

P.E.R.C. NO. 88-125

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

FAIRVIEW BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-87-26

FAIRVIEW FEDERATION OF
TEACHERS, LOCAL 1116,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Fairview Federation of Teachers, Local 1116 against the Fairview Board of Education. The grievance asserts the Board violated the parties' agreement when it withheld a teacher's increment. The Commission finds that the Commissioner of Education has jurisdiction over this dispute.

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Appearances:

For the Petitioner, Dennis J. Oury, Esq.
(Richard J. Brovarone, on the brief)

For the Respondent, Dwyer & Canellis, P.A.

DECISION AND ORDER

The Fairview Board of Education ("Board") has filed a Petition for Scope of Negotiations Determination. It seeks a restraint of binding arbitration of a grievance. The grievance asserts that the Board violated its collective negotiations agreement with the Fairview Federation of Teachers, Local 1116 ("Federation") when it withheld an increment from teacher Catherine Busso.

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

The Federation is the majority representative of the Board's teachers and certain other employees. Article VII of the parties' contract provides, in part:

A. Placement on Salary Schedule

Adjustment to Salary Schedule - Each teacher presently employed by the Board shall be placed on his proper step of the salary guide in accordance with his degree status and years of experience in teaching. Years of experience as used in this section shall mean years of experience granted by the Fairview Board of Education upon initial employment together with service in Fairview as it accrues.

The grievance procedure ends in binding arbitration.

Catherine Busso is a teacher in the resource room of the Lincoln School. On August 6, 1987, the Board voted to withhold Busso's increment for the 1986-87 school year and thus to keep her on step 13 of the salary guide. The reason given was excessive absenteeism.

On September 4, 1986, Busso filed a grievance alleging that she had not been placed on the 1986-87 salary guide in accordance with her years of experience in the Fairview schools. The grievance also contested the charge of excessive absenteeism and the Board's use of the term "increment" since the Legislature had deleted certain statutory provisions entitling employees to increments when it enacted the Teacher Quality Employment Act, N.J.S.A. 18A:29-5.1 et seq. ("TQEA"). Busso has also filed a petition with the Commissioner of Education asserting that the withholding of her salary and adjustment increments violated N.J.S.A. 18A:29-14.

The Board denied the grievance and the Federation sought binding arbitration. This petition ensued.

The Board asserts that this disciplinary dispute may not be submitted to binding arbitration because there is an alternate statutory appeal procedure to contest the withholding: a petition with the Commissioner of Education pursuant to N.J.S.A. 18A:29-14. The Federation agrees that this dispute would not have been legally arbitrable before the TQEA, but argues that the TQEA implicitly repealed N.J.S.A. 18A:29-14 by expressly repealing other provisions on increments.

At the outset of our analysis, we stress the narrow boundaries of our scope of negotiations jurisdiction. In Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978), the Supreme Court, quoting from Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55 (1975), stated:

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. [78 N.J. at 154]

N.J.S.A. 34:13A-5.3 permits employers and majority representatives to agree to binding arbitration of a disciplinary dispute provided that the disciplined employee has no alternate statutory appeal procedure. CWA v. PERC, 193 N.J. Super. 658 (App. Div. 1984). Increment withholdings are a form of discipline. 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 (3/19/85), certif. den. 101 N.J. 280 (1985); State of New Jersey, P.E.R.C. No. 87-130, 13 NJPER 347 (¶18141 1987), aff'd App. Div. Dkt. No. A-4575-86T8 (4/7/88). The question therefore is whether Busso has an alternate statutory appeal procedure to contest the Board's decision not to advance her on the salary guide.

Before the TQEA, N.J.S.A. 18A:29-5 gave teachers a minimum salary of \$2,500; N.J.S.A. 18A:29-7 established a salary schedule; N.J.S.A. 18A:29-8 and 10 conferred minimum employment and adjustment increments of \$150 a year, and N.J.S.A. 18A:29-12 confirmed that all statutory salaries, schedules and increments were minimums. N.J.S.A. 18A:29-14 permitted a school board to withhold, for inefficiency or other good cause, a teacher's employment and adjustment increments, subject to the teacher's right to appeal to the Commissioner of Education.

After the TQEA, N.J.S.A. 18A:29-5 gave teachers a minimum salary of \$18,500, while N.J.S.A. 18A:29-7, 8, 10 and 12 were repealed. N.J.S.A. 18A:29-14 was left intact.

We have held that N.J.S.A. 18A:29-14 provides an alternate statutory appeal procedure barring teachers (unlike non-professional staff) from submitting increment withholdings to binding arbitration. Egg Harbor Tp. Bd. of Ed., P.E.R.C. No. 86-49, 11 NJPER 692 (¶16239 1985). We do not agree with the Federation that the repeal of N.J.S.A. 18A:29-7, 8, 10 and 12 impliedly repealed

N.J.S.A. 18A:29-14 as well. Implied repeals are not favored.

Mahwah Tp. v. Bergen Cty. Bd. of Taxation, 98 N.J. 268, 281 (1985).

The Commissioner of Education has historically had jurisdiction to review disputes over the withholding of both employment and adjustment increments, though the negotiated amounts far exceeded the statutory minimums. The Legislature reviewed the statutory provisions on teacher salaries and increments section-by-section. Had it meant to repeal N.J.S.A. 18A:29-14 and displace the Commissioner's traditional jurisdiction, it would have done so. We therefore find an alternate statutory appeal procedure and restrain arbitration.

ORDER

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

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

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

DATED: Trenton, New Jersey
May 25, 1988
ISSUED: May 26, 1988