

P.E.R.C. NO. 2016-54

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ELIZABETH BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2016-025

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 an 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 (Joshua I. Savitz, of counsel and on the brief, and Vanessa E. Pena, on the brief)

For the Respondent, Oxfeld Cohen, P.C., attorneys (Gail Oxfeld Kanef, on the brief)

DECISION

On October 16, 2015, the Elizabeth Board of Education (Board) filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by the Elizabeth Education Association (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, exhibits, and the certification of the Principal of Marquis de Lafayette, School No. 6 (Principal).

The Association filed a brief.<sup>1/</sup> The Board also filed a reply brief. These facts appear.

The Association represents certified personnel within the school district including, but not limited to, teachers, librarians, nurses, attendance officers, guidance counselors, clerks, secretaries, lab assistants, security personnel, classroom assistants and computer technicians. The Board and the Association were parties to a collective negotiations agreement (CNA) in effect from July 1, 2009 through June 30, 2012, as well as a memorandum of agreement (MOA) covering the period from July 1, 2012 through June 30, 2015. The grievance procedure ends in binding arbitration.

Grievant has been employed by the Board since 1999. He was assigned to teach First Grade at Marquis de Lafayette, School No. 6 during the 2011-2012 school year.

On December 13, 2011, the Principal sent a memorandum to the grievant regarding his failure to submit any lesson plans for approximately two months. (Exhibit B) In pertinent part, the memorandum stated:

This memo serves as an official reprimand for your behavior regarding submitting lesson plan[s]. The specific action that warrants

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<sup>1/</sup> Pursuant to N.J.A.C. 19:13-3.6(f)1, "[a]ll briefs filed with the Commission shall. . .[r]ecite all pertinent facts supported by certification(s) based upon personal knowledge."

reprimand includes failure to provide lesson plans.

It is your professional duty to hand in lesson plans on a scheduled basis. To date you have not provided lesson plans since October 17<sup>th</sup>, 2011. This is a measured component in formal observations as well as your Annual Evaluation Form (Annual Professional Performance Report). Your lesson plans are due on a scheduled basis. Attached you will find the schedule of dates that your plans are submitted. Should this type of behavior continue, it will be noted in your observation as well as your APPR.

In order to address these concerns, please undertake the following actions:

- Reviewing of Lesson Plan Schedule
- Compliance with lesson plan policy made by school leadership
- Commitment to ending year effectively and planning transition to 2012

A "Lesson Plan Submission Schedule" was attached to the memorandum, providing grievant with the dates that lesson plans were due as well as the manner in which they were to be submitted.

On January 26, 2012, the Vice Principal conducted a formal classroom observation of grievant and issued a summary report with his findings. (Exhibit C) Grievant's performance was assessed and scored<sup>2/</sup> in several areas, including the following deficiencies:

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2/ The scale for this evaluation included, from lowest to highest, ratings of "unsatisfactory," "basic," "proficient," and "distinguished."

**Component 1e. Designing Coherent Instruction**

Level: Unsatisfactory

Comments: The series of learning experiences is poorly aligned with the instructional outcomes and does not represent a coherent structure. The experiences are suitable for only some students. Student[s] work only in whole group activities throughout the whole period.

**Component 2b. Establishing a Culture for Learning**

Level: Basic

Comments: Student engagement in the task at hand is inconsistent. "We are going to the bathroom," [Grievant] commands the class. Students were instructed to put their desk back into groups before leaving for a restroom break. Students had to get in line for the bathroom at 1:38. 4 students return to the class at 1:48, with the specific task of retrieving and distributing slates and markers while teacher stood at the door to monitor the remaining children outside the class and the 4 students inside. The rest of the class returned at 1:52. One student walked around the room looking for paper towel[s] while the lesson continued. Students were talking as the teacher walks around the room to grade the given assignment. One student stood on the chair while [the] teacher explain[ed] the directions.

**Component 2c. Managing Classroom Procedures**

Level: Unsatisfactory

Comments: Much instructional time is lost due to inefficient classroom routines and procedures. There is little or no evidence of the teacher managing instructional groups, transitions, and/or the handling of materials and supplies. Upon entering [Grievant's] class at 1:35 P.M., 17 students sat in [a] row. Some pupils had math sheet[s] and others had reading book[s] in front of them. Students were instructed to put their desk back into groups before leaving for a restroom break. Students had to get in line

for the bathroom at 1:38. "We are going to the bathroom," [Grievant] commands the class. Students were instructed to put their desk back into groups before leaving for a restroom break. Students had to get in line for the bathroom at 1:38. 4 students return to the class at 1:48, with the specific task of retrieving and distributing slates and markers while [the] teacher stood at the door to monitor the remaining children outside the class and the 4 students inside. The rest of the class returned at 1:52. Much instructional time is lost due to lack of planning and inefficient classroom routine.

