

P.E.R.C. NO. 2022-48

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HOLLAND TOWNSHIP BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2022-023

HOLLAND TOWNSHIP EDUCATION ASSOCIATION,

Respondent.

#### SYNOPSIS

The Public Employment Relations Commission grants, in part, the request of the Holland Township Board of Education for a restraint of binding arbitration of a grievance filed by the Holland Township Education Association, which contested the withholding of a teaching staff member's increment. The Commission finds that this withholding was based predominately on the evaluation of teaching performance for the teacher's allegedly inappropriate statements to students in class. There were also two incidents which served as secondary reasons for the withholding that were disciplinary in nature. The Commission restrains arbitration over the substantive decision to withhold the increment, but denies a restraint to the extent the grievance contests alleged procedural violations associated with the teacher's rights to be notified of and respond to complaints.

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, Hatfield Schwartz Law Group, LLC,  
attorneys (Stefani C. Schwartz, of counsel and on the  
brief)

For the Respondent, Oxfield Cohen, P.C., attorneys  
(Samuel B. Wenocur, of counsel and on the brief)

DECISION

On January 6, 2022, the Holland Township Board of Education (Board) filed a scope of negotiations petition seeking a restraint of binding arbitration of a grievance filed by the Holland Township Education Association (Association). The grievance contests the withholding of a teacher's salary increment for the 2021-2022 school year.

The Board filed briefs, exhibits and the certification of its Superintendent, Stephanie Snyder. The Association filed a brief, exhibits and the certifications of the grievant, Special Education teacher, Nancy Zrake, and 5<sup>th</sup> grade science teacher, Rosemary Martin. These facts appear.

The Association represents all teachers and support staff personnel, including classroom aides, clerks, secretaries and custodians employed by the Board. The Board and Association are parties to a collective negotiations agreement (CNA) with a term of July 1, 2018 through June 30, 2021, which continues to be in effect. The grievance procedure ends in binding arbitration.

The Association's September 13, 2021 grievance alleges the Board's increment withholding violated Articles 4:5 and 13:5.1.

Article 4:5 provides:

No employee shall be disciplined, discharged, reprimanded, reduced in rank or compensation, or deprived of any professional advantages granted in this Agreement without just cause, provided that there shall be excluded from binding arbitration of disciplinary disputes those involving employees with statutory protection under the tenure laws or alternate statutory appeal procedures. Within two (2) school days prior to any scheduled meetings concerning any of these matters, the employee will be given written notice of the reasons for such a meeting or interview and shall be entitled to have representative(s) of the Association present to advise him and represent him during such meetings or interview.

Article 13:5.1 provides:

Any complaints regarding an employee made to any member of the administration by any parent student or other person, which are used in any manner in evaluating an employee, shall be promptly investigated and called to the attention of the employee. The employee shall be given an opportunity to respond to and/or rebut such complaint.

Snyder certifies that on May 27, 2021, she received messages from concerned parents regarding inappropriate conversations that the grievant was having with her students, during school hours and in the grievant's classroom, regarding the relationship between administration and staff, including the administration's decision to reassign and terminate staff. Snyder asserts that the grievant admitted she was visibly emotional during this conversation with her students. Snyder further certifies that parents were concerned because of the inappropriate nature of the conversation, the grievant's emotional display when criticizing the administration, and her students were concerned that their behavior had impacted the administration's decision to reassign and terminate staff.

Snyder certifies that, as a result of this alleged incident of classroom misconduct, on June 21, 2021 the grievant was advised that Snyder would be recommending to the Board that it withhold her salary increment for the 2021-2022 school year. Snyder certifies that this decision was based upon her assessment of the grievant's teaching performance, as well as two prior, documented incidents involving poor performance. The Board's April 6, 2020 reprimand letter alleged that the grievant violated several Board policies when she improperly used social media to solicit donations from parents for classroom resources. The Board's May 24, 2021 reprimand letter alleged that students were

observed leaving the grievant's classroom and congregating, unsupervised at a nearby courtyard.

On August 24, 2021, the Board voted to approve the withholding of the grievant's salary increment for the 2021-2022 school year. By letter dated August 26, 2021, the grievant was advised of the Board's approval of the increment withholding and provided a statement of reasons, which stated the following, in pertinent part:

... on Thursday, May 27, 2021, I received messages from concerned eighth grade parents regarding inappropriate conversations you had with their children about the administration's decision to reassign and terminate staff. As a teaching staff member, you are expected to "provide an approved educational program and establish a class environment that fosters learning and personal growth, to help pupils to develop skills, attitudes and knowledge needed to provide a good foundation for continued education and to maintain good relationships with parents and other staff members." Furthermore, District Policy and Regulation define appropriate staff conduct (Policy 3281) and the cooperation between parents and the school (Policy 9200).

