

P.E.R.C. NO. 92-54

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MIDDLETOWN TOWNSHIP BOARD  
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-92-38

MIDDLETOWN TOWNSHIP  
ADMINISTRATORS AND  
SUPERVISORS ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by a high school principal represented by the Middletown Township Administrators and Supervisors Association against the Middletown Township Board of Education. The grievance contests the withholding of the principal's salary increments. Under all the circumstances, the Commission holds that the withholding predominately reflects an evaluation of the principal's leadership, judgment, and management as a principal and that the proper forum for reviewing the propriety of that evaluation is before the Commissioner of Education.

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MIDDLETOWN TOWNSHIP BOARD  
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-92-38

MIDDLETOWN TOWNSHIP  
ADMINISTRATORS AND  
SUPERVISORS ASSOCIATION,

Respondent.

Appearances:

For the Petitioner, Kalac, Newman, Lavender & Campbell,  
attorneys (Peter P. Kalac, of counsel)

For the Respondent, Wayne J. Oppito, attorney

DECISION AND ORDER

On September 25, 1991, the Middletown 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 high school principal represented by the Middletown Township Administrators and Supervisors Association. The grievance contests the withholding of the principal's salary increments.

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

The Association represents the Board's administrators and supervisors. The parties entered into a collective negotiations agreement effective from July 1, 1990 until June 30, 1991. Binding arbitration is the grievance procedure's terminal step for resolving disputes involving the withholding of a principal's increments for

predominately disciplinary reasons. N.J.S.A. 34:13A-26; N.J.S.A. 34:13A-29.

The Board has a policy entitled Increments and Special Bonuses for Professional Staff. Its first paragraph provides:

Any advancement on a salary guide, including annual increments and raises, shall not be considered automatic. Advancement on any such guide shall require favorable reports covering the employee's competence and thoroughness in the performance of the duties assigned, his/her record of attendance and his/her compliance with district regulations. Special bonuses may be granted to professional employees for outstanding performance.

Principals receive interim and final performance reports each year.

Nicholas Campanile is principal of High School North. On February 27, 1991, Campanile's evaluator, Assistant Superintendent Alrita Morgan, issued an interim performance report, subtitled interim assessment-individual professional improvement plan, on Campanile's performance during the 1990-1991 school year. The report noted that Campanile and Morgan had discussed at-risk students, suspension numbers, staff development and curriculum implementation; stated that Campanile needed to be attentive to timelines and follow-through on recommendations; and asserted that he had not "initiated a systematic and holistic plan for the needs of North students." It then listed these priorities for Campanile: (1) submit a plan by March 1 to reduce at-risk students, (2) continue to improve evaluation of building personnel, (3) build on his 1990-91 objective of facilitating staff development by submitting by May 1 a building inservice plan, (4) develop more

familiarity with the building's budget by reviewing budget proposals and signing purchase orders effective February 15, 1991, and (5) submit by February 15, a report of high school extracurricular activities. Each priority was followed by specific steps and goals.

On March 11, 1991, Campanile submitted a response. He strongly objected to the statements that he had not been attentive to timelines and follow-through; he had not initiated a plan for at-risk students; and he was unfamiliar with the building's budget.

On May 22, 1991, the superintendent wrote a letter to Campanile as a follow-up to a March 28 conference. That conference concerned Campanile's handling of a student's alleged assault on two employees. The letter recorded the superintendent's conclusions that Campanile had not "exhibited the leadership of an experienced principal" in handling the matter; he had exercised poor judgment when informed of the incident; by "allowing an assistant principal to handle the incident as a routine disciplinary case," he had not been sensitive to the need for district-wide procedural consistency; by permitting the student to return from suspension after five days, he had acted inconsistently with the student disciplinary code and Board policy; and his failure to inform the superintendent immediately made it hard to schedule a timely expulsion hearing. The letter concluded:

You should know that I consider your handling of this matter as inappropriate and it reflects extremely poor judgment on your part. This letter will be placed in your personnel file.

On June 17, the superintendent wrote Campanile a letter stating that he would recommend that the Board withhold Campanile's employment and adjustment increments for the 1991-92 school year. The superintendent gave these reasons:

1. My letter of May 22, 1991 pointing out the inappropriate handling of an alleged assault by a student on two employees of the Middletown Township Board of Education which reflected poor judgment on your part.

2. Failure to comply with directives as indicated by:

- a) Failure to submit a building inservice plan to the Assistant Superintendent for Secondary Education by May 1st.

- b) Failure to consistently sign purchase orders intended to insure close budgetary control by the principal.

