

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SAYREVILLE BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2022-002

SAYREVILLE EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Sayreville Board of Education for a restraint of binding arbitration of a dispute as to whether the withholding of an increment of a teaching staff member (TSM) represented by the Sayreville Education Association is disciplinary or predominately relates to the evaluation of teaching performance. The Commission finds the Board placed the most emphasis on the TSM's alleged teaching performance deficiencies during a period of time when she was, in effect, absent from duty, as she claims she was too sick to perform most if not all of her teaching duties as a result of contracting COVID-19, and also, allegedly, negligently failed to sign out sick on a number of days. Allegations of absenteeism are disciplinary reasons for increment withholdings that do not predominately relate to evaluation of teaching performance. Under such circumstances, the Commission finds that the bulk of the alleged teaching performance deficiencies stem from a factual dispute (whether and to what extent the TSM was too sick to work and/or failed to properly log her sick days) that would not require the Commissioner of Education's review.

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.

P.E.R.C. NO. 2022-17

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Docket No. SN-2022-002

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Respondent.

Appearances:

For the Petitioner, The Busch Law Group, LLC (Nicholas Celso III, of counsel)

For the Respondent, Oxfeld Cohen, PC (Samuel B. Wenocur, of counsel)

DECISION

On August 2, 2021, the Sayreville Board of Education (Board) filed a scope of negotiations petition seeking restraint of binding arbitration of a dispute as to whether the withholding of an increment of a teaching staff member (TSM) represented by the Sayreville Education Association (Association) is disciplinary or predominately relates to the evaluation of teaching performance.

The Board filed briefs, exhibits, and the certifications of Dr. Richard Labbe, Superintendent of Schools, and Richard Gluchowski, Principal of the Sayreville Middle School (SMS). The

Association filed a brief, exhibits^{1/}, and the certification of the TSM. These facts appear.

The TSM, a tenured teacher, has been employed by the Board since 2001. During the 2020-2021 school year she was assigned to the SMS as a sixth Grade Language Arts/Literacy Teacher. The TSM is also the Association's Vice President; she certifies that she served in that capacity at all times relevant to this matter.

Dr. Labbe certifies that, as a teacher in the district, the TSM is expected to adhere to all Board policies and regulations, as well as school-specific procedures. The TSM's job description requires, among other things, that she assist "in upholding and enforcing school rules, administrative regulations and board policy." Labbe further certifies that as a member of the teaching profession, the TSM is expected to exhibit high standards of professional and ethical behavior, to conduct herself with maturity and integrity, and maintain a high degree of self-restraint and controlled behavior.

By letter dated June 10, 2021, Dr. Labbe gave notice to the TSM of his recommendation that the Board withhold her salary increment for the 2021-2022 school year "because of [her] poor

1/ The Association submitted a single exhibit with the TSM's certification, consisting of a letter from the Association's counsel to the Board's counsel dated May 7, 2021, and numerous documents attached thereto, categorized therein as: (1) classroom plans; (2) time and attendance records; (3) emails; and (4) doctors' notes.

performance and behavior throughout the course of the 2020-2021 school year, as referenced in [her annual performance] Assessment."^{2/} Dr. Labbe's letter specified the following concerns underlying his recommendation:

1. Failure to submit lesson plans on the following dates:
September 7, 2020;
September 28, 2020;
November 9, 2020;
November 23, 2020;
November 30, 2020;
December 7, 2020;
January 4, 2021;
January 11, 2021;
January 18, 2021;
January 25, 2021; and
February 1, 2021.
2. Failure to post students' grades "in a reasonable amount as defined by BOE Regulation 6147.1, and in defiance of clearly delineated procedures."
3. Failure "to submit Parent/Teacher conference Links to the administration as required, even after having received two reminders following the initial request, depriving parents of an opportunity to sign up for conferences."
4. Failure "to report to work on-site, to provide synchronous instruction, and hold a video meet with the rostered students," on January 13, 14, 19, 20, 21, 22, 25, 27 and 29, 2021," while accepting "full pay for these days (despite not working) and to date have

^{2/} We consider Dr. Labbe's June 10 letter, and documents referenced therein, to be the Board's statement of reasons issued pursuant to N.J.S.A. 18A:29-14 and N.J.A.C. 19:13-2.2(a)(3).

not made an offer or effort to refund
the money."

