

P.E.R.C. NO. 2016-51

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ROBBINSVILLE BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2016-003

ROBBINSVILLE EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Robbinsville Board of Education for a restraint of binding arbitration of a grievance filed by the Robbinsville Education Association. The grievance contests the withholding of two teachers' salary increments. Finding that the reasons for the withholdings predominately relate to an evaluation of the grievants' teaching performance, the Commission restrains arbitration and notes that nothing within the statutory framework of the Teacher Effectiveness and Accountability for the Children of New Jersey Act (TEACHNJ), N.J.S.A. 18A:6-117 et seq., or related Educator Effectiveness regulations, N.J.A.C. 6A:10-1.1 et seq., prohibits a board of education from using any criteria it deems appropriate for purposes of making increment withholding determinations pursuant to N.J.S.A. 18A:29-14.

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, Cleary Giacobbe Alfieri Jacobs,  
LLC, attorneys (Matthew J. Giacobbe, of counsel)

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

DECISION

On July 15, 2015, the Robbinsville Board of Education (Board) filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by the Robbinsville Education Association (Association). The grievance contests the withholding of two teachers' salary increments. Because the increment withholdings are based predominately on an evaluation of teaching performance, we restrain arbitration.

The Board filed briefs, exhibits, and the certification of the Superintendent of Schools (Superintendent). The Association filed a brief and the certification of its President (President). These facts appear.

The Association represents all certified personnel and support staff employed by the Board other than administration. The Board and Association are parties to a collective negotiations agreement (CNA) in effect from July 1, 2014 through June 30, 2017. The grievance procedure ends in binding arbitration.

Article 12 of the CNA, entitled "Evaluation," provides that teachers shall be evaluated consistent with P.L. 2012, c. 26 (the Teacher Effectiveness and Accountability for the Children of New Jersey Act (TEACHNJ), N.J.S.A. 18A:6-117, et seq.) and N.J.A.C. 6A:10-1.1, et seq. (Educator Effectiveness).

### **Grievant #1**

Grievant #1 (YK) was employed by the Board as a mathematics teacher at Robbinsville High School during the 2013-2014 and 2014-2015 school years.<sup>1/</sup>

On June 16, 2014, a "Corrective Action Plan" (CAP) was created for YK to improve her teaching deficiencies during the 2014-2015 school year. Specifically, YK's CAP included the following "Areas Identified for Improvement":

#### **1. Questioning strategies and differentiation during mathematics instruction**

-Current strategies are not effectively eliciting evidence of student understanding of the learning objective

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<sup>1/</sup> According to the Board's reply brief, YK resigned from her employment with the Board sometime after July 15, 2015.

-Student learning data/evidence is not being used to differentiate instruction

**2. Guidance to students on classroom focus and standards of conduct**

-When interacting with peers, students are not guided to focus on the learning objective  
-Standards of conduct are not clearly communicated to students

**3. Classroom Culture**

-Instructional outcomes, activities and assignments, and classroom interactions convey low expectations for some students  
-Students demonstrate little or no pride in their work

**4. Tardiness**

-[YK] did not meet deadlines for submitting midterm exams, mid-year SGO forms, and final SGO forms  
-[YK] was tardy to school on several occasions

Further, YK's CAP included the following "Demonstrable Goals":

1. Develop ability to collect and use student learning evidence to differentiate instruction in mathematics
2. Improve management of student behavior and peer interaction to ensure students are focused on learning
3. Raise levels of rigor and learning expectations
4. Arrive at work on time and meet all submission deadlines

YK was observed on at least four different occasions during the 2014-2015 school year. According to a Summative Review of CAP Progress dated June 9, 2015, YK failed to meet the

"Demonstrable Goals" set forth in her CAP numbered one through three related to classroom environment and instruction.<sup>2/</sup>

For purposes of her annual Teacher Summative Report, YK was evaluated in the following four categories:

- Domain 1: Planning & Preparation
- Domain 2: Classroom Environment
- Domain 3: Instruction
- Domain 4: Professional Responsibilities

According to her 2014-2015 Teacher Summative Report, YK scored "Partially Effective"<sup>3/</sup> in Domains 2-4 and "Effective" in Domain 1. YK's total "Summative Rating" was "Effective," but her "Teacher Practice" score was "Partially Effective."

As a result of these deficiencies, the Superintendent recommended that the Board withhold YK's contractual step and increment for the 2015-2016 school year. On May 26, 2015, the Board voted unanimously to withhold YK's contractual step and increment for the 2015-2016 school year.

On July 2, 2015, YK requested that the Association proceed directly to arbitration in accordance with the CNA's grievance procedure. By letter dated July 8, 2015, the Superintendent

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2/ YK did meet "Demonstrable Goal" number four related to arriving at work on time and meeting submission deadlines.

3/ The grading scale for the Teacher Summative Report, from lowest to highest, is as follows: "Ineffective" includes scores of less than 1.85; "Partially Effective" includes scores of 1.85-2.64; "Effective" includes scores of 2.65-3.49; and "Highly Effective" includes scores of 3.5-4.0.

provided YK with a statement of reasons for the withholding. In pertinent part, it provides:

The reason for this action is due to poor teaching performance as demonstrated by an average score of 2.43 on Domains 1 through 4 of the Danielson rubric measuring teaching performance. Despite working on certain teaching elements through a formal corrective action plan this past school year, your teaching performance fell below both state and local expectation.