3. Failure to provide direction, follow-up, leadership and training to your two assistant principals, particularly in the areas of discipline., i.e., long range planning for the choir trip to Puerto Rico, the student assault on a teacher and a staff member and evaluation of a non-professional staff member.

On June 25, 1991, the Board, after hearing from Campanile and his representative, accepted the superintendent's recommendations for the reasons stated in the June 17 letter.

On June 28, 1991, Campanile received his annual written performance report. The report reviewed Campanile's performance against his objectives for the 1990-91 school year. It stated, in part, that he had not completed the objectives of developing a plan for at-risk students, submitting a building inservice plan,

developing familiarity with the building budget and consistently signing purchase orders, and meeting timelines and following-through.

On June 28, 1991, Campanile filed a grievance asserting that the withholding of his increments was disciplinary and arbitrary. He and the Association demanded binding arbitration pursuant to N.J.S.A. 34:13A-26 and 29. This petition ensued.<sup>1/</sup>

In 1979, the Supreme Court held that disputes over increment withholdings of teaching staff members could not validly be submitted to binding arbitration. Bernards Tp. Bd. of Ed. v. Bernards Tp. Ed. Ass'n., 79 N.J. 311 (1979). By enacting N.J.S.A. 18A:29-14, the Legislature had delegated to the Commissioner of Education the authority to review increment withholdings for inefficiency or other good cause.

In 1982, the Legislature enacted "disciplinary" amendments to the New Jersey Employer-Employee Relations Act. These amendments authorized employers to agree to binding arbitration of disciplinary disputes which could not be contested through an alternate statutory appeal procedure. N.J.S.A. 34:3A-5.3. The legislative history of those amendments reveals that the Legislature recognized that the denial of an increment constitutes discipline. See East Brunswick Bd. of Ed., P.E.R.C. No. 84-149, 10 NJPER 426 (¶15192 1984), aff'd App. Div. Dkt. No. 5596-83T6 (3/19/85), certif. den. 101 N.J. 280

---

<sup>1/</sup> A September 1, 1991 newspaper article stated, without elaboration, that the withholding was disciplinary. This assertion is not competent evidence and will be disregarded.

(1985); State of New Jersey, P.E.R.C. No. 87-130, 13 NJPER 347 (¶18141 1987), aff'd App. Div. Dkt. No. A-4573-86T8 (4/7/88). It initially passed a bill that would have allowed withholdings to be reviewed through binding arbitration, despite N.J.S.A. 18A:29-14's statutory review procedures. The Governor vetoed that bill and suggested that it be revised to preclude binding arbitration when an alternate statutory appeal procedure existed. A bill incorporating that suggestion was passed and signed. We therefore continued to restrain binding arbitration of disputes over increment withholdings involving teaching staff members. See, e.g., Jersey City Bd. of Ed., P.E.R.C. No. 89-117, 15 NJPER 286 (¶20126 1989).

Against this backdrop, new amendments went into effect on January 4, 1990. The Legislature addressed the arbitrability of increment withholdings and decided that teaching staff withholdings that are for predominately disciplinary reasons should be reviewed through binding arbitration. N.J.S.A. 34:13A-26.<sup>2/</sup> But not all withholdings can go to arbitration. If the reason for a withholding is related predominately to the evaluation of a teaching staff member's teaching performance, any appeal must be filed with the

---

<sup>2/</sup> N.J.S.A. 34:13A-26 provides:

Disputes involving the withholding of an employee's increment by an employer for predominately disciplinary reasons shall be subject to the grievance procedures established pursuant to law and shall be subject to the provisions of section 8 of this act [34:13A-29].

Commissioner of Education. N.J.S.A. 34:13A-27(d).<sup>3/</sup> If there is a dispute over whether a withholding is predominately disciplinary, we must make that determination. N.J.S.A. 34:13A-27(a).<sup>4/</sup> Our power is limited to determining the appropriate forum for resolving an increment withholding dispute. We do not and cannot consider whether a withholding was with or without just cause.

---

2/ Footnote Continued From Previous Page

N.J.S.A. 34:13A-29 provides:

a. The grievance procedures that employers covered by this act are required to negotiate pursuant to section 7 of P.L.1968, c. 303 (C.34:13A-5.3) shall be deemed to require binding arbitration as the terminal step with respect to disputes concerning imposition of reprimands and discipline as that term is defined in this act.

b. In any grievance procedure negotiated pursuant to this act, the burden of proof shall be on the employer covered by this act seeking to impose discipline as that term is defined in this act.