Dr. Labbe's June 10 letter further noted "disappointment concerning [the TSM's] conduct when interviewed by the administration regarding the immediately preceding issue (payment for work not performed) when [the TSM] became irate and engaged in a profane and disrespectful outburst during the virtual meeting," and expressed "hope that with the assistance of [the TSM's supervisor], [the TSM would be] able to acknowledge [her] shortcomings through an appropriate corrective action plan . . . moving forward."

The TSM's 2020-2021 annual performance assessment (APR), referenced in Dr. Labbe's above-quoted June 10 letter, indicates that the TSM's annual summary conference took place on June 9, 2021, and the resulting written APR, authored by Principal Gluchowski, appears to have been completed on July 6. The APR delineates four types of performance ratings: Unsatisfactory, Basic, Proficient and Distinguished. The APR details, among other things, that the TSM received an "Overall Practice" score of Proficient, with that score broken down numerically as "Raw Score: 3.9/ Final Cut Score: 3". The APR further shows that the TSM received scores of Proficient (3.34) in the area of "Planning and Preparation," Distinguished (3.64) in the areas of "Classroom Environment" and "Instruction," and Basic (2.20) in the area of "Professional Responsibilities." The APR references

two classroom observations of the TSM during the 2020-2021 school year, conducted on April 29 and May 27, respectively. The

"Comments" section of the APR states as follows:

When [the TSM] is present teaching, she continues to demonstrate distinguishing qualities during lessons. She presents a positive attitude toward learners while delivering instruction and takes great pride in her work as well as her ability to convey information to them that is practical and formative. Additionally, she very effectively engages her students in learning during instruction. Finally, she takes an active role as an SEA Board Representative in supporting her colleagues.

However, during this school year [the TSM] demonstrated significant and very serious performance deficiencies, particularly with regard to professional responsibilities and unbecoming conduct. She knowingly and/or negligently failed to sign out as sick on nine school days and to provide the required synchronous remote instruction in accordance with specific requirements without notifying the district or her immediate supervisor, which constitutes conduct unbecoming of a teaching staff member. She also neglected to sign out as sick on five additional days. Additionally, [the TSM] failed to admit her above stated errors and accept responsibility during the course of an administrative conference with me, and in fact, she explicitly articulated disdain for the investigative process during this meeting through a profane and disrespectful outburst, which again constitutes conduct unbecoming of a teaching staff member.

[The TSM] also demonstrated troubling performance deficiencies in violation of district policies and expectations. For instance, she negligently and defiantly failed to submit lesson plans for one or more days during 13 weeks of instruction. She

also negligently failed to post the grades for her students for nearly the entire 2nd Marking Period of the school year and as a result, deprived these students' parents of the ability to sufficiently monitor their children's performance. In fact, the grades for the marking period were not posted until February 1, 2021, which was two days after the ending date of the marking period. Likewise, [the TSM] also failed to submit Parent/Teacher Conference links to the administration as required, even after having received two reminders following the initial request. As a result, parents were again deprived of an opportunity to sign-up for conferences so that they could learn about the academic performance of their children. In addition, [the TSM] didn't advise her immediate supervisor or the administration of her intent to not provide the information, or her lack of preparation for and follow through on the conferences, causing me and her department supervisor to field parental questions for all rostered students. Finally, on more than a dozen occasions, [the TSM] negligently failed to record the attendance of her students.

As a result of the above performance deficiencies and unbecoming conduct, I will recommend to the Superintendent of Schools that [the TSM]'s annual salary step and monetary increment be withheld for the 2021-2022 school year. As well as, it will be recommended that the 14 days in which she did not perform her contractual instructional duties and negligently failed to sign out sick be appropriately converted to "sick days" and taken from her bank of accrued days.

Finally, [the TSM] will be required to comply with a corrective action plan designed to remediate her performance deficiencies regarding the timely posting of lesson plans, the timely reporting of grades, the timely recording of attendance, and demonstrating

respect for and following the direction of administration.

The Board adopted Dr. Labbe's recommendation to withhold the TSM's salary increment on July 15, 2021. On July 26, the Association submitted a request for arbitration. This petition ensued.