### **Component 3a. Communication with Students**

Level: Basic

Comments: Teacher's attempt to explain the instructional purpose has only limited success. The instructional purpose of the lesson was not explained to students.

### **Component 3b. Using Questioning and Discussion Techniques**

Level: Unsatisfactory

Comments: Interaction between the teacher and students is predominately recitation style, with the teacher mediating all questions and answers. T. "Your number grid is on your back covers. If you don't have one, raise your hand." T. "If you don't have a number grid, raise your hand now." T. "You are going to start at number 40 write number counting by 5 and stop when you get to 80." Students write on their slates as teacher circulated the room with his grade book to record information. One student walked around the room looking for paper towel[s] while the lesson continued. "Good job Robert," [Grievant] praised on the students as [he] check[ed] answers. Students were talking as the teacher walks around the room to grade the given assignment. T. "Everybody can raise their board." Some students raise their board to display their answers. Students continue talking through the assignment. T. "Using your number grid, start at number 31 and count backward by 1

until you get to 25. Use your number grid if need to." Teacher circulated the room to check students' answers. One child took off her snicker [sic] as another turn[ed] away from his desk to talk about bingo. Another student got out his seat to yell bingo as [Grievant] work[ed] with one child. At 2:03. T. "Clear those boards." T. "Who can remember what I say estimating is?" [Grievant] called on two students who answered no to recalling the definition of estimating. T. "Estimating is an educated guess. You don't have to count very close to estimate. It is an estimated guess on how much is there." T. "I'm not asking you to count but I'm asking you to estimate. I'm just gonna give you a quick look and you have to estimate." Teacher showed blocks on a projector. T. "How much do you think was there?" Students wrote their answers on their slates and show their answers to the teacher when called. Student who had the right answer celebrated with hoos and teacher [gave] the correct answer. Teacher showed student[s] another set of data on the projector so they can estimate. T. "I'm going to put number on th eboard and you have to write add or even." One student stood on the chair while teacher explain[ed] the directions. Teacher wrote odd or even on the projector and with the number 11 while students note down their response as whether it is [odd] or even. Teacher gave student another number to decide whether it was [odd] or even number. @2:16 T. "Draw 13 simple things. When you have your thirteen things drawn, you will tell if they are even or odd."

**Component 3c. Engaging Students in Learning**

Level: Unsatisfactory

Comments: The learning activities, materials resources, instructional groups and technology are poorly aligned with the instructional outcomes. Teacher turns on the projector. T. "Your number grid is on your back covers. If you don't have one, raise your hand." T. "If you don't have a number

grid, raise your hand now." T. "Your are going to start at number 40 write number counting by 5 and stop when you get to 80." Students write on their slates as teacher circulated the room with his grade book to record information. One student walked around the room looking for paper towel[s] while the lesson continued. "Good job Robert," [Grievant] praised on the students as [he] check[ed] answers. Students were talking as the teacher walks around the room to grade the given assignment. T. "Everybody can raise their board." Some students raise their board to display their answers. Students continue talking through the assignment. T. "Using your number grid, start at number 31 and count backward by 1 until you get to 25. Use your number grid if you need to. "Teacher circulates the room to check students' answers. One child took off her snicker [sic] as another turn[ed] away from his desk to talk about bingo. Another students got out of his seat to yell bingo as [Grievant] work[ed] with one child. At 2:03. T. "Clear those boards." T. "Who can remember what I say estimating is?" [Grievant] called on two students who answered no to recalling the definition of estimating. T. "Estimating is an educated guess. You don't have to count very close to estimate. It is an estimated guess on how much is there." T. "I'm not asking you to count but I'm asking you to estimate. I'm just gonna give you a quick look and you have to estimate." Teacher showed blocks on a projector. T. "How much do you think was there?" Students wrote their answers on their slates and show their answer to the teacher when called. Student who had the right answer celebrated with hoos when teacher [gave] the correct answer. Teacher showed student[s] another set of data on the projector so they can estimate. T. "I'm going to put the number on the board and you have to write add or even." One student stood on the chair while teacher explain[ed] the directions. Teacher wrote odd or even on the projector and with the number 11 while



students note down their response as whether it is [odd] or even. Teacher gave student another number to decide whether it was [odd] or even number. @2:16 T. "Draw 13 simple things. When you have your thirteen things drawn, you will tell me if they are even or odd." At 2:20 teacher instructed class to put away slates and markers to go on to their next class which was library.