Your choice to share, among other things, dissatisfaction of the operations of the school with your eighth (8<sup>th</sup>) grade students was unprofessional and caused a significant disruption to the orderly operations of the district. Your emotional display compromised the mental health and well-being of your students, interfered with the delivery of curriculum and instruction, and undermined administrative decision making.

Moreover, this is not the first incident in which you engaged in misconduct in the course

of your teaching performance. Since April 2020, you received two written reprimands related to your duties as a teaching staff member. First, you received a warning on April 6, 2020 for inappropriately using social media to solicit donations to purchase resources for your classroom. Second, you received a formal letter of reprimand on May 24, 2021 after you failed to properly supervise your students.

Based on the foregoing, good cause exists for withholding your employment salary and adjustment increments for the 2021-2022 school year.

The grievant certifies that her observations for the 2020-2021 school year were exemplary. For example, the grievant certifies that, on her June 10, 2021 Observation Report, the Board gave her a score of 3.17 for Domain 4, "Professional Responsibilities", which is an "effective" rating. The "Showing Professionalism" section of that report provides:

the teacher displays high standards of honesty, integrity, and confidentiality in interactions with colleagues, students and the public. The teacher is active in serving students, working to ensure that all students receive a fair opportunity to succeed. The teacher maintains an open mind in team or departmental decision making. The teacher complies fully with school district regulations.

The grievant certifies that her 2020-2021 summative evaluation report, signed by Snyder, gave her an overall teacher practice score of 3.64, an overall highly effective rating. The grievant certifies that the alleged inappropriate conversation with students, which was the basis for the Board withholding her

salary increment, took place on May 26, 2021, at around 8:15-8:20 a.m. during "Advisory Period." She denies making any comments or taking any actions which merited any disciplinary action, including an increment withholding. She certifies that during the 2020-2021 school year, the school day began by students reporting to homeroom at 7:50 a.m., students would then have Advisory from 8:05 to 8:40 a.m., with first period beginning at 8:40 a.m. While students remained in the same classroom throughout the day, the teachers moved between classrooms for different periods. The first period teacher typically also served as the homeroom and Advisory teacher. The grievant certifies that as an Advisory teacher, she did not prepare any lesson plans or teach any lessons to students in the room. She certifies that her role was to watch over the students while they work on any of their classes. She further certifies that Advisory is not considered an instructional period for contractual purposes, but rather, it is treated as a separate category of student-contact time, like hall monitoring or bus duty.

The grievant certifies that, on May 28, 2021, the 8<sup>th</sup> grade math teachers met with the Association vice president and president, who informed them that Snyder wanted to talk to them about something that happened, but they did not know specifically what it was about. At that time, the Association indicated that

Snyder was considering disciplinary action. She further certifies that after this meeting, she never had a meeting (either individually or with the other 8<sup>th</sup> grade teachers) with Snyder. The grievant also certifies that she was never interviewed or contacted by any administrator as to the alleged inappropriate conversation of May 26<sup>th</sup>. The grievant certifies that she has never been written up based upon the alleged inappropriate conversation of May 26<sup>th</sup>. She also certifies that during a June 11, 2021 meeting with Snyder to discuss the grievant's summative evaluation, they discussed the alleged May 2021 incident of the grievant failing to supervise her students in the courtyard, but Snyder did not raise any issues regarding inappropriate comments with students on May 26<sup>th</sup>.

The grievant certifies that she first became aware of her increment withholding for the 2021-2022 school year via the June 21, 2021 "Rice Notice" letter from Snyder, which stated the increment withholding was "based upon an assessment of teaching performance." She further certifies she requested, through the Association, for permission to speak directly to the Board at the June 29, 2021 Board meeting, but Snyder denied this request. The grievant certifies that she then sent each Board member a letter on June 28<sup>th</sup> contesting the proposed increment withholding, which indicates that she had no idea as to the specific basis for the increment withholding. She also certifies that, on August 10<sup>th</sup>,



Snyder sent her a new letter, citing "professionalism" as a basis of the recommendation to withhold her increment. The grievant certifies that prior to the August 24, 2021 Board meeting, where her increment withholding was rescheduled to be discussed, she sent another letter to the Board members contesting the increment withholding, which further indicated that she continued to be unaware of the basis for the increment withholding.