As you know New Jersey expects teachers to receive practice score above 2.65 in order to be deemed effective and Robbinsville expects teachers to receive scores above 2.75. Despite the reality that the overall score on your final evaluation, which included a student growth objective (SGO) score, was above state expectations, the lack of progress on the teacher practice components formed the basis for the increment withholding.

## **Grievant #2**

Grievant #2 (FV) is employed by the Board and was an art teacher at Robbinsville High School during the 2013-2014 and 2014-2015 school years.

On June 16, 2014, a CAP was created for FV to improve her teaching deficiencies during the 2014-2015 school year. Specifically, FV's CAP included the following "Areas Identified for Improvement":

### **1. Questioning strategies and differentiation during art instruction**

-Current strategies are not effectively eliciting evidence of student understanding of the learning objective

-Student learning data/evidence is not being used to differentiate instruction

**2. Guidance to students on classroom focus and standards of conduct**

-When interacting with peers, students are not guided to focus on the learning objective  
-Standards of conduct are not clearly communicated to students

**3. Classroom Culture**

-Instructional outcomes, activities and assignments, and classroom interactions convey low expectations for some students  
-Students demonstrate little or no pride in their work

**4. Tardiness**

-[FV] arrives to teaching assignments late and unprepared  
-[FV] was tardy to school on several occasions

Further, FV's CAP included the following "Demonstrable Goals":

1. Develop ability to collect and use student learning evidence to differentiate instruction in art
2. Improve management of student behavior and peer interaction to ensure students are focused on learning
3. Raise levels of rigor and learning expectations
4. Arrive at work on time and have all materials prepared

FV was observed on at least three different occasions during the 2014-2015 school year. For purposes of her annual Teacher

Summative Report, FV was evaluated in the following four categories:

- Domain 1: Planning & Preparation
- Domain 2: Classroom Environment
- Domain 3: Instruction
- Domain 4: Professional Responsibilities

According to her 2014-2015 Teacher Summative Report, FV scored "Partially Effective" in Domains 3-4 and "Effective" in Domains 1-2. FV's total "Summative Rating" was "Effective," but her "Teacher Practice" score was "Partially Effective."

As a result of these deficiencies, the Superintendent recommended that the Board withhold FV's contractual step and increment for the 2015-2016 school year. On May 26, 2015, the Board voted unanimously to withhold FV's contractual step and increment for the 2015-2016 school year.

On July 2, 2015, FV requested that the Association proceed directly to arbitration in accordance with the CNA's grievance procedure. By letter dated July 8, 2015, the Superintendent provided FV with a statement of reasons for the withholding. In pertinent part, it provides:

The reason for this action is due to poor teaching performance as demonstrated by an average score of 2.61 on Domains 1 through 4 of the Danielson rubric measuring teaching performance. Despite working on certain teaching elements through a formal corrective action plan this past school year, your teaching performance fell below both state and local expectation.



As you know New Jersey expects teachers to receive practice scores above 2.65 in order to be deemed effective and Robbinsville expects teachers to receive scores above 2.75. Despite the reality that the overall score on your final evaluation, which included a student growth objective (SGO) score, was above state expectations, the lack of progress on the teacher practice components formed the basis for the increment withholding.

On July 10, 2015, the Association filed one Request for Submission of a Panel of Arbitrators on behalf of YK and FV claiming that the Board violated the CNA and the school district's policies and procedures by withholding the increment of two teachers who received total "Summative Ratings" of "Effective" under TEACHNJ. This petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978), states:

The Commission is addressing the abstract issue: is the subject matter in dispute within the scope of collective negotiations. Whether that subject is within the arbitration clause of the agreement, whether the facts are as alleged by the grievant, whether the contract provides a defense for the employer's alleged action, or even whether there is a valid arbitration clause in the agreement or any other question which might be raised is not to be determined by the Commission in a scope proceeding. Those are questions appropriate for determination by an arbitrator and/or the courts.

As such, we do not consider the contractual merits of the grievance or whether there was just cause for this withholding.

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. and Edison Tp. Principals and Supervisors Ass'n, P.E.R.C. No. 97-40, 22 NJPER 390 (¶27211 1996), aff'd 304 N.J. Super. 459 (App. Div. 1997). Pursuant to 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. See N.J.S.A. 34:13A-27a. Where a board cites multiple reasons, but shows that it acted primarily for certain reasons, we will weigh those concerns more heavily in our analysis. Woodbridge Tp. Bd. of Ed., P.E.R.C. No. 2009-53, 35 NJPER 78 (¶31 2009). However, 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. Montgomery Tp. Bd. of Ed., P.E.R.C. No. 2015-73, 41 NJPER 493 (¶152 2015).

We articulated the process for making an increment withholding determination in Scotch Plains-Fanwood Bd. of Ed., P.E.R.C. No. 91-67, 17 NJPER 144 (¶22057 1991):

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.