#### **Areas for Improvement**

[Grievant] needs to take advantage of professional development in district initiative[s] such as i-observation as evident in the failure to respond to the pre-conference.

#### **Overall Comments and Notifications**

[Grievant] is encouraged to participate in professional developments which focus on planning, preparation and various use of instructional strategies to engage all learners. In addition, it is recommended that [Grievant] pays careful attention to serious issues such as significant loss of instructional time.

On February 2, 2012, the Principal sent a second memorandum to the grievant regarding his failure to submit timely lesson plans. (Exhibit D) In pertinent part, the memorandum stated:

This memo serves as an official reprimand for your behavior regarding submitting lesson plan[s]. The specific action that warrants reprimand includes failure to provide lesson plans.

It is your professional duty to hand in lesson plans on a scheduled basis. To date you have only provided 1 lesson plan (January 9, 2012 in Math and Reading Only) since October 17<sup>th</sup>, 2011. This is a measured component in formal observations as well as your Annual Evaluation Form (Annual Professional Performance Report). Your lesson plans are due on a scheduled basis.

Attached you will find the schedule of dates that your plans are submitted. Should this type of behavior continue, it will be noted in your observation as well as your APPR.

In order to address these concerns, please undertake the following actions:

- Reviewing of Lesson Plan Schedule
- Compliance with lesson plan policy made by school leadership
- Commitment to ending year effectively and planning transition to 2012

A "Lesson Plan Submission Schedule" was attached to the memorandum, providing grievant with the dates that lesson plans were due as well as the manner in which they were to be submitted.

On March 9, 2012, the Principal sent a third memorandum to the grievant regarding his failure to submit lesson plans.

(Exhibit E) In pertinent part, the memorandum stated:

This memo serves as an official reprimand for your behavior regarding submitting lesson plan[s]. The specific action that warrants reprimand includes failure to provide lesson plans on March 5, 2012.

It is your professional duty to hand in lesson plans on a scheduled basis. To date you have provided three sets of lesson plans consisting of six weeks of formal plans. This is a measured component in formal observations as well as your Annual Evaluation Form (Annual Professional Performance Report). Your lesson plans are due on a bi weekly scheduled basis which is part of your professional responsibilities.

In order to address these concerns, please undertake the following actions:

- Schedule meeting with building administration
- Compliance with lesson plan policy made by school leadership
- Commitment to ending year effectively and planning transition to 2012

On March 15, 2012, the Principal sent a memorandum with an attachment to the Executive Director of Human Resources/Labor Counsel (Executive Director of HR) recommending that grievant's increment for the 2012-2013 school year be withheld. (Exhibit F) The attachment, an internal "Non-Renewal/Increment Withholding Form," specified that grievant's increment was being withheld based upon the following:

**Evaluations:**

1/26/2012            Unsatisfactory

**Corrective Memos/Reprimands/Warnings:**

12/13/2011        Reviewing Policy on Lesson Plans  
 2/2/2012           Reviewing Policy on Lesson Plans  
 3/9/2012           Meeting with administrators  
                          concerning Lesson Plans

On June 28, 2012, the Board voted to withhold grievant's increment for "performance and/or attendance."<sup>3/</sup> (Exhibit G) On October 2, 2012, the Assistant Superintendent for Teaching and Learning sent a letter to the grievant notifying him that his increment for the 2012-2013 school year had been withheld. (Exhibit H) On October 23, 2012, the Association filed a Request

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<sup>3/</sup> The Association asserts that although the grievant was notified that the Board had voted to withhold his increment for the 2012-2013 school year on March 12, 2012, no reason was specified other than "performance and/or attendance."

for Submission of a Panel of Arbitrators (AR-2013-273). 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). We are not persuaded in our increment withholding gatekeeping function by the labels given to the documents (e.g. "reprimand" or "evaluation") underpinning a school board's decision. Rather, as all increment withholdings are inherently disciplinary, we are concerned with whether the cited deficiencies are based on an evaluation of teaching performance. Edison Tp. Bd. of Ed. 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.