Principal Gluchowski certifies that all teachers are expected to adhere to the SMS Faculty Handbook, which provides, among other things: "All teachers are to post their lesson plans electronically to OnCourse by 8:00 a.m. of the second school day of each week." Dr. Labbe certifies that this requirement is also set forth in Board Policy 6143.1, Lesson Plans, which states among other things that "[a]ll teachers are required to prepare lesson plans one week in advance of when the lesson is scheduled for the pupils."

Dr. Labbe certifies that a number of additional requirements had to be established due to the COVID-19 pandemic, including: remote, virtual (or "synchronous") instruction beginning in September 2020; the schedules for both students and teachers was based on the assigned OnCourse schedule of classes; students and teachers were expected to be live in either Google Meet or WebEx during the entire class; attendance was to be recorded for each class and students were to remain present during the entire class period; teachers were to schedule office hours daily for the last hour of the school day, to meet with students and/or parents as

needed; a log of parent contacts and activities during office hours was to be maintained, and a contact log was available in OnCourse; the district would follow the grading policy which was in place prior to March 2020; teachers were required to post weekly lesson plans in OnCourse which included "DoNow, Objectives, Instructional Strategies and Activities, Assessments, Closure and Assignments"; weekly lesson plans were to include the link to the OnCourse or Google Classroom learning management system.

The TSM certifies that on January 8, 2021, a day she taught remotely, she lost her sense of taste, got sicker and sicker that evening, and had a COVID test that day, which came back positive on January 9. She was hospitalized for one full day on January 15, due to low oxygen and an irregular heart rhythm. The TSM certifies that she was physically able (but just barely) to teach remotely again on Monday, January 11, 2021; and that immediately thereafter, she wrote to the Board and Dr. Labbe, that she was "barely able to get through even a remote session" because of how ill she was. The TSM certifies that January 11 was the last day that she was able to teach whatsoever until March 23, 2021.^{3/}

3/ The record contains copies of: an email to Principal Gluchowski dated January 18, 2021 from a doctor, and an attached doctor's note, stating the TSM was not cleared to return to work and would be reevaluated on January 22; an email exchange between the TSM and Gluchowski on January 25, in which the TSM reported her hospitalization the prior week (continued...)

The TSM certifies that she attempted to make entries into AESOP, the district's attendance reporting system, on January 13 and 14, 2021, but received error messages; while she was able to make an entry on January 15, the day she was hospitalized. The TSM further admits she did not enter a sick day into AESOP on January 19, 20, 21, 22, 25, 26 and 27, 2021; she certifies that during that period she was very ill and had trouble sleeping and, as a result, would wake up too late to make an entry into AESOP, which only accepts absentee entries before 7:00 a.m.

The TSM further certifies that every day she was not present, either in person or remotely, she submitted lesson plans through her Google Classroom account, with a notice that she would not be in school on that date. She also submitted hard copies of alternate lesson plans with alternative activities for in-person days for the students in the event of a power shortage when they would not have access to their computers. The TSM certifies that she did this on a daily basis, and that both her

3/ (...continued)

and stated, among other things, that she was not cleared to return to in-person or remote instruction at that point, in reply Gluchowski asked for a note extending the medical leave, and copied the Board's human resources department; a doctor's note dated January 26, stating the TSM was medically unable to return to work and was still incapacitated by the COVID-19 infection; and a doctor's note dated February 8, stating the TSM suffered periods of hypoxia and tachycardia, the virus had also impacted an underlying thyroid disease, she was medically unable to perform her tasks as a teacher, and estimating that she would remain in that status until at least March 22.

supervisor and Vice Principal had access to the lessons she posted each day on Google classroom.

The TSM certifies that on February 1, 2021, while she was still out on leave due to COVID, Principal Gluchowski phoned her, asking why she had not put in a parent/teacher's conference link to be posted by the district, so that parents could sign in for conferences. The TSM further certifies that during the phone call, Gluchowski initially professed ignorance when reminded that she was out sick and had not been teaching for quite some time, and that she had also emailed him on January 25 about her condition; but that during the call Gluchowski eventually admitted receiving the prior notices/emails.

The TSM certifies that the Board did not require another teacher to provide lesson plans in the "on-course platform" while assigned as the TSM's substitute for most or the entirety of the TSM's leave. The TSM contends that, therefore, the Board did not consider the providing of lesson plans on that platform to be a necessary part of the TSM's teaching performance. The TSM certifies that the substitute also contracted COVID during this period, and that the substitute during her own COVID-related absences only provided lesson plans on Google Classroom, and was not required to post the plans on the OnCourse platform. The TSM certifies that she returned to work on March 23, 2021.

