

P.E.R.C. NO. 89-117

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

JERSEY CITY BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-89-53

JERSEY CITY EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Jersey City Education Association against the Jersey City Board of Education. The grievance alleges that the Board violated the parties' collective negotiations agreement when it withheld the salary increment of a teaching staff member and reduced his December 1986 paycheck. N.J.S.A. 18A:29-14 preempts arbitration of increment withholding disputes involving teaching staff members.

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Appearances:

For the Petitioner, DeMaria, Ellis & Hunt, Esqs.
(Brian N. Flynn, of counsel; Harry M. Agnostak, on the
brief)

For the Respondent, Feintuch & Porwich, Esq.
(Phillip Feintuch, of counsel)

DECISION AND ORDER

On February 14, 1989, the Jersey City Board of Education filed a Petition for Scope of Negotiations Determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Jersey City Education Association. The grievance alleges that the Board violated the parties' collective negotiations agreement when it withheld the salary increment of a teaching staff member and reduced his December 1986 paycheck.

The Association is the majority representative of the Board's teachers. The parties have entered a collective negotiations agreement effective September 1, 1986 to August 31, 1988. Article 6-1 provides that no teacher shall be disciplined without just cause. The contract's grievance procedure ends in binding arbitration.

On March 16, 1987, teacher Dennis Appleman filed a grievance challenging his supervisor's recommendation that Appleman not be paid his salary increment for the next school year because of excessive absences. The grievance also challenged the withholding of a portion of Appleman's salary during December 1986. According to the Superintendent, during the 1986-1987 term, Appleman was absent 37 days because of a work-related injury plus 20 days unrelated to the injury.^{1/} The Board denied the grievance and the Association demanded arbitration. This petition ensued.

N.J.S.A. 18A:29-14 preempts arbitration of increment withholding disputes involving teaching staff members. Bernards Tp. Bd. of Ed. v. Bernards Tp. Ed. Ass'n, 79 N.J. 311 (1979). Contrast East Brunswick Bd. of Ed., P.E.R.C. No. 84-149, 10 NJPER 426 (¶15192 1984) aff'd App. Div. Dkt. No. A-5596-83T6, certif. den. 101 N.J. 280 (1985) (increment withholding disputes involving nonprofessional employees may go to binding arbitration absent an alternate statutory appeal procedure). We will restrain arbitration over the Association's challenge to the withholding of the grievant's increment.^{2/}

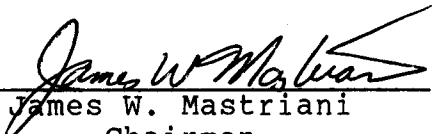
^{1/} According to the grievance, the teacher was struck in the face while at work and required surgery.

^{2/} The Board does not argue that the portion of the grievance challenging an alleged reduction in the grievant's December 1986 paycheck is part of the increment withholding or is nonarbitrable. That part of the dispute may proceed to arbitration.

ORDER

The request for a restraint of binding arbitration of the portion of the Appleman grievance which challenges the withholding of his salary increment is granted.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Johnson, Ruggiero, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Reid abstained.

DATED: Trenton, New Jersey
April 28, 1989
ISSUED: May 1, 1989