The grievant certifies that Snyder's August 26, 2021 letter first apprised her that the alleged inappropriate conversation of May 26<sup>th</sup> was the basis for her increment withholding, but that the letter failed to provide any details regarding the alleged inappropriate comments. She further certifies that she has never received any of the complaints from parents referenced in that letter nor was she told about the content of these complaints. The grievant certifies the first time she was able to address the allegations concerning her increment withholding was at the October 2021 Board meeting, where she read a prepared statement. In that statement, the grievant addressed the April 2020 incident regarding her alleged misuse of social media to solicit donations, claiming she was unaware that she did anything improper at the time and that she immediately apologized and removed the offending social media post. She also addressed the May 2021 incident regarding her alleged failure to supervise students, claiming that she was supervising the students from her

class in the courtyard and they were not out of her "sight or ear shot."

Martin certifies that, on May 27, 2021, the Association was informed that Snyder wanted to meet with the 8<sup>th</sup> grade teachers about parent complaints or emails regarding the teachers being upset about announced changes for the 2021-2022 school year. Martin further certifies that the Association did not receive any of these alleged parental complaints and that the grievant was not specifically mentioned by Snyder. Martin certifies that the Association was not provided any advance warning of Snyder's recommendation to withhold the grievant's salary increment and that the Association's first notice of the increment withholding was when the grievant informed them of her receipt of the June 21, 2021 "Rice Notice." Martin further certifies that Snyder's August 26, 2021 letter was the Association's first notice of the basis for the grievant's increment withholding. Martin certifies that the Association, to date, has not been provided with the specific details concerning the grievant's alleged inappropriate comments to students on May 26<sup>th</sup>.

Zrake certifies that under the CNA's Article 4:5, the Board is supposed to provide a member with two days' written notice before scheduling any meetings which could concern any disciplinary action. Zrake further certifies that Article 4:5 also requires the Board to provide an employee with a written

notice of reasons for a meeting or interview which could be related to disciplinary action. Zrake certifies that the CNA's Article 13:5.1 requires the Board to make an employee aware of any parental complaints made about the employee and provides the employee the opportunity to respond to parental complaints. Zrake also certifies that the Association has enforced this provision.

Zrake certifies, on June 21, 2021, she made an initial request to Snyder to have the grievant speak at the next Board meeting and she also requested the reasons for the increment withholding. Zrake certifies that, on June 23<sup>rd</sup>, Snyder denied the grievant's request to speak at the Board meeting and that a statement of reasons for the increment withholding would be provided if the Board approved Snyder's recommendation. Zrake further certifies that, in her August 16, 2021 email to Snyder, she requested that the grievant be allowed to speak at the August 24<sup>th</sup> Board meeting and inquired as to why "teaching performance" in the grievant's initial "Rice Notice" was changed to "professionalism" in the subsequent letter. Zrake certifies that Snyder responded via email on August 16<sup>th</sup>, denying the request for the grievant to speak and stating, "It should have read in the first letter 'professionalism'. This is not a conversation about her teaching performance."

On September 13, 2021, the Association filed a Step 3 grievance to contest the grievant's increment withholding for the 2021-2022 school year. Zrake certifies that the Association's grievance asserts that the grievant's increment withholding was inappropriate because it was not for just cause and that the Board failed to follow the procedural requirements preceding a disciplinary action such as an increment withholding. On September 24<sup>th</sup>, Snyder denied the grievance and advised that the appropriate forum for appealing the grievant's increment withholding was with the Commissioner of Education. On September 29<sup>th</sup>, the Association filed a request for a hearing before the Board. At the Board's October 19<sup>th</sup> meeting, a hearing was held regarding the grievance. The Board voted to deny the grievance at its November 23<sup>rd</sup> meeting. On December 3<sup>rd</sup>, the Association filed a request for submission of a panel of arbitrators. 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. 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). 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. 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.

The Board argues that arbitration should be restrained because the grievant's salary increment was withheld for reasons predominately related to teaching performance. The Board argues that teaching performance is not limited to teaching in the classroom but also includes discussions and comments made to students, such as the grievant's inappropriate conversation with students on May 26<sup>th</sup> complaining, in an emotional display, about the Board's personnel actions. The Board argues that a teacher's alleged inappropriate comments to students predominately relate to teaching performance because they involve the Board's subjective educational judgment as to what is appropriate in a classroom environment, thus, the Commissioner of Education's expertise is required to determine the grievant's appeal of the increment withholding.