The TSM certifies that on April 26, 2021, she was called into Dr. Labbe's office for a meeting. The TSM was accompanied in the meeting by Association President Veres. Also present was Assistant Superintendent Shediack. At that meeting, Dr. Labbe told the TSM that she had a choice: either face tenure charges or accept an increment withholding. The TSM certifies that during the April 26 meeting with Dr. Labbe, "theft of time," specifically for the days in January 2021 that the TSM admits she did not enter her absences into AESOP, was the only reason provided for the threat of either tenure charges or an increment withholding; and that Dr. Labbe did not refer to lesson plans, posting of student grades or parent/teacher conferences as additional reasons. The TSM certifies that no reference was made to the substance of the TSM's March 29 meeting (further detailed below) with Gluchowski, and that Dr. Labbe "specifically mentioned he would not be referencing that prior meeting".

The TSM certifies that, soon after her meeting with Labbe, the Association's counsel asked the Board attorney why the TSM was being threatened with disciplinary action. The Board attorney replied that the Board viewed the TSM as being guilty of theft of time, and invited counsel to submit anything the Association had to disprove that claim. In response, the Association's counsel submitted his May 7 letter and attachments thereto, addressing the theft of time claim. (See footnote 1,

supra.) The TSM certifies that only after the Association counsel's May 7 letter did the Board provide her with a copy of the drafted tenure charges.^{4/} The TSM certifies that she was only previously aware of the allegations in one charge and two counts of the draft tenure charges, and this was her first notice that the Board was trying to discipline her on grounds other than those. The TSM stresses that the Board only raised the other charges after the Association contested the "original" grounds for the withholding. The TSM also contends that her APR scores were arbitrarily lowered to attempt to demonstrate supposed issues with her teaching performance.

In its certifications the Board disputes many of the TSM's claims including, among other things, as to: whether she was hospitalized for one day; whether there were any problems with the AESOP system; and the extent of the TSM's COVID-related absences and whether she properly reported or otherwise communicated them to her supervisors. The Board also denies arbitrarily lowering the TSM's APR score.

Principal Gluchowski certifies that the TSM's posting of assignments on her Google Classroom page did not comply with the lesson plan requirements set forth in the Faculty Handbook; and that the Board received in January a parental complaint that the

^{4/} The record does not contain a copy of the draft tenure charges.

TSM had not graded a student's assignments and had not posted anything for upcoming parent/teacher conferences. Gluchowski certifies that he gave the substitute "latitude" because she needed to change gears at the last minute from her normal duties, and teach extra periods, to cover for the TSM; but that even so, the substitute continued to properly upload lesson plans.

Gluchowski certifies that on March 29, 2021, he held a virtual Webex meeting with the TSM "to gather information pertaining [to] her deficiencies throughout the year," as detailed in an undated written summary of the meeting attached to Gluchowski's certification.^{5/} Also present in the meeting, according to Gluchowski's written summary, were: Ken Veres, Association President; Dr. Marilyn Shediack, Assistant Superintendent of Curriculum & Instruction; Dr. Edward Aguiles, Director of Human Resources; and Kimberly Grossman, Supervisor of English Language Arts. Gluchowski's written summary relates the issues as to which [the TSM] was "asked to explain her point of view" regarding five topics of inquiry, in pertinent part as follows (emphases added):

Topic 1: Lesson plans

Mr. Gluchowski asked [the TSM] why lesson plans were not posted for 11 weeks of the school year, specifically the Month of

^{5/} The TSM certifies that she never received any notice in connection with the March 29 meeting, or a write-up for anything discussed in it, and Gluchowski's written summary of the meeting was never shared with her.

January when she was on a remote teaching status.

. . .

Topic 2: Grading

After advising [the TSM] the SMS administration fielded a number of parent concerns late in January 2021, Mr. Gluchowski asked [the TSM] why her grade book was not updated for the month of January.

. . .

Topic 3: Student Attendance

Mr. Gluchowski asked [the TSM] why student attendance was not taken throughout the month of January.

. . .

Topic 4: Parent/Teacher Conferences

Mr. Gluchowski asked [the TSM] why she did not set up links or participate in Parent /Teacher conferences which were scheduled for the week of February 1, 2021.

