

P.E.R.C. NO. 97-88

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ROCKAWAY TOWNSHIP BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-97-17

ROCKAWAY TOWNSHIP EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Rockaway Township Board of Education for a restraint of binding arbitration of a grievance filed by the Rockaway Township Education Association. The grievance contests the withholding of a teacher's salary increments for the 1996-1997 school year. The Commission finds that although absenteeism is a reason for this increment withholding, the impact of the grievant's illness on his teaching performance and his teaching performance in general appear to be the Board's dominant concerns. Appeals of increment withholdings based predominately on an evaluation of teaching performance must 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, Anthony P. Sciarrillo, attorney

For the Respondent, Bucceri & Pincus, attorneys
(Sheldon H. Pincus, of counsel)

DECISION AND ORDER

On September 6, 1996, the Rockaway Township Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Rockaway Township Education Association. The grievance contests the withholding of a teacher's salary increments for the 1996-1997 school year.

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

The Association represents the Board's teachers and certain other employees. The parties' grievance procedure ends in binding arbitration of disputes over increment withholdings for predominately disciplinary reasons. N.J.S.A. 34:13A-26 and 29.

Richard Jorgensen is a tenured teacher employed by the Board for 25 years. During the 1995-1996 school year, he was a fourth grade teacher at the O'Brien School. He was frequently absent due to illness, including the period from February 9, 1996 through the end of the school year.

On April 24, 1996, the superintendent wrote to Jorgensen advising that he had recommended that the Board withhold his employment and adjustment increments. The letter stated:

The number of days that you worked this school year did not allow for you to make a contribution to the educational program that would merit an increase in salary for the forthcoming year. Furthermore, your performance during the days that you were in attendance was deemed to be deficient in several areas. I refer you to the correspondence and observations that you received from Dr. Calella since the opening of school for the specifics on your teaching performance.

The referenced documents indicate that Jorgensen's performance was found to be less than satisfactory in 13 of 19 listed categories and that he allegedly had trouble controlling student behavior in his classroom and handling student disciplinary problems. On April 25, the superintendent wrote to Jorgensen advising that the Board had voted to withhold his increments.

The Association filed a grievance asserting that the decision to withhold Jorgensen's increment constituted discipline 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 grievance, 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]

The Board asserts that it withheld Jorgensen's increment not only for his extended absence, but also for deficiencies in his classroom performance which, it asserts, are documented in the evaluations and memoranda issued by Jorgensen's principal during the school year.

The Association contends that the withholding is disciplinary and that some of the documents criticizing Jorgensen's classroom performance were not shown to him before the decision to withhold his increments and were also placed in his personnel file without his knowledge.^{1/} The Association has

^{1/} The Association has filed a separate grievance challenging the placement of these documents in Jorgensen's personnel file. This petition does not seek to restrain arbitration of that grievance.

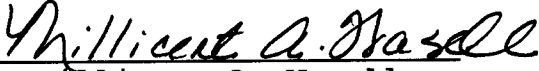
also submitted copies of Jorgensen's evaluations from recent school years indicating satisfactory performance. The Board responds that evaluations from prior years are irrelevant.

Had the superintendent's letter cited only Jorgensen's extended absence as the basis for the withholding, we would not restrain arbitration. See Edison Tp. Bd. of Ed., P.E.R.C. No. 97-40, 22 NJPER 390 (¶27211 1996), app. pending App. Div. Dkt. No. A-_____ ; Hillside Bd. of Ed., P.E.R.C. No. 92-124, 18 NJPER 358 (¶23155 1992); Scotch Plains (withholdings for excessive absenteeism are predominately disciplinary and must be reviewed through binding arbitration). However, the statement of reasons and the accompanying documents include and specify alleged deficiencies in Jorgensen's teaching performance. Thus, although absenteeism is a reason for this increment withholding, the impact of Jorgensen's illness on his teaching performance and his teaching performance in general appear to be the Board's dominant concerns. See Paterson School Dist., P.E.R.C. No. 94-115, 20 NJPER 258 (¶25129 1994). Accordingly, we must restrain binding arbitration.

ORDER

The request of the Rockaway Township 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, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioner Boose abstained from consideration.

DATED: January 30, 1997
Trenton, New Jersey
ISSUED: January 31, 1997