

P.E.R.C. NO. 98-91

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEW PROVIDENCE BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-98-38

NEW PROVIDENCE EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the New Providence Board of Education for a restraint of binding arbitration of a grievance filed by the New Providence Education Association. The grievance contests the withholding of a teaching staff member's increment for the 1997-1998 school year. The Commission finds that this withholding was predominately based on allegations of ineffective instruction and classroom management of students. It thus was predominately based on the evaluation of teaching performance and 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.

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Appearances:

For the Petitioner, Martin R. Pachman, attorney
(Robin T. McMahon, of counsel)

For the Respondent, Bucceri & Pincus, attorneys
(Gregory T. Syrek, of counsel; Linda Ganz Ott, on the
brief)

DECISION

On October 9, 1997, the New Providence Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the New Providence Education Association. The grievance contests the withholding of a teaching staff member's increment for the 1997-1998 school year.

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

The Association represents teaching staff members employed by the Board, excluding administrators. The parties entered into a collective negotiations agreement effective from July 1, 1995 through June 30, 1998. The grievance procedure ends in binding arbitration.

John Stankus is a tenured science teacher who has been employed by the Board since 1969. At the end of the 1991-92 school year, the principal and science supervisor recommended that his increment for the next school year be withheld based on his alleged inability to discipline students and adjust course content to meet the students' levels. The Board, however, placed him on administrative review instead.

Stankus was rated satisfactory for the next two school years. During the 1995-96 school year, the principal again believed that Stankus had difficulties in classroom management. He was rated as "needing improvement" in several categories in his annual evaluation.

In the beginning of the 1996-97 school year, several parents complained about Stankus's inability to control student behavior and the resultant lack of instruction. The principal and the vice-principal met with him following the first complaint and offered suggestions on ways to restore classroom discipline. They recommended that he speak to the parents of disruptive students and develop a better rapport with students.

On November 19, 1996, the principal and vice-principal met again with Stankus. They offered suggestions on how to improve student behavior and lesson delivery and recommended that Stankus observe other teachers' techniques and classroom management.

On November 22, 1996, a class taught by Stankus was observed. Following the observation, Stankus was told to develop a classroom management plan, post classroom rules, call students by their first names, use the chalkboard for visual clues, and verify that students understand the lesson by asking them questions.

On December 5, 1996, Stankus's professional growth plan was amended to focus on areas of classroom management, lesson delivery and student rapport.

On February 7, 1997, an informal observation was conducted of his environmental science class. The vice-principal wrote in an observation report that Stankus was consistently off task with the lesson; students walked in late without repercussions; one student walked aimlessly around the room looking for a pencil; and a worksheet was handed out at the beginning of the lesson with no instruction that the worksheet was to be completed for homework. The same worksheet was also handed out at the end of the lesson.

Another informal observation was conducted on March 4, 1997. The principal followed up with a memorandum commenting on the lesson and asserting that students were only passively involved. The principal also raised concerns about debris in the sinks and on the floor.

On March 11, 1997, the principal formally observed another class. He wrote in an observation report that Stankus did not engage students in the lesson; discipline students who arrived

late; use effective questioning techniques to assess students' understanding of the lesson; or clearly state the objectives of the lesson and procedures to be followed.

At the end of the 1996-97 school year, Stankus received his annual observation. Under Instructional Performance, he received "Needs Improvement" in nine of the 14 categories. Under Classroom Management, he received four "Needs Improvement" out of five categories. Under Parent/Community Relations, he was rated "Needs Improvement" in both categories. Under Professional Characteristics, he received four "Needs Improvement" out of eight categories. Under Professional Growth, he received "Needs Improvement" in one out of three categories. The Professional Growth Plan, Section 1, entitled Degree of Implementation of this Year's PGP, stated:

Mr. Stankus did not attend one or more conferences, workshops, or courses pertaining to the use of computers in the science classroom.

Mr. Stankus did not attend the three-day workshop on Essential Elements of Instruction.

Mr. Stankus did develop classroom rules and tips for success.

Mr. Stankus was directed in his last observation to visit three specific classroom teachers and observe their classroom management skills. He was supposed to report back to Mr. Calder on the results of that visit by April 1, 1997. As of April 28, 1997, Mr. Stankus has not fulfilled this requirement.

Mr. Stankus still needs to work on his lesson delivery. The students need to be actively involved and learning. If Mr. Stankus attended

the Essential Elements of Learning, he would have a variety of ideas regarding lesson delivery at his disposal to utilize in class.

Mr. Stankus lacks an overall positive rapport with his students. He needs to be more involved with students in order to develop their trust. Mr. Stankus must implement motivational techniques which engage the learner and make maximum use of scheduled class time.

Stankus filed a rebuttal to the evaluation. He asserted that the evaluation was not a fair representation of his performance and that the class which the principal observed had a number of disaffected students who caused him and others problems throughout the year. He asserted that observations were not properly reported, generalizations were made without documentation, and some statements were inaccurate.

On May 22, 1997, the School Business Administrator/Board Secretary advised Stankus that the Board of Education had voted to withhold his increment for the 1997-98 school year. The letter stated, in part:

The Board took this action because of your deficiencies in instructional performance and classroom management. Examples of these deficiencies have been described and documented by Mr. Schmidt and Mr. Calder in several memoranda and in conferences with you.

At the same meeting, the Board approved the Superintendent's request that you be placed on administrative review for the 1997/1998 school year. As a result, you will be observed and evaluated throughout the 1997/1998 school year on the same schedule as a non-tenured teaching staff member.

On June 16, 1997, the Association filed a grievance contesting the increment withholding. 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 (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 merits of this grievance.

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-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]

Applying these standards, we conclude this withholding was predominately based on the evaluation of teaching performance. We have restrained arbitration in cases predominately involving allegations of ineffective instruction and poor classroom management of students and do so again here. See, e.g., Hillside Bd. of Ed., P.E.R.C. NO. 97-39, 22 NJPER 389 (¶27210 1996); Wayne

Tp. Bd. of Ed., P.E.R.C. No. 93-107, 19 NJPER 272 (¶24137 1993);
Bergen Cty. Voc. Schools Bd. of Ed., P.E.R.C. No. 91-70, 17 NJPER
150 (¶22060 1991); Upper Saddle River Bd. of Ed., P.E.R.C. No.
91-69, 17 NJPER 148 (¶22059 1991). We need not determine whether
every reason cited relates to teaching performance. Hillside;
State-Operated School Dist. of Jersey City, P.E.R.C. No. 97-98, 23
NJPER 165 (¶28083 1997); Mahwah Bd. of Ed., P.E.R.C. No. 94-99, 20
NJPER 197 (¶25093 1994).

ORDER

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

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Ricci and Wenzler voted in
favor of this decision. None opposed. Commissioner Boose abstained
from consideration. Commissioners Finn and Klagholz were not present.

DATED: January 29, 1998
Trenton, New Jersey
ISSUED: January 30, 1998