

P.E.R.C. NO. 99-84

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MORRIS SCHOOL DISTRICT
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-99-40

THE EDUCATION ASSOCIATION
OF MORRIS,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Morris School District Board of Education for a restraint of binding arbitration of a grievance filed by The Education Association of Morris. The grievance contests the withholding of a teacher's salary increment for the 1998-99 school year. The Commission concludes that the reasons for this withholding were predominately based on an evaluation of teaching performance. The areas of concern involved Professional Characteristics, Class Management and Teaching Procedures. Any appeal of this withholding shall be filed with 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.

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Appearances:

For the Petitioner, Wiley, Malehorn & Sirota, attorneys
(John Geppert Jr., of counsel and on the brief; Christina
L. Davis, on the brief)

For the Respondent, Bucceri & Pincus, attorneys
(Sheldon H. Pincus, on the brief)

DECISION

On December 15, 1998, the Morris School District Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by The Education Association of Morris. The grievance contests the withholding of a teacher's salary increment for the 1998-99 school year.

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

The Association represents the Board's certified personnel. The Board and the Association are parties to a collective negotiations agreement effective from July 1, 1995 through June 30, 1999. The grievance procedure ends in binding arbitration.

Valerie Burton is a tenured teacher employed by the Board. She teaches basic skills at the Frelinghuysen Middle School. Burton was given a Professional Growth Plan for the 1997-98 school year. The PGP required her "to increase student demonstrations of learning through projects and performances in her classroom."

On April 20, 1998, Barbara Siegel, an administrator, reprimanded Burton. The reprimand concerned a March 9, 1998 memorandum from Siegel to Burton concerning another teacher's complaints about property damage in a classroom used by Burton. Burton was also reprimanded for using a CCC program in the computer labs for approximately 45 minutes each day to prepare students for Iowa testing despite a recommendation to use this program for only 20 minutes; walking in the hall with a coffee cup during class time on April 15 while three students of hers were acting inappropriately in the hall; eating, drinking and reading a magazine during class time on April 15 while students worked on the computers without her assistance and despite a rule prohibiting eating and drinking in the small computer lab; and playing solitaire on a computer on April 29 as the students worked on the computers without her assistance.

On April 30, 1998, Burton responded to the reprimand. She wrote that her students needed more than 20 minutes on the CCC program; that on April 15 she was walking with a cup of coffee from the cafeteria as most other teachers do during the day; and

that on April 29 she was not playing solitaire, but clearing a program that had been left on the screen from a prior class. She also responded that her diabetic diet requires her to eat several times during the day. She offered to get a doctor's note to document this requirement.

On May 1, 1998, Siegel observed two of Burton's classes. Burton was rated unacceptable in all three of the categories on the observation form: "Professional Characteristics," "Class Management," and "Teaching Procedures." Under commendations, Siegel found nothing commendable in the teaching observed. Under recommendations, Siegel listed eight items: (1) class did not begin on time; (2) there were no lesson plans; (3) the teaching was not based on the students' diagnosed instructional needs; (4) there was no teaching during the first class observed; (5) classroom management was poor because students arrived 10 minutes late; (6) Burton explained procedures to the boys and then repeated the same procedures to the girls; (7) Burton carried food and coffee to class despite being directed not to do so, and (8) Burton had an airlines catalog among her teaching materials, leading the observer to believe that outside work was being done in school. Siegel did not believe Burton was meeting her PGP requirements. In concluding the observation, she stated that the lesson was unacceptable in all areas of performance.

On May 8, 1998, Burton's class was observed again by another administrator, Jay Lipper. Lipper rated Burton as

unacceptable in all three categories. He indicated that when he asked for lesson plans, Burton gave him a three-page photocopy of a section on exponents from the teacher's edition of a math book. Under recommendations, Lipper wrote that Burton should raise the expectations for her students; daily lesson plans must be submitted to Burton's primary supervisor; the basic skills program must be individualized based on students' abilities; activities, materials and teaching strategies must be better organized; objectives of a lesson need to be limited and made clear to the students; open-ended questions need to be asked; a professional improvement plan must be developed with Burton's primary supervisor; and Burton should schedule parent-teacher conferences outside class time. Under commendations, Lipper noted that student behavior was very good and the halls were properly monitored.

On May 27, 1998, Burton's class was observed again by another administrator, Daniel Skelton. In his summary of this observation, Skelton wrote that the lesson design was ineffective; no diagnosis occurred to determine entry-level objectives for individual students or the group; students worked on concepts and skills requiring additional teaching; and students were moved to independent practice before understanding these concepts and skills.

