasonably predicated.

\* \* \*

The Commissioner finds that although there were many positive aspects to petitioner's performance, including a satisfactory review at year end, petitioner has failed to establish by a preponderance of competent and credible evidence that it was unreasonable, arbitrary or capricious for the Board to withhold his increment for the 1983-84 year.

[Carroll v. Sussex-Wantage Bd. of Ed., 1985 S.L.D. 1310 (Comm. of Ed. 1985), aff'd 1987 S.L.D. 2557 (State Bd. of Ed. 1987), aff'd App. Div. unreported, Docket No. A-2830-86T7 (10/26/87)]

The State Board of Education affirmed the Commissioner's decision to withhold the increment, and the New Jersey Superior Court, Appellate Division affirmed the State Board.<sup>4/</sup> See also Sturn v. South Plainfield Bd. of Ed., 92 N.J.A.R.2d(EDU) 661; 1992 N.J. AGEN LEXIS 4926.

In the view of the Commission, its role in matters such as this one is not to make a determination as to the merits of the withholding. This includes not basing our gatekeeping function

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<sup>4/</sup> The State Board modified the Commissioner's ruling in part by finding the petitioner guilty of two out of four charges, but upheld the increment withholding based on those two charges. The Appellate Division affirmed the Board's decision, but remanded to the local board of education for reconsideration of the penalty in light of the State Board's finding of guilt on two of the four original charges.

on the method by which the teacher's alleged performance failures were brought to the attention of the Board, nor on our view as to the completeness or exhaustive nature of the investigation. It is anticipated that whether review occurs before the Commissioner of Education, or before an arbitrator, either authority will look at the totality of circumstances in determining the validity of the increment withholding. The grievant will have an opportunity to argue before the Commissioner that her annual formal evaluations for the 2011-2012 and 2012-2013 school years rate her performance in all categories as either "Exemplary" or "Commendable," the two highest of the five available ratings.

As our task is limited to determining whether the increment was withheld for reasons predominately related to teaching performance, we have no authority to determine whether the increment withholding met the standards set forth under the Education Laws of this state. That question, and many of the arguments and defenses raised by the parties, will be reviewed by the Commissioner of Education.

ORDER

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

BY ORDER OF THE COMMISSION

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

ISSUED: October 30, 2014

Trenton, New Jersey