

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SOUTH HARRISON TOWNSHIP  
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-96-12

SOUTH HARRISON TOWNSHIP  
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by a teacher represented by the South Harrison Township Education Association against the South Harrison Township Board of Education. The grievance asserts that the Board withheld the teacher's salary increment without just cause. The Commission holds that the reason for the withholding predominately involves an evaluation of teaching performance and the merits of the withholding must be reviewed by the Commissioner of Education.

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.

P.E.R.C. NO. 96-36

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Appearances:

For the Petitioner, Jo Ann A. Laughlin, attorney

For the Respondent, Waltman, Reilly & Rogovoy, attorneys  
(Ned P. Rogovoy, of counsel)

DECISION AND ORDER

On August 3, 1995, the South Harrison Township Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by a teacher represented by the South Harrison Township Education Association. The grievance asserts that the Board withheld the teacher's salary increment without just cause.

The Board has filed exhibits and a brief. The Association received an extension of time, but did not file a brief. These facts appear.

The Association represents certified members of the Board's instructional staff. The parties entered into a collective

negotiations agreement effective from July 1, 1993 to June 30, 1996. The grievance procedure ends in binding arbitration of increment withholdings for predominately disciplinary reasons. See N.J.S.A. 34:13A-26 and 29.

Peg Buzby is a tenured teacher in the Township's elementary school. During the 1994-95 school year, she taught basic skills instruction and developmental reading.

On April 24, 1995, the Board voted to withhold Buzby's salary increment for the next school year. In a letter notifying Buzby of the withholding, the superintendent stated that the withholding "is based on ineffective instruction as observed in the classroom." The Board submitted various observation reports, performance evaluations, and other documents criticizing Buzby's teaching techniques and indicating parental dissatisfaction with Buzby's teaching. The Board also submitted responses from Buzby to these documents.

Buzby grieved the withholding. She asserted that the Board had violated a contractual article stating that "[n]o teacher shall be disciplined, reprimanded, reduced in rank or compensation, or given an adverse evaluation of his/her professional services without just cause."

The Board denied the grievance and 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, 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

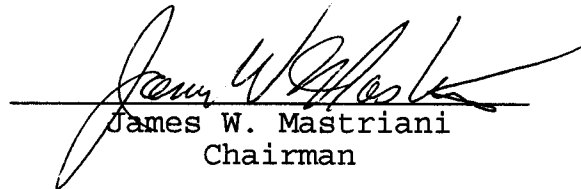
review. Most everything a teacher does has some effect, direct or indirect, on students. But according to the Sponsor's Statement and the Assembly Labor Committee's Statement to the amendments, only the "withholding of a teaching staff member's increment based on the actual teaching performance would 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]

This case centers on the alleged ineffectiveness of Buzby's teaching techniques. We thus hold that the reasons for this withholding predominately involve an evaluation of Buzby's teaching performance and the merits of the withholding must be reviewed by the Commissioner of Education. We accordingly restrain arbitration.

ORDER

The request of the South Harrison Township 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, Ricci and Wenzler voted in favor of this decision. Commissioner Boose abstained from consideration. Commissioner Klagholz was not present.

DATED: November 27, 1995  
 Trenton, New Jersey  
 ISSUED: November 28, 1995