. . .

Topic 5: Possible lack of synchronous learning school days

Mr. Gluchowski explained to [the TSM] that during the month of January, there were 9 days in which she did not provide synchronous instruction or video meet with her roster students. Mr. Gluchowski read out loud the dates in question. (January 13, 14, 19, 20, 21, 22, 25, 27, 29)

. . .

Mr. Gluchowski read the [district's] statement [regarding COVID-19 policies] aloud, "You can still teach remotely unless symptoms begin where you cannot teach remotely effectively, in which you would need to submit a sick day into AESOP."

Mr. Gluchowski asked [the TSM], "Why didn't you put the sick day into Frontline as instructed to do so on the COVID-19 letter of January 11, 2021 for the 9 dates in January?"

. . .

Mr. Gluchowski asked [the TSM], "Did you receive approval from me not to put in a sick day into AESOP if you were not able to teach?"

. . .

Mr. Gluchowski asked [the TSM], "Which is it, were you on a sick day or were you teaching?"

Mr. Gluchowski asked [the TSM] again, "Were you present for those days or absent on a sick day?"

. . .
Mr. Gluchowski asked, "Why didn't you put the sick day into Frontline as instructed to do so on the COVID-19 letter of January 11, 2021?"

. . .
Again, after continued aggressive elaboration of how she was sick and how the illness affected her, [the TSM] stated, "This is fucking bullshit."

. . .
Mr. Gluchowski responded, "I did not say that, again I am trying to find out what was going on during the time she did not put in sick days for those 9 days."

. . .
Dr. Aquiles stated in an effort to close his discussion with [the TSM], "We can review those 9 days and clean them up on our end."

The TSM repeatedly responded, "I was sick," to the above-quoted inquiries.

Dr. Labbe certifies that, contrary to the TSM's description, his purpose in meeting with the TSM on April 26, 2021 was to review "all of the problems" discussed during her March 29 meeting with Gluchowski, which included the TSM's "acceptance of pay for the days on which she had not worked and failed to report her absences." Labbe further certifies that at the time he was weighing options for dealing with "all of this," including "possibly filing tenure charges against [the TSM] for wrongfully accepting and retaining those funds, among other things."

Labbe further certifies that he ultimately concluded the TSM's teaching performance deficiencies set forth in the APR did warrant an increment withholding. Labbe certifies that the TSM failed to exhibit the level of integrity expected of a teacher by failing to properly perform her assigned duties on multiple days when she failed to log out as sick; and that she failed to exercise the expected level of self-restraint and controlled behavior in dealing with her supervisors by, among other things, stating in response to her administrators' questioning, "This is fucking bullshit," as detailed in Gluchowski's summary of the March 29 meeting.

ANALYSIS

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. When doing so, we focus on "the statement of reasons issued to the teaching staff member at the time the increment was withheld." N.J.A.C. 19:13-2.2(a)(3). Where a board cites multiple reasons for the withholding, 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). In mixed-reasons cases, we look to those that predominate, paying particular attention to the ones most emphasized by the Board in its statement of reasons. Monroe Bd. of Ed., P.E.R.C. No. 2018-48, 44 NJPER 453 (¶126 2018), citing, inter alia, Bergenfield Bd. of Ed., P.E.R.C. No. 2006-69, 32 NJPER 82 (¶42 2006), aff'd, 33 NJPER 186 (¶65 App. Div. 2007); Camden Cty. V/T Bd. of Ed., P.E.R.C. No. 2007-47, 33 NJPER 24, 25 (¶9 2007). However, we will neither look behind the cited reasons nor consider their validity. See Saddle River Bd. of Ed., P.E.R.C. No. 96-61, 22 NJPER 105 (¶27054 1992). 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, 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.

Applying these standards to the unique facts of this case, we find that the reasons for the disputed increment withholding, as set forth in the Board's statement of reasons (and, referenced therein, the TSM's 2020-2021 APR), do not predominately relate to an evaluation of the TSM's teaching performance.

The Board argues that its withholding of the TSM's salary increment was predominately evaluative and is therefore under the exclusive jurisdiction of the Commissioner of Education, because the Commission has routinely held that the deficiencies cited in the TSM's annual performance review (including: failing to submit lesson plans as required; failing to properly post student grades; failing to follow procedures for setting up parent/teacher conferences; failing to record student attendance, and failing to provide synchronous instruction with real-time,

online class meetings) relate predominately to teaching performance.