The Association argues that arbitration should not be restrained because the Board's stated reasons for the increment withholding were predominately disciplinary. The Association

argues that Snyder's August 16<sup>th</sup> email to Zrake admitted that the grievant's increment withholding was "not a conversation because of her teaching performance," and thus, it must have been for disciplinary reasons. The Association next argues that the increment withholding could not have been for predominately evaluative reasons because the grievant received exemplary evaluations during the 2020-2021 school year, and none of the evaluations raised the grievant's alleged inappropriate conversation with students. The Association further argues that any alleged inappropriate comments made to students on May 26<sup>th</sup> would not relate to teaching performance because her duties during Advisory Period were not educational, but rather supervisory, akin to cafeteria or hall duty. The Association also argues that the Board's Notice of Increment Withholding letter does not provide any specific details as to how the grievant's teaching performance was deficient or how it could be improved, but does allege violation of specific Board policies, where such allegations are typically considered to be disciplinary rather than evaluative in nature. The Association further argues that the Board's allegation concerning the grievant's alleged misuse of social media and her alleged failure to supervise her students in the courtyard are both disciplinary rather than evaluative in nature. Lastly, the Association argues that even if the Commission were to find the grievant's increment



withholding was predominately related to teaching performance and non-arbitrable, the Association's claims regarding the Board's violation of the CNA's procedural requirements remain arbitrable.

The Board responds in its reply brief that the Association's factual assertions must be established at a hearing on the merits. The Board argues that the Association's claim that Snyder's August 16<sup>th</sup> email admitted that the increment withholding was not about teaching performance cannot override the Board's clearly articulated basis for the increment withholding in its August 26<sup>th</sup> statement of reasons, which is what the Commission focuses on in an increment withholding case. The Board further responds that the Commission has found increment withholdings to be predominately related to teaching performance despite a teacher's positive evaluations, and thus, the grievant's 2020-2021 evaluations are not dispositive here. The Board also responds that the primary reason for the grievant's increment withholding are the allegations concerning her alleged inappropriate comments to students on May 26<sup>th</sup>, and the Commission should weigh this reason more heavily than the other two incidents referenced in the Board's August 26<sup>th</sup> statement of reasons. The Board further argues that the grievant's inappropriate comments to students involve the board's educational judgment as to what is appropriate in a classroom environment, which extends to the Advisory Period where the

grievant was present to guide and supervise the students. Lastly, the Board responds that the Association's request for arbitration does not reference any contractual procedural violations and that Article 4:5 is inapplicable because its plain language excludes this matter as it involves an alternate statutory appeal procedure.

As a threshold matter, we interpret the Board's August 26, 2021 statement of reasons as identifying the May 2021 incident involving the grievant's alleged inappropriate comments to students as the primary focus for the increment withholding. The Board also referenced two other incidents, which we interpret as secondary reasons for the increment withholding. In mixed-reasons cases, as in the instant case, we more heavily weigh those reasons most emphasized by the Board. Monroe Bd. of Ed.

With regard to the grievant's alleged inappropriate comments to her students, the Commission has long held that withholdings based on a teacher's allegedly inappropriate conduct or remarks made in class predominately relates to teaching performance. Florham Park Bd. of Ed., P.E.R.C. No. 93-76, 19 NJPER 159 (¶24081 1993) (withholding predominately related to teaching performance due to a single incident of a teacher allegedly making critical remarks about the principal to his class); Robbinsville Bd. of Ed. P.E.R.C. No. 2009-3, 34 NJPER 220 (¶75 2008) (withholding predominately related to teaching performance where teacher

allegedly made one insensitive comment to a student); Roxbury Bd. of Ed., P.E.R.C. No. 94-80, 20 NJPER 78 (¶25034 1994)

