

P.E.R.C. NO. 2000-90

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

FRANKLIN TOWNSHIP BOARD
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2000-71

FRANKLIN TOWNSHIP EDUCATION
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Franklin Township Board of Education for a restraint of binding arbitration of a grievance filed by the Franklin Township Education Association. The grievance contests the withholding of a teacher's salary increment for the 1999-2000 school year as discipline without just cause. The Commission concludes that the withholding is based predominately on the alleged failure of the teacher to comply with an administrative directive to contact a parent and not an evaluation of 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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Appearances:

For the Petitioner, Carroll, Weiss & Josephson, L.L.P.,
attorneys (James F. Schwerin, on the brief)

For the Respondent, Klausner, Hunter & Rosenberg,
attorneys (Stephen B. Hunter, on the brief)

DECISION

On January 6, 2000, the Franklin Township Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Franklin Township Education Association. The grievance contests the withholding of a teacher's salary increment for the 1999-2000 school year as discipline without just cause.

The parties have filed briefs and exhibits. These facts appear.

The Association represents teaching personnel. The Board and the Association are parties to a collective negotiations

agreement effective from July 1, 1996 through June 30, 1999. The parties have reached an agreement for a successor contract, but that agreement has not been finalized. The grievance procedure ends in binding arbitration.

Judy Bell is a tenured high school math teacher. On May 6, 1999, the director of the mathematics department sent a memorandum to Bell informing her that a parent had been trying to reach her and had left messages in her voice mail. The memorandum stated that it had been weeks since the parent first tried to reach Bell. She was directed to return the parent's call and in the future to respond to parents' calls more quickly. On May 18, the director wrote to Bell again and asked her to meet with him the next day to discuss his lesson observation and the results of her communication with the parent.

On June 15, 1999, the principal wrote to Bell. His memorandum stated that he had requested that she call the parent regarding her son's grades and that he received another call from the parent advising him that she had still not heard from Bell. The memorandum directed Bell to call the parent that day.

On July 12, 1999, the director of the mathematics department wrote to the director of personnel. He recommended that Bell's increment be withheld because of her refusal to communicate with a parent about her son's grades. He wrote that the parent had called him in April; that he had written to Bell on May 6 and met with her on May 19; and that each time she told him that she would call the parent as soon as she had a chance.

On July 29, 1999, the Board voted to withhold Bell's 1999-2000 increment for failing to follow an administrative directive to contact a parent concerning a pupil's grade. On September 28, the Association filed a grievance asserting that the withholding was without just cause and in violation of the contract. The grievance sought reinstatement of the increment. On November 30, the Board denied the grievance. On December 20, the Association demanded arbitration. This petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (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. [Id. at 154]

Thus, we do not consider the contractual merits of the grievance or any contractual defenses the Board may have.

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. 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 (¶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. [17 NJPER at 146]

The Board asserts that the failure to communicate with parents is an element of teaching performance and that arbitration should be restrained. It relies on Maurice River Tp. Bd. of Ed., P.E.R.C. No. 99-52, 25 NJPER 35 (¶30014 1998) and Southern Gloucester Cty. Reg. H.S. Dist. Bd. of Ed., P.E.R.C. No. 93-26, 18 NJPER 479 (¶23218 1992).

The Association asserts first that Bell strongly disagrees with the assertion that she did not comply with the directive to contact a parent. It asserts that she explained the delay in calling the parent and did attempt to call but was unsuccessful. The Association asserts that this withholding was predominately disciplinary and not based on an evaluation of Bell's exemplary teaching performance.

The only reason cited by the Board for withholding Bell's increments is that she allegedly did not comply with an administrative directive to contact a parent. The Board does not dispute the Association's assertion that Bell's teaching performance is exemplary. While we recognize that communication with parents is a element of teaching performance, this withholding is predominately related to the alleged failure to comply with the administrative directive, not to the evaluation of teaching performance.

The two cases relied on by the Board are distinguishable. In Maurice River Tp. Bd. of Ed., the lack of communications with parents was just one of many reasons for the withholding and we noted that some aspects of the withholding may


have involved alleged failures to comply with administrative directives. In Southern Gloucester Cty. Reg. H.S. Dist. Bd. of Ed., the teacher allegedly had repeated difficulties in her interactions with students and parents. The board was focused on the substance of the communications, not the teacher's alleged failure to respond to a directive to communicate.

Under these circumstances, the grievance may legally proceed to binding arbitration.

ORDER

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

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Madonna, McGlynn, Ricci and Sandman voted in favor of this decision. None opposed. Commissioner Muscato was not present.

DATED: May 25, 2000
Trenton, New Jersey
ISSUED: May 26, 2000