The Board argues that the grievance is not subject to binding arbitration because grievant's increment was withheld due to his ineffective teaching performance and, therefore, predominately involves an evaluation of his job performance.

The Association argues that because the Board failed to provide grievant with specific reasons for the increment withholding, the Commission must construe this ambiguity in favor of the grievant and find that the reasons for the increment withholding were predominately disciplinary in nature.<sup>4/</sup>

The Board replies that the reasons for grievant's increment withholding are not ambiguous or unknown and the only evidence submitted demonstrates that the withholding was based upon an

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<sup>4/</sup> Other than Ridgefield Park Ed. Ass'n, Local 195, and Scotch Plains-Fanwood Bd. of Ed., the Association did not cite any cases supporting its position.

evaluation of grievant's teaching performance. While acknowledging that a statement of reasons was not provided to the grievant as required by N.J.S.A. 18A:29-14, the Board maintains that this does not compel a finding that the withholding was disciplinary in nature nor does it change the fact that the Association has failed to provide a certification or produce any evidence in support of its position.

We first address the fact that the Board did not submit the statement of reasons for the withholding that was required to be provided to the grievant within ten days of the withholding pursuant to N.J.S.A. 18A:29-14 and was required to be submitted to the Commission with the Board's scope of negotiations petition pursuant to N.J.A.C. 19:13-2.2(a)(3). In cases where a statement of reasons is absent, the Commission ordinarily requires certifications from the principal actors attesting to the reasons for the withholding, but will also accept and rely on other documents explaining the basis for the withholding which are more contemporaneous with that decision than certifications prepared for purposes of litigation. See, e.g., Elizabeth Bd. of Ed., P.E.R.C. No. 2015-69, 41 NJPER 474 (¶147 2015); Summit Bd. of Ed., P.E.R.C. No. 2013-57, 39 NJPER 311 (¶107 2013); Mahwah Tp. Bd. of Ed., P.E.R.C. No. 2008-71, 34 NJPER 262 (¶93 2008); Bridgeton Bd. of Ed., P.E.R.C. No. 2006-100, 32 NJPER 197 (¶86 2006); Woodbury Bd. of Ed., P.E.R.C. No. 2006-81, 32 NJPER 128

(¶59 2006); Washington Tp. Bd. of Ed., P.E.R.C. No. 2005-81, 31 NJPER 179 (¶73 2005). We note that multiple increment withholding scope of negotiations petitions filed by the Board during the same period do not contain the legally required statement of reasons. Yet again, we express our disappointment that the Board does not appear to be following the statutory procedural requirements of the increment withholding process, but note we have no authority to issue a remedy within the exclusive jurisdiction of the Commissioner of Education.

Here, the Principal's October 14, 2015 certification states the following:

14. On or about March 15, 2012, as a result of [Grievant's] poor teaching performance, as detailed above, I made the recommendation that his employment and adjustment salary increments for the 2012-2013 school year be withheld. See Exhibit F; see also Exhibits B through E.
- . . .
16. The Board, at its June 28, 2012 meeting, voted in favor of withholding Grievant's increment for the 2012-2013 school year. See Exhibit G.
- . . .
20. . . .To the best of my knowledge and belief, the decision to withhold Grievant's increment was predominately based on evaluative and not disciplinary reasons.

Although Exhibit G (the Board's resolution at its June 28, 2012 meeting) does not specify the performance-related reasons for the increment withholding, Exhibit F (the March 15, 2012 memorandum



and attachment from the Principal to the Executive Director of HR) references records contemporaneous with the increment withholding (Exhibits B through E) that do. We find that the records cited by the Principal in his certification support his statements regarding the reasons for the increment withholding.

The Principal's certification and the exhibits produced by the Board that we rely on here in lieu of a statement of reasons provide an explanation of the Board's reasons for the increment withholding. Although we need not determine whether every reason cited by the Board relates to teaching performance, we find that the Board's reasons focus predominately on an evaluation of grievant's alleged teaching performance deficiencies.

Specifically, the January 2012 observation report involves an evaluation of teaching performance (designing coherent instruction, establishing a culture for learning, managing classroom procedures, communication with students, using questioning and discussion techniques, engaging students in learning, and failing to take advantage of professional development). The Commission has found that the following concerns are relevant to teaching performance: 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 properly communicate academic expectations and standards to students and their parents; and failing to attend professional development courses. See 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. 2000-28, 25 NJPER 442 (¶30194 1999).