Burton received her Annual Teacher Performance Evaluation for the 1997-98 school year in May 1998. Skelton and Siegel did

the evaluation. Burton was rated unacceptable in all three categories: Professional Characteristics, Class Management, and Teaching Procedures.

Under Professional Characteristics, the evaluation noted that Burton continued to demonstrate unacceptable behavior. Such behavior included improper supervision of students; failing to plan in writing or in advance for classes; beginning classes late; eating and drinking coffee during class; and inability to design and implement effective lessons. This section of the evaluation also included the subjects for which Burton received the April 20 reprimand.

Under Class Management, Burton was rated as unacceptable for three reasons: (1) students are improperly supervised, (2) students come late to class, and (3) class often begins late. The evaluation described Burton's walking around the building looking for an empty computer lab as poor classroom management. It was also asserted that Burton had sent two students who were ten minutes late back out of class to get a pass for being late, thus leaving them unsupervised for another ten minutes.

Under Teaching Procedures, Burton was rated unacceptable because little or no teaching or learning occurred in her classes. The evaluation stated that there are no written plans for Burton's lessons and her skills in designing lessons are poor.

Under "Professional Growth Plan Status," the evaluation stated:

Mrs. Burton's PGP for this year was to increase student demonstrations of learning through projects and performances in her classroom. There is no evidence that this occurred.

Mrs. Burton's [performances] in the areas measured are all Unacceptable.

It is recommended that Mrs. Burton's increment be withheld for the 1998-99 school year.

In June 1998, Burton submitted a rebuttal disputing the evaluation. Burton asserted in particular that she did not have lesson plans on May 8 because she had just learned of her mother's serious illness. The rebuttal further asserted that Burton had never left her students without adult supervision; she did not receive any notice of the Board's concerns about her performance; Siegel had exaggerated her students' misbehavior; she did not have food near the computers; her students were not left without assistance; she had not walked around the building during class time; the administrators did not use any measurement tools in criticizing the achievement and motivational skills taught her students; an administrator falsely accused her of providing only "busy work" for her students; allegations about class supervision, student tardiness, and classroom supervision were false and based on hearsay; and the administrators were wrong in concluding that there was little or no teaching or learning going on and that she did not use diagnostic techniques. Burton concluded by stating that the administrators had been tardy in observing her and abusive in their evaluation. She asked them to withdraw their recommendation to withhold her increment.

On June 29, 1998, the Board voted to withhold Burton's salary increment for the next school year. It relied on the concerns cited in the annual evaluation.

The Association filed a grievance contesting the withholding. On November 11, 1998, the Board determined not to rescind its decision to withhold Burton's increment. It cited "unacceptable" ratings in the areas of Professional Characteristics, Class Management, and Teaching Procedures. On November 17, 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]

Under all the circumstances, we conclude that the reasons for this withholding relate predominately to the evaluation of Burton's teaching performance. The Legislature considered all increment withholdings to be disciplinary. Randolph Tp. Bd. of Ed., P.E.R.C. No. 99-45, 25 NJPER 14 (¶30005 1998), app. pending App. Div. Dkt. No. A-2541-98T3. We do not look to whether a particular withholding was intended to be punitive, but whether the reasons cited are based on teaching performance assessments. Edison; Greater Egg Harbor Reg. H.S. Dist. Bd. of Ed., P.E.R.C. No. 95-58, 21 NJPER 116 (¶26071 1995). The reasons cited here are largely based on such assessments. As our cases consistently reflect, such matters as classroom supervision and management, instructional techniques and effectiveness, and adequate lesson planning all center on the educational relationship between teacher and students. See, e.g., Dennis Tp. Bd. of Ed., P.E.R.C. No. 98-73, 24 NJPER 17 (¶29012 1997); Wood-Ridge Bd. of Ed., P.E.R.C. No. 98-41, 23 NJPER 564 (¶28281 1997); Millville Bd. of Ed., P.E.R.C. No. 98-48, 23 NJPER 601 (¶28295 1997). We need not determine whether any particular reason cited in the annual evaluation might be categorized as unrelated to teaching performance because we are satisfied that almost all the reasons cited are based on the evaluation of teaching performance. We accordingly restrain arbitration.

ORDER

The request of the Morris School District Board of Education for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Finn and Ricci voted in favor of this decision. None opposed. Commissioner Boose abstained from consideration.

DATED: March 25, 1999
Trenton, New Jersey
ISSUED: March 26, 1999