The Association argues that the Board's "actual" reasons for the withholding (which it contends is solely "theft of time" related to her alleged failures to log into AESOP for some of her January 2021 absences)^{6/} were predominately disciplinary. That is, the Association argues, AESOP is wholly disconnected from the TSM's interaction with students or their educations, and a disciplinary response to the TSM's alleged inaction with regard to AESOP sheds no light on her teaching performance. The Association further argues that an alleged misuse of sick days or excessive absenteeism is treated as disciplinary because no educational expertise is needed to determine whether the absenteeism supports a withholding.

The Association further argues that, even accepting the Board's "altered" reasons for withholding the TSM's increment (i.e. any reason relied upon beyond the alleged "theft of time"), those reasons are still predominately disciplinary - that is, the Board did not similarly require the TSM's substitute to post lesson plans, therefore any discipline imposed based upon the TSM's failure to do so was for disciplinary rather than

^{6/} The Association contends the APR is "inadmissible" as it was created after the decision to withhold the TSM's increment, which it contends was first communicated during the TSM's April 26 meeting with Dr. Labbe.

evaluative reasons. The Association further asserts that the TSM's alleged failures to post grades and to provide parent/teacher conference links concern non-compliance with work rules and do not require the expertise of the Commissioner of Education.

We find this is a mixed-reason case, therefore we must pay particular attention to the reasons "most emphasized" by the Board in its statement of reasons. We reject the Association's argument that any reasons listed therein or, by reference, within the APR, are "inadmissible" other than as discussed in the TSM's April 26 meeting with Dr. Labbe, even assuming (as the TSM claims) the only issue discussed in that meeting was "theft of time."

Allegations like failing to submit lesson plans, post student grades, set up parent/teacher conferences, provide instruction, etc., certainly relate to the performance of teaching duties, and such failings may well justify the withholding of an increment. However, we find that here the Board places the "most emphasis" on the TSM's alleged teaching performance deficiencies during a period of time when the TSM claims she was too sick to perform most if not all of those duties, as a result of contracting COVID-19, and during which she also, allegedly, negligently failed to sign out sick on a number of days. If true, then the TSM was, in effect, absent from duty.

Allegations of absenteeism are disciplinary reasons for increment withholdings that do not predominately relate to evaluation of teaching performance. See, Middlesex Bd. of Ed., P.E.R.C. No. 2020-45, 46 NJPER 444 (¶99 2020), citing, 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); Bergenfield Bd. of Ed. and Bergenfield Ed. Ass'n, P.E.R.C. No. 2006-69, 32 NJPER 82 (¶42 2006), aff'd, 33 NJPER 186 (¶65 App. Div. 2007); Scotch Plains-Fanwood, supra; Elizabeth Bd. of Ed., P.E.R.C. No. 2016-75, 42 NJPER 545 (¶150 2016); Elizabeth Bd. of Ed., P.E.R.C. No. 2015-48, 41 NJPER 344 (¶109 2015); Middlesex Bd. of Ed., P.E.R.C. No. 2000-86, 26 NJPER 217 (¶31089 2000); Hillside Bd. of Ed., P.E.R.C. No. 92-124, 18 NJPER 358 (¶23155 1992). Under the circumstances of this case we find that the bulk of the alleged teaching performance deficiencies stem from a factual dispute (whether and to what extent the TSM was too sick to work and/or failed to properly log her sick days) that would not require the Commissioner of Education's review.

The Board also emphasizes the TSM's unprofessional and unbecoming use of profanity during a meeting with her Principal to discuss those issues. This meeting did not occur in the classroom or in front of students. As such, we find that "an arbitrator can properly make an objective determination whether

or not [the TSM] engaged in what is indisputably improper conduct" during that meeting. Elizabeth Bd. of Ed., P.E.R.C. No. 2020-5, 46 NJPER 104 (¶21 2019), quoting, Morris Hills Reg. Dist. Bd. of Ed., P.E.R.C. No. 92-69, 18 NJPER 59 (¶23025 1991).

ORDER

The request of the Sayreville Board of Education for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni, Jones, Papero and Voos voted in favor of this decision. Commissioner Ford recused himself.

ISSUED: October 28, 2021

Trenton, New Jersey