In addition, the memoranda from the Principal to the grievant dated December 13, 2011, February 2, 2012, and March 9, 2012 involve grievant's repeated failure to submit, or to timely submit, lesson plans. Although our findings have varied depending on the facts of each case, the Commission has found that the failure to submit, or to timely submit, lesson plans is relevant to teaching performance in the context of an increment withholding. See, e.g., Elizabeth Bd. of Ed., P.E.R.C. No. 2015-69, 41 NJPER 474 (¶147 2015) (restraining arbitration of an increment withholding grievance for other reasons found to be predominately related to teaching performance, while also citing East Orange Bd. of Ed., P.E.R.C. No. 2014-49, 40 NJPER (¶125 2014) and Old Tappan Bd. of Ed., P.E.R.C. No. 2011-39, 36 NJPER 419 (¶162 2010) for the proposition that a "violation of

administrative procedures or directives does not predominately relate to an evaluation of teaching performance" where "the only cited lesson plan deficiencies are strictly administrative," such as timely submitting lesson plans according to a specific schedule in a specific fashion); East Orange Bd. of Ed., P.E.R.C. No. 2014-49, 40 NJPER (¶125 2014) (restraining arbitration of an increment withholding grievance for other reasons found to be predominately related to teaching performance, while also indicating that concerns regarding the grievant's failure to satisfactorily submit required records may not be predominately related to teaching performance); Old Tappan Bd. of Ed., P.E.R.C. No. 2011-39, 36 NJPER 419 (¶162 2010) (finding that "concerns about timeliness and tardiness [were] relevant to teaching performance" and citing Parsippany-Troy Hills Bd. of Ed., P.E.R.C. No. 98-153, 24 NJPER 339 (¶29160 1998) to support restraining arbitration "based on repeated late filing of reports," while also indicating that a majority of the board's reasons went beyond whether duties were performed in a timely manner); Willingboro Bd. of Ed., P.E.R.C. 2006-87, 32 NJPER 165 (¶74 2006) (finding that among other issues, concerns regarding "not submitting lesson plans or leaving plans for substitute teachers" were predominately related to teaching performance and therefore sufficient to restrain arbitration of an increment withholding grievance); Englewood Bd. of Ed., P.E.R.C. No. 2006-

33, 31 NJPER 353 (¶140 2005) (restraining arbitration to the extent the grievant challenged the board's reliance on a lack of lesson plans as a reason for an increment withholding); Trenton Bd. of Ed., P.E.R.C. No. 2002-67, 28 NJPER 239 (¶33089 2002) (finding that among other issues, concerns regarding grievant's "untimely and inadequate [submission] of lesson plans" were predominately related to teaching performance and therefore sufficient to restrain arbitration of an increment withholding grievance); Salem City Bd. of Ed., P.E.R.C. No. 2001-3, 26 NJPER 357 (¶31142 2000) (finding that among other issues, concerns regarding grievant's "failure to submit timely and relevant lesson plans" were predominately related to teaching performance and therefore sufficient to restrain arbitration of an increment withholding grievance); Parsippany-Troy Hills Bd. of Ed., P.E.R.C. No. 98-153, 24 NJPER 339 (¶29160 1998) (finding that among other issues, concerns regarding "a pattern of failure to submit reports on time" were predominately related to performance as a CST member and therefore sufficient to restrain arbitration of an increment withholding grievance).

Here, as noted in the Principal's memoranda to the grievant, submission of lesson plans "is a measured component in formal observations. . . [and the] Annual Evaluation Form (Annual Professional Performance Report)." See Exhibits B, D, E. We find that the grievant's failure to submit, or to timely submit,

lessons plans cannot reasonably be characterized as administrative or procedural in nature. Absent the provision of lesson plans, school administrators are unable to effectively assess a teacher's preparation, effective implementation of curriculum, and classroom performance. Willingboro Bd. of Ed.; Englewood Bd. of Ed.; Trenton Bd. of Ed.; Salem City Bd. of Ed.; Parsippany-Troy Hills Bd. of Ed.

We find that the Board's reasons for withholding grievant's increment were predominately related to an evaluation of his teaching duties and are appropriate for review before the Commissioner of Education rather than an arbitrator.

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

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 and Eskilson voted in favor of this decision. Commissioner Jones voted against this decision. Commissioners Voos and Wall were not present.

ISSUED: January 28, 2016

Trenton, New Jersey