

P.E.R.C. NO. 2018-34

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MATAWAN-ABERDEEN REGIONAL
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2018-016

MATAWAN REGIONAL ADMINISTRATORS
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the Board's request for a restraint of binding arbitration of a grievance filed by the Association contesting the withholding of a principal's increments. The Commission finds that the reasons for the withholding - inappropriate handling of a student-staff altercation, failure to comply with directives to establish a building staff development plan and to sign purchase orders, and failure to provide leadership and training to vice principals - are not predominately disciplinary, but rather relate predominantly to an evaluation of the principal's performance as an educational leader and manager.

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, David B. Rubin, P.C., attorney
(David B. Rubin, on the brief)

For the Respondent, New Jersey Principals and
Supervisors Association (Wayne J. Oppito, on the brief)

DECISION

On September 22, 2017, the Matawan-Aberdeen Regional Board of Education (Board) filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by the Matawan Regional Administrators Association (Association). The grievance contests the withholding of a principal's increment. We grant the Board's request for a restraint of binding arbitration.

The Board filed briefs, exhibits, and the certification of its Superintendent, Joseph Majka. The Association filed a brief, exhibits, and the certification of M.R., the principal whose increment was withheld. These facts appear.

The Association represents all principals, assistant principals, supervisors, directors, and other managerial employees of the Board, excluding the Superintendent. The Board and the Association are parties to a collective negotiations agreement with a term of July 1, 2015 through June 30, 2018 (Agreement). The grievance procedure ends in advisory arbitration.

Majka certifies that on the evening of May 19, 2017, over 200 students attended an official school-sponsored event known as "Battle of the Classes" in the gymnasium, where it was extremely warm. He further certifies that the heat caused a number of students to either lose consciousness or require emergency medical attention by 911 personnel, and that the situation became so dire that students had to be moved outdoors to the bleachers of the football field. Majka further attests that one of the essential duties of the principal is to assure all official school-sponsored events are properly planned, staffed, and supervised so that students are kept safe, and that M.R. knew or should have known that the level of planning, staffing, and supervision was inadequate and that students' health and safety would be at an intolerable risk.

M.R. certifies that the event was adequately planned, staffed, and supervised, the situation with the heat was alleviated when students moved outdoors or accessed

air-conditioned classrooms, and that two students required medical attention. She further certifies that although it was extremely warm that day, the Superintendent did not cancel classes or any of the after-school activities because of the heat. M.R. further attests that she was not scheduled to be present at the Battle of the Classes, but that it was supervised by an experienced assistant principal.

M.R. received an overall final score of 3.52, out of a total of 4.0, on her evaluation for the 2016-2017 school year. Her evaluation was signed at various points during the year, the latest date being June 30, 2017. The Board's assertions regarding her improper planning and supervision of the Battle of the Classes are not included in the evaluation.

On June 27, 2017, Majka notified M.R. that the Board had voted at its June 19 meeting to withhold her increments for the 2017-2018 school year based upon her "lack of planning, staffing and supervision" of the Battle of the Classes. On July 5, the Association filed its grievance. This petition ensued.

Although the grievance procedure set forth in the Agreement ends in advisory arbitration, under N.J.S.A. 34:13A-26 and -29, increment withholdings of teaching staff members for predominately disciplinary reasons may be reviewed through binding arbitration. See also Randolph Tp. Bd. of Ed. v. Randolph Education Ass'n, 328 N.J. Super. 540 (App. Div.),

certif. denied, 165 N.J. 132 (2000). Conversely, if the reason for a withholding is related predominately to an evaluation of teaching performance, the teaching staff member may file a petition of appeal with the Commissioner of Education. N.J.S.A. 34:13A-27(d). If there is a dispute over the reason for a withholding, we must make that determination. N.J.S.A. 34:13A-27(a). Our power is limited to determining the appropriate forum for resolving a withholding dispute. We do not determine the merits of the withholding.

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.

In Middletown Tp. Bd of Ed., P.E.R.C. No. 92-54, 18 NJPER 32 (¶23010 1991), we applied the tests of N.J.S.A. 34:13A-27(d) and Scotch Plains-Fanwood to an increment withholding involving a principal. We recognized that principals are teaching staff members even though they usually do not teach classes. We stated:

[Principals] have broad responsibility for managing and supervising students, staff, facilities and community relations. When determining whether withholding a principal's increments relates predominately to an evaluation of that "teaching staff member's teaching performance" we must therefore ask whether the withholding relates predominately to an evaluation of the quality of the principal's performance as an educational leader and manager.

We concluded that the reasons for the increment withholding - inappropriate handling of a student-staff altercation, failing to comply with directives to establish a building staff development plan and to sign purchase orders, and failure to provide follow-up, leadership, and training to assistant principals - related predominately to an evaluation of the principal's performance as an educational leader and manager.

Similarly, in Phillipsburg Bd. of Ed., P.E.R.C. No. 2003-8, 28 NJPER 340 (¶33119 2002), we held that a withholding based on an assistant principal's failure to perform administrative duties of overseeing teachers' duty assignments and to follow-through on allegations of a student's harassment predominately involved an

evaluative of his performance as an educational leader and manager. And in Brigantine Bd. of Ed., P.E.R.C. No. 95-54, 21 NJPER 110 (¶26067 1995), we restrained arbitration of a grievance challenging the withholding of a principal's increments, finding that the reason for the action - the principal's failure to implement board policy by allowing ineligible students to participate in extracurricular activities - related predominantly to his performance as an educational leader and manager.

Under the circumstances of this case, we hold that the reasons provided by the Board for M.R.'s increment withholding - her alleged "lack of planning, staffing and supervision" of the Battle of the Classes - likewise involve an evaluation of her performance as an educational leader and manager. The Superintendent has certified that M.R. was responsible for providing proper oversight of the Battle of the Classes and that she failed to fulfill that responsibility. The truth and significance of those allegations must be assessed by the Commissioner of Education.

The Association argues that we must find the withholding to be predominately disciplinary given that the principal's year-end evaluation does not mention the Battle of the Classes incident. The fact that the Board's allegation does not appear in M.R.'s evaluation does not change our conclusion. We have frequently recognized that deficient teaching performance does not

necessarily have to appear in an evaluation in order for a withholding to relate predominately to an evaluation of teaching performance, and we have applied the same principle in cases involving administrators. See e.g., Farmingdale Bd. of Ed., P.E.R.C. No. 2015-28, 41 NJPER 224 (¶74 2014), and Phillipsburg Bd. of Ed., supra.

ORDER

The request of Matawan-Aberdeen Regional 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 Voos voted against this decision. Commissioner Jones was not present.

ISSUED: February 22, 2018

Trenton, New Jersey