Where a statute or regulation is alleged to preempt an otherwise negotiable term or condition of employment, it must do so expressly, specifically and comprehensively in order to foreclose otherwise required employer-employee negotiations on the subject matter. Council of N.J. State College Locals, NJSFT-AFT/AFL-CIO v. State Bd. of Higher Ed., 91 N.J. 18, 30 (1982); Bethlehem Tp. Bd. of Ed. v. Bethlehem Tp. Ed. Ass'n, 91 N.J. 38, 44-45 (1982). The legislative provision must "speak in the imperative and leave nothing to the discretion of the public

employer." *State v. State Supervisory Employees Ass'n*, 78 N.J. 54, 80-82 (1978).

The Board argues that the grievance is not subject to binding arbitration because the grievants' increments were withheld due to ineffective teaching performances and, therefore, predominately involve an evaluation of their job performance.

The Association argues that despite the CNA's requirement that teachers be evaluated consistent with applicable state statutes and regulations, including specific references to TEACHNJ and N.J.A.C. 6A:10-1.1, et seq., the grievants received total "Summative Ratings" of "Effective" on their annual Teacher Summative Reports but still suffered increment withholdings. While conceding that the Board has a managerial prerogative to evaluate a certificated employee's work performance, the Association maintains that this grievance is arbitrable because it narrowly focuses on the Board's failure to follow collectively negotiated provisions regarding evaluation procedures.

The Board replies that the sole issue before the Commission is whether the grievants' increments were withheld for reasons predominately related to teaching performance or discipline. In addition, the Board claims that the CNA's procedural requirements related to evaluation were not violated, and that there is no requirement that the grievants' overall evaluation scores be considered in order to withhold their increments.

As stated above, our role in this case is limited to determining whether the increment withholdings were predominately disciplinary or related to teaching performance.

We find that the Board's stated reasons for the increment withholdings predominately involve an evaluation of the grievants' teaching performance. Edison Tp. Bd. of Ed.

For YK, the Board's stated reasons include a failure to meet any of the "Demonstrable Goals" related to classroom environment and instruction set forth in YK's CAP as well as "Ineffective"

ratings in Domains 2-4 (Classroom Environment, Instruction and Professional Responsibilities) of YK's 2014-15 annual Teacher Summative Report. For FV, the Board's stated reasons include

"Ineffective" ratings in Domains 3-4 (Instruction and Professional Responsibilities) of FV's 2014-15 annual Teacher Summative Report. Although we need not determine whether every

reason cited by the Board relates to teaching performance, the following concerns are all relevant to teaching performance:

failure to make adequate progress on recommendations; ineffective instruction and poor classroom management of students;

ineffective teaching techniques; maintaining classroom

discipline; engaging student interest during class; failing to

differentiate instruction to meet the learning needs of students;

failing to submit adequate or relevant lesson plans; and failing

to properly communicate academic expectations and standards to

students and their parents. See Woodbury Bd. of Ed., P.E.R.C. No. 2006-81, 32 NJPER 128 (¶59 2006); New Providence Bd. of Ed., P.E.R.C. No. 98-91, 24 NJPER 108 (¶29053 1998); South Harrison Tp. Bd. of Ed., P.E.R.C. No. 96-36, 22 NJPER 20 (¶27007 1995); Wood-Ridge Bd. of Ed., P.E.R.C. No. 98-41, 23 NJPER 564 (¶28281 1997); Bergenfield Bd. of Ed., P.E.R.C. No. 2006-80, 32 NJPER 126 (¶58 2006); Paramus Bd. of Ed., P.E.R.C. No. 2004-30, 29 NJPER 508 (¶161 2003); Parsippany-Troy Hills Bd. of Ed., P.E.R.C. No. 98-153, 24 NJPER 339 (¶29160 1998); Old Tappan Bd. of Ed., P.E.R.C. No. 2011-39, 36 NJPER 419 (¶162 2010); Willingboro Bd. of Ed., P.E.R.C. No. 2006-87, 32 NJPER 165 (¶74 2006); Parsippany-Troy Hills Bd. of Ed., P.E.R.C. No. 2000-28, 25 NJPER 442 (¶30194 1999).

The Association makes no specific claims about procedural violations under the CNA. Rather, it argues that the Board should be precluded from withholding the grievants' increments because their total scores on their annual Teacher Summative Reports were above State expectations. However, nothing prohibits a board of education from using any criteria it deems appropriate for purposes of making increment withholding determinations, and it is well-settled that evaluation criteria are not mandatorily negotiable. N.J.S.A. 34:13A-5.3; see also, Bethlehem Tp. Bd. of Ed. v. Bethlehem Tp. Ed. Ass'n, 91 N.J. 38, 46-47 (1982). Additionally, N.J.S.A. 18A:29-14 gives the Board

the right to withhold an increment for "inefficiency or other good cause."

Accordingly, the Board's request to restrain arbitration is granted.

ORDER

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

BY ORDER OF THE COMMISSION

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

ISSUED: January 28, 2016

Trenton, New Jersey