(withholding predominately related to teaching performance where teacher made allegedly improper remarks to female pupils); Red Bank Reg. Bd. of Ed., P.E.R.C. No. 94-106, 20 NJPER 229 (¶25114 1994) (withholding predominately related to teaching performance where teacher allegedly made off-color jokes and demeaning comments to and about students, and was insensitive to the needs of lower ability students). We have found these cases predominately relate to teaching performance on the theory that they involve a teacher's interactions with students and maintaining an appropriate educational environment. That rationale applies here. These interactions taking place during a non-instructional Advisory Period does not change that the determination of what behavior is appropriate in a classroom environment is a matter of educational judgment. Although the grievant was not "teaching" during Advisory Period, her role was to supervise the students as they did homework or studied. We also note that the grievant certified that the Advisory Period teacher also typically served as the Homeroom and 1<sup>st</sup> period teacher. This supports that the students would view the grievant as their "teacher" despite that Advisory Period was not instructional, and that the same expectations for maintaining an appropriate classroom environment would apply. Accordingly, we

find that the grievant's alleged inappropriate comments to students predominately relates to her teaching performance and may be not be submitted to binding arbitration.

We will briefly address the two secondary reasons provided by the Board for the increment withholding. The May 2021 incident involved the grievant allegedly failing to supervise her students when she remained in the classroom while some of her students left the classroom and gathered in the courtyard. The grievant asserts that she was watching the students from the classroom. On this record, we find that this reason is disciplinary, and does not predominately relate to teaching performance. Madison Bd. of Ed., P.E.R.C. No. 2020-58, 46 NJPER 596 (¶136 2020) (withholding was disciplinary when teacher's failure to supervise students on three different occasions related to his non-performance of teaching duties); Bergenfield Bd. of Ed., P.E.R.C. No. 2006-69, 32 NJPER 82 (¶42 2006) (withholding was disciplinary where teacher, among other things, was accused of poor classroom supervision by sleeping in class and repeatedly leaving building, resulting in students missing classes, finding "[s]uch allegations do not constitute an evaluation of teaching performance, because such performance did not occur").

The April 2020 incident alleging the grievant's misuse of social media to solicit donations from parents is disciplinary,

and does not predominately relate to teaching performance.

Pinelands Reg. Bd. of Ed., P.E.R.C. No. 2022-27, 48 NJPER 289 (¶64 2021) (finding that Board's allegation that grievant's social media commentary violated district policy was not predominately related to teaching performance).

We are unpersuaded by the Association's reliance on the grievant's positive evaluations for the 2020-2021 school year to show that the Board's basis for the increment withholding was not evaluative in nature. We have frequently recognized that deficient teaching performance does not necessarily have to appear on evaluation documents, and that even after all observations of a teacher have been completed, an increment may still be withheld for teaching performance reasons which must be reviewed by the Commissioner of Education. Farmingdale Bd. of Ed., P.E.R.C. No. 2015-28, 41 NJPER 224 (¶74 2014). The defense based upon the evaluations is a substantive consideration that, in this case, falls within the purview of the Commissioner of Education for consideration. The Commissioner of Education may consider the grievant's positive 2020-2021 evaluations to determine whether the Board's increment withholding was appropriate.

Despite that the two secondary reasons provided by the Board for the withholding are disciplinary, we reiterate that we find that the May 2021 incident involving the grievant's inappropriate

comments to her students was the focus of the increment withholding, and that predominately related to teaching performance. Therefore, arbitration must be restrained and the merits of the increment withholding will be considered by the Commissioner of Education.

Notwithstanding the foregoing, we decline to restrain arbitration over the Association's claims that the Board violated the CNA's procedural requirements, specifically those set forth in Article 4:5 and Article 13:5.1. The grievant certifies that she was never provided copies of parental complaints nor given the opportunity to respond to the complaints. She also asserts that she was not provided the requisite two days notice for meetings that concern disciplinary matters. These procedural claims may proceed to arbitration. Willingboro Bd. of Ed., P.E.R.C. No. 2001-68, 27 NJPER 236 (¶32082 2001). The Board may raise its contractual defenses to the arbitrator. Ridgefield Park.

For the foregoing reasons, we restrain arbitration as to the merits of the grievant's increment withholding because the primary reason for the withholding predominately relates to teaching performance, specifically communication with students in a classroom setting. However, we decline to restrain arbitration as to the Association's claims that the Board violated the CNA's procedural requirements.

ORDER

The request of the Holland Township Board of Education for a restraint of binding arbitration is granted with regard to the merits of the grievant's increment withholding and denied with regard to the Association's procedural claims.

BY ORDER OF THE COMMISSION

Chair Weisblatt, Commissioners Bonanni and Papero voted in favor of this decision. Commissioner Voos voted against this decision. Commissioner Jones abstained from consideration. Commissioner Ford was not present.

ISSUED: May 26, 2022

Trenton, New Jersey