

P.E.R.C. NO. 2022-25

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.

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)

SYNOPSIS

The Public Employment Relations Commission denies the Board's motion for reconsideration of P.E.R.C. No. 2022-17, 48 NJPER 219 (¶49 2021), which denied the Board's request for a restraint of binding arbitration of a dispute over a teacher's increment withholding. In that decision, the Commission found that the crux of the Board's reasoning to withhold the teacher's increment was predominately disciplinary, relating to the Board's allegations that she was absent from duty and failed to properly use sick leave for those absences. The Commission finds that the Board has not met the standard for reconsideration of establishing extraordinary circumstances or exceptional importance. The Commission concludes that the underlying decision correctly found that the Board's issues with the teacher dealt with her alleged "theft of time", which is predominately disciplinary, rather than her alleged deficient teaching performance.

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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DECISION

On November 8, 2021, the Sayreville Board of Education (Board) moved for reconsideration of P.E.R.C. No. 2022-17, 48 NJPER 219 (¶49 2021). In that decision we denied the request of the Board 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 (Association) is disciplinary or predominately relates to the evaluation of teaching performance. In this "mixed-reason" increment withholding case, we found that the crux of the Board's reasoning to withhold the TSM's increment dealt with the period of time, in January 2021, when the TSM claims she was too sick from COVID-19 to perform most if not all of her teaching duties,

and during which she also, allegedly, negligently failed to sign out sick on a number of days. We further reasoned that such allegations of being "absent from duty" are predominately disciplinary in nature appropriate for arbitral review, rather than evaluative of teaching performance, which would require the expertise of the Commissioner of Education to review the increment withholding. The Board has filed a brief in support of its motion. The Association has filed an opposition brief.

Reconsideration "will only be granted based on a demonstration of extraordinary circumstances and exceptional importance. The movant shall specify and bear the burden of establishing the grounds warranting reconsideration." N.J.A.C. 19:13-3.12(a). We will not consider arguments raised for the first time through a motion for reconsideration. Camden County Sheriff, P.E.R.C. No. 2004-65, 30 NJPER 133 (¶50 2004); accord State of New Jersey (OER), P.E.R.C. No. 88-45, 13 NJPER 841 (¶18323 1987) (holding that a party cannot raise a claim for the first time on a motion for reconsideration). See also, Mercer County Sheriff's Office, P.E.R.C. No. 2017-15, 43 NJPER 114 (¶33 2016); In re Toolen, P.E.R.C. No. 2018-36, 44 NJPER 329 (¶94 2018).

The Board argues that the Commission's decision erroneously focused on the case being about absenteeism. In its motion, the Board re-frames the dispute as not about the TSM's failure to

call out sick on the days she did not perform her teaching duties, but rather that the TSM provided inadequate services on those days and yet received full pay. The Board now claims that the TSM did provide remote teaching services on the nine days in question in January 2021, and that these services were deficient, thereby justifying her increment withholding based on an evaluation of her teaching performance. In further support of the increment being withheld due to deficient teaching performance, the Board re-raises that the TSM failed to post student grades, failed to properly submit lesson plans, and failed to set up parent conferences as required. Lastly, the Board takes issue with several of the cases cited in the Commission's decision as being misapplied or supportive of its position.

The Association responds that the Board's motion does not meet the high burden of establishing extraordinary circumstances or exceptional importance warranting reconsideration of the Commission's decision. The Association argues that the Board's motion is the first time it is claiming that the TSM performed her teaching duties during the period she was allegedly out sick with COVID-19, contradicting the Board's previously submitted documentation, which claimed the TSM was paid for work she did not perform. The Association further argues that the factual dispute as to whether the TSM performed teaching duties on the

subject days and whether she properly used or attempted to use sick leave for the days she was allegedly absent from duty are issues for arbitration.

Here, we find the Board's motion for reconsideration has not met the standard of establishing extraordinary circumstances or exceptional importance. In its motion, the Board is re-framing the dispute in a different light than how it was presented to the Commission initially. The extensive record in this case is replete with instances of the Board alleging that the TSM did not perform her teaching duties during the days in question, rather than that she, in fact, performed those duties, but poorly.

We rely on the Commission's decision's thorough recitation of the factual record, but highlight the following. In Dr. Labbe's June 10 letter, which the Commission considered 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), the Board clearly states that the TSM failed, "to report to work on-site, to provide synchronous instruction, and hold a video meet with the rostered students...while accepting full pay for these days (despite not working) and to date [has] not made an offer or effort to refund the money." Here, the Board is alleging that the TSM did not perform her teaching duties on the subject days and violated the policy of not using her sick leave for such absences. Moreover, the written summary of the March 29, 2021 meeting between

Principal Gluchowski and the TSM repeatedly demonstrates that the administration's predominate concern was that the TSM did not perform teaching duties while at the same time not properly using her sick leave for her absence from duty. Throughout that meeting, Principal Gluchowski repeatedly questioned the TSM whether she was in fact too sick to provide remote teaching services and, if so, why she did not use sick leave or otherwise notify the administration as to the extent of her illness. For example, Principal Gluchowski asked the TSM, "Which is it, were you on a sick day or were you teaching?", and again, "Were you present for those days or absent on a sick day?". Principal Gluchowski further stated, "...I am trying to find out what was going on during the time she did not put in sick days for those 9 days." This demonstrates a factual dispute, which is appropriate for arbitral review, regarding what the TSM was doing on the subject days and whether she was indeed too sick to perform her teaching duties. Such a factual dispute contradicts the Board's instant position that it always claimed that the TSM worked on the subject days, but performed deficiently. The Commission's decision correctly found that the crux of the Board's issues with the TSM dealt with her alleged "theft of time", which is predominately disciplinary, rather than her alleged deficient teaching performance.

We further find that the Board's critique of the cases cited in the Commission's decision is unpersuasive towards determining this reconsideration motion. The Board argues that the cited

cases are about excessive absenteeism, and the instant matter is not. The cases cited by the Commission accurately support the following proposition: "Allegations of absenteeism are disciplinary reasons for increment withholdings that do not predominately relate to evaluation of teaching performance." The Commission's decision does not analogize to any of the cases specifically, but rather, thoroughly explains its finding that the increment withholding was primarily focused on the TSM's alleged absence from duty, which has been deemed disciplinary in the Commission's precedent. The Board is simply disagreeing with that finding, which is not appropriate for a motion for reconsideration.

For all the foregoing reasons, we find that the Board has not demonstrated extraordinary circumstances and exceptional importance warranting reconsideration of our prior decision.

ORDER

The Sayreville Board of Education's motion for reconsideration is denied.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Jones, Papero and Voos voted in favor of this decision. None opposed. Commissioner Ford recused himself. Commissioner Bonanni was not present.

ISSUED: December 21, 2021

Trenton, New Jersey