

P.E.R.C. NO. 95-76

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RIVER EDGE BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-95-52

RIVER EDGE EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the River Edge Education Association against the River Edge Board of Education. The grievance contests the withholding of a teacher's salary increments. Under all the circumstances of this case, the Commission holds that the reasons for this withholding predominately involved an evaluation of teaching performance and must be reviewed by the Commissioner of Education. The reasons are based on an overall assessment of the teacher's past and present classroom interactions.

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, Fogarty and Hara, attorneys (Stephen R. Fogarty, of counsel; Ellen Marie Walsh, on the brief)

For the Respondent, Springstead and Maurice, attorneys (Harold N. Springstead, of counsel)

DECISION AND ORDER

On November 30, 1994, the River Edge Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the River Edge Education Association. The grievance contests the withholding of a teacher's salary increments.

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

The Association represents the Board's certificated personnel, custodians and maintenance personnel, except for certain positions. The parties entered into a collective negotiations agreement. The grievance procedure ends in binding arbitration of increment withholdings that are not predominately based on an evaluation of teaching performance. N.J.S.A. 34:13A-26; -29.

Susan Mooney has taught for the Board for over 20 years. During the 1993-1994 school year, she taught second grade at Roosevelt Elementary School.

On June 14, 1994, Mooney's principal received a complaint from a parent who told him that Mooney had hit her child's hand and had used profane language under her breath in class. Mooney has denied these allegations. The principal interviewed the girl who was allegedly hit and three other students. The principal also reported the incident to the Division of Youth and Family Services and to the superintendent.

On June 16, 1994, the superintendent wrote the Board's trustees a memorandum. The memorandum recounted the allegations but added that the child thought Mooney had not seen her hand on the desk when Mooney brought her hand down. He stated that the incident highlighted a problem in placing students in Mooney's class since she had had "public relations difficulties" and many parents had written letters asking that their children not be placed in her class. The superintendent thus suggested the possibility of reassigning her. The superintendent noted that a letter of reprimand would be placed in Mooney's file and he recommended an increment withholding as well.

On June 24, 1994, the superintendent wrote Mooney a letter of reprimand. The letter stated:

This letter is an official letter of reprimand which outlines the most recent concerns involving your behavior as a teacher in the River Edge Public Schools. On Tuesday, June 14, 1994 a

parent informed us of an allegation that you hit her child on the hand with your open hand and used improper, inappropriate language. Upon further investigation by the school principal, Mr. Anthony Vouvalides, it was determined that this striking of the child was not purposeful or intentional. The parent also asserts that you hit her child "a week" earlier in the leg, also with an open hand. This could not be unequivocally verified due to the time difference between the alleged incident and the reporting of the incident. However, it is the determination of the school administration upon reviewing the matter, that you did use improper language in the classroom. Each child interviewed by the principal asserted that you used improper language in the classroom, usually under your breath, but loud enough for the students to hear it.

Unfortunately, your lack of self control in the classroom is not an isolated incident. Written reprimands were issued in 1986 and 1991.<sup>1/</sup> Particularly troublesome is the fact that the problems that were noted in the 1991 letter of reprimand and a letter that I had sent you that year have resurfaced.

You are hereby admonished that your use of improper language in the classroom is unacceptable. Furthermore, you are to refrain from making any unnecessary physical contact with students.

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<sup>1/</sup> The 1986 reprimand cited two alleged incidents. The first incident involved Mooney's leaving her students unattended, yelling at another teacher in the hallway, and being overheard by two groups of students. The second incident involved Mooney's dismissing a teacher aide in front of her students. The 1991 reprimand stemmed from complaints received from parents who had visited on Parent Visitation Day; the reprimand cited Mooney's allegedly sharp and negative interactions with students, inappropriate tone with second graders, and use of profanity. One parent was so upset that her child was transferred out of Mooney's class. The superintendent met with Mooney about these complaints and wrote her a letter registering his concerns and recommending that she take a paid leave of absence to obtain psychiatric help.

Your actions will be considered in conjunction with an assessment of your performance when I determine whether your employment and adjustment increments should be withheld. If the problems with your classroom performance are not rectified, I will have no choice but to consider preferring tenure charges. I trust such action will not be necessary.

On June 27, 1994, the superintendent wrote Mooney a letter stating that he would recommend that her employment and adjustment increments for the next school year be withheld. The letter listed four reasons:

1. Use of improper language in the classroom when responding to and reacting to students' actions.
2. Lack of self control in the classroom.
3. Ineffectively communicating with students by raising your voice too often and at inappropriate volumes.
4. Inappropriately disciplining students in the presence of others and overrelying on reactive forms of discipline.

On June 29, 1994, the Board voted to withhold Mooney's increments for the reasons cited by the superintendent.

On July 1, 1994, the Association filed a grievance contesting the increment withholding. The principal, superintendent and Board all denied the grievance. The Association demanded arbitration and 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.

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

Under N.J.S.A. 34:13A-26, increment withholdings of teaching staff members for predominately disciplinary reasons are to be reviewed through binding arbitration. But not all withholdings can go to arbitration. Under N.J.S.A. 34:13A-27(d), if the reason for a withholding is related predominately to an 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, 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 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]

Under all the circumstances of this case, we hold that the reasons for this withholding predominately involve an evaluation of Mooney's teaching performance and must be reviewed by the Commissioner of Education. The reasons are based on an overall assessment of Mooney's past and present classroom interactions. We have restrained arbitration in similar cases involving educational judgments about allegedly inappropriate interactions, language, and disciplinary techniques during classes. See, e.g., Red Bank Reg. Bd. of Ed., P.E.R.C. No. 94-106, 20 NJPER 229 (¶25114 1994); Roxbury Tp. Bd. of Ed., P.E.R.C. No. 94-80, 20 NJPER 78 (¶25034 1994); Wayne Tp. Bd. of Ed., P.E.R.C. No. 93-107, 19 NJPER 272 (¶24137 1993); Florham Park Bd. of Ed., P.E.R.C. No. 93-76, 19 NJPER 159 (¶24081 1993); Upper Saddle River Bd. of Ed., P.E.R.C. No. 91-69, 17 NJPER 148 (¶22059 1991).

ORDER

The request of the River Edge Board of Education for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

  
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James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioner Boose abstained from consideration.

DATED: March 24, 1995  
Trenton, New Jersey  
ISSUED: March 27, 1995