3/ N.J.S.A. 34:13A-27(d) provides:

If a dispute involving the reason for the withholding of a teaching staff member's increment is submitted to the commission pursuant to subsection a. of this section, and the commission determines that the reason for the increment withholding relates predominately to the evaluation of a teaching staff member's teaching performance, the teaching staff member may file a petition of appeal pursuant to N.J.S. 18A:6-9 and N.J.S. 18A:29-14....

4/ N.J.S.A. 34:13A-27(a) provides:

If there is a dispute as to whether a withholding of an increment of a teaching staff member is disciplinary, the commission shall determine whether the basis for the withholding is predominately disciplinary.



In Scotch Plains-Fanwood Bd. of Ed., P.E.R.C. No. 91-67, 17 NJPER 144 (¶22057 1990), we set forth the standards for determining which withholdings may be submitted to binding arbitration and which must be submitted to the Commissioner of Education.

The fact that an increment withholding is disciplinary does not guarantee arbitral review. Nor does the fact that a teacher's action may have involved 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 App. Div. Dkt. No. A-2053-86T8 (10/23/87)], 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]

See also Tenafly Bd. of Ed., P.E.R.C. No. 91-68, 17 NJPER 147 (¶22058 1991); Upper Saddle River Bd. of Ed., P.E.R.C. No. 91-69, 17 NJPER 148 (¶22059 1991); Bergen Cty. Voc. Schools Bd. of Ed., P.E.R.C. No. 91-70, 17 NJPER 150 (¶22060 1991); Greater Egg Harbor Reg. H.S. Bd. of Ed., P.E.R.C. No. 92-9, 17 NJPER 384 (¶22181 1991).

This is our first increment withholding case under N.J.S.A. 34:13A-26 involving a principal instead of a teacher. Principals are teaching staff members and thus covered by N.J.S.A. 18A:29-14. See N.J.S.A. 18A:1-1; 18A:28-5. But they usually do not teach classes. Instead they have broad responsibility for managing and

supervising students, staff, facilities and community relations. When determining whether withholding a principal's increments relates predominately to an evaluation of that "teaching staff member's teaching performance," we must therefore ask whether the withholding relates predominately to an evaluation of the quality of the principal's performance as an educational leader and manager.

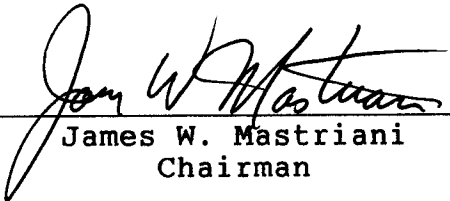
Under all the circumstances, we hold that this withholding relates predominately to an evaluation of Campanile's performance as an educational leader and manager. The parties agree that the superintendent's June 17 letter accurately states the reasons for the withholding. We believe these reasons, overall, reflect an evaluative judgment of the superintendent and the Board that the principal has not satisfactorily discharged his responsibility to oversee the high school's students, staff, and building. In particular, the first reason reflects the superintendent's subjective judgment, more fully explained in his May 22 letter, that the principal did not exercise the leadership and judgment expected of a principal in responding to a student-staff altercation. The second reason implies insubordination, but also reflects a judgment that the principal has not discharged his responsibilities, as outlined in the interim performance report, to train the staff and oversee the building's budget. The third reason similarly reflects a judgment that the principal has not been an effective leader and trainer of assistant principals. Under all the circumstances, we believe this withholding predominately reflects an evaluation of

Campanile's leadership, judgment, and management as a principal and that the appropriate forum for reviewing the propriety of that evaluation is before the Commissioner of Education. Compare Upper Saddle River Bd. of Ed. (restraining arbitration of withholding based on Board's overall judgment about classroom management, teaching skills, and classroom language); cf. Holmdel Bd. of Ed., P.E.R.C. No. 92-6, 17 NJPER 378 (¶22178 1991) (restraining arbitration of memorandum embodying supervisor's educational judgment about implementation of French curriculum). Contrast Englewood Bd. of Ed., P.E.R.C. No. 91-118, 17 NJPER 341 (¶22153 1991), app. pending App. Div. Dkt. No. A-6030-90T2 (permitting arbitration of reprimands based on objective allegations of misconduct).<sup>5/</sup>

ORDER

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

BY ORDER OF THE COMMISSION

  
 \_\_\_\_\_  
 James W. Mastriani  
 Chairman

Chairman Mastriani, Commissioners Goetting, Grandrimo and Wenzler voted in favor of this decision. Commissioners Bertolino and Smith voted against this decision. Commissioner Regan abstained from consideration.

DATED: November 25, 1991  
 Trenton, New Jersey  
 ISSUED: November 26, 1991

<sup>5/</sup> We do not decide whether any of these reasons, standing alone, predominately involve an evaluation of teaching performance.