

P.E.R.C. NO. 96-24

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BUTLER BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-95-109

BUTLER ADMINISTRATORS ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by an assistant principal represented by the Butler Administrators Association against the Butler Board of Education. The grievance contests the withholding of salary increments from the assistant principal. Under all the circumstances, the Commission holds that the reasons for this withholding predominately involved an evaluation of the assistant principal's performance as an educational leader and manager. Accordingly, only the Commission of Education may issue a binding decision on the merits of the withholding.

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, Ribis, Graham & Curtin, attorneys
(Kathleen M. Noonan, of counsel)

For the Respondent, Wayne J. Oppito, attorney

DECISION AND ORDER

On June 12, 1995, the Butler Board of Education petitioned for a scope of negotiations determination. The employer seeks a restraint of binding arbitration of a grievance filed by an assistant principal represented by the Butler Administrators Association. The grievance contests the withholding of salary increments from the assistant principal.

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

The Association represents the Board's principals and assistant principals. The parties entered into a collective negotiations agreement with a grievance procedure ending in advisory arbitration when requested by the Association. N.J.S.A. 34:13A-26

and 29 provide for binding arbitration of disciplinary increment withholdings.

Wendel Kralovich has worked for the Board for 22 years and has been an assistant principal for the last 12 years. His job description includes disciplining students; overseeing attendance; attending and supervising school functions; constantly supervising the school buildings and grounds; and assisting the principal in supervision and curriculum development.

On April 25, 1994, the Board voted to withhold Kralovich's salary and adjustment increments for the 1994-1995 school year. The superintendent then sent Kralovich a letter listing these reasons for the withholding:

The Board based its decision on its determination that your performance during the 1993-1994 school year was less than satisfactory. The specific reasons relied upon by the Board include, but are not limited to, your inability to communicate with and keep the building principal aware of the operations of your office and the reasons for your absences from school and school activities; your refusal to implement his suggestions when it comes to the running of the attendance office, your lack of visibility in the school and the manner in which you apply discipline; and your failure to inform the principal of matters as they occur during the course of the school day.

The Board's decision to withhold Kralovich's increments was based on his principal's recommendation. That recommendation was recorded in an October 4, 1993 memorandum to Kralovich entitled "Memo of Concerns/Evaluation of Performance" and the principal's March 28, 1994 evaluation of Kralovich.

The October 4, 1993 memorandum stated:

Concern #1: Your disciplinary methods lack variety. Although I have talked with you on several occasions about discipline, you have shown no inclination to improve. Students are still being disciplined in your outer office instead of in your inner office. Alternate methods of discipline have not been employed and no suggestions have been made to remedy some of the problems emanating from your office. I have heard and continue to hear complaints from students, parents and teachers regarding the workings of the office in regards to discipline.

Suggestion: I recommend that you immediately initiate different techniques (1) in disciplining students, (2) in communicating with parents and faculty, and (3) in your visibility in the building through the day.

Concern #2: Despite our discussion, you have not assumed a share of the total school program. I do not see you participating in any extracurricular activities, attending athletic contests or other school-sponsored events. I think this lack of participation (even when assigned) contributes to your inability to establish rapport with the total student body at Butler High School.

Suggestion: Start now to participate actively in such activities.

Concern #3: On Friday, October 1, 1993 you were assigned as the administrator in charge of the Freshman Social. When I came to school on Monday, October 4, 1993, it was brought to my attention that you did not show as you were supposed to. I am certain that you must realize how serious something of this nature is. This is the second time this has happened. It was only through the concern and constant supervision of the faculty chaperones at this event that you were saved from a problem occurring at the dance and your being responsible for same.

Your personal life is, of course, your own. However, when it interferes with your professional duties, it becomes the concern of

the Board of Education, the Superintendent and myself.

Suggestion: This is the second time in the past year that such an incident has occurred. When I spoke to you earlier during the day you indicated that you needed to leave at 1:30 p.m. but you would be back for the dance. I would expect a phone call alerting me to other circumstances. I have an answering machine if you needed to leave a message. This must not, and it SHALL NOT, happen again.

A copy of this memo/evaluation is being sent to the Superintendent to be placed in your personnel file. I will recommend to the Superintendent that consideration be given to withholding your raise for the 1994-1995 school year.

Kralovich submitted a response. With respect to the first concern, he wrote that he had been previously accused of using disciplinary techniques that were too flexible and inconsistent; he had developed alternative disciplinary responses; and the principal should inform him of any other disciplinary techniques before criticizing him for not using them. With respect to the second concern, he wrote that he had never been told that athletic events were part of the "total program"; he had administered other programs for several years only to see those programs taken away; and he believed his rapport with the student body was excellent. With respect to the third concern, he wrote that his mother's illness^{1/} required him to miss the dance; this was the only time in 20 years

^{1/} According to the Association's brief, his mother suffered a stroke in the early fall of 1993 and Kralovich thus had to miss five work days at that time, take two weeks of vacation in November and December, and miss five or six more days after the Christmas recess.

that a family emergency had taken precedence over his professional duty; and the previous incident had been an "excused absence" since the principal had given him permission to miss that function if circumstances warranted and since he had informed the principal's secretary that he would have to miss this function unless events changed and he did not hear back from the principal or his secretary. Kralovich concluded that the three charges were "the result of contradictory advice, of information not given and of circumstances beyond [his] control and these charges should not justify the withholding of an increment for the next school year."

The March 28, 1994 evaluation gave Kralovich the lowest possible rating in four of the seven categories: dependability, participation in professional growth situations, awareness of community-school relations, and assuming responsibility. Kralovich received the next lowest rating in two other categories: personality traits and accepting criticism. He received a "3" (on a 1-5 scale) in respect for and of his colleagues. In the narrative portion of the evaluation, the principal criticized Kralovich for disciplining students in the outer office, not holding conferences with parents before disciplinary situations got out of hand; not streamlining procedures in the attendance office; not being more visible in school buildings; not informing the principal of matters as they occur; not being involved in the school's total program; poor attendance as reflected by 21 days of absence that year; and not attending three school functions he had been expected to attend.

Kralovich submitted a response. He stated that he had always performed his major responsibilities -- discipline, attendance, teacher evaluation, scheduling, and student supervision -- conscientiously and competently; his attendance in past years had been excellent and his absences this year were due to his mother's illness; he often called and met with parents about disciplinary problems; paperwork had increased over the past few years and his office had lost a full-time secretary so he himself had had to keep records timely and accurate; he believed that routine disciplinary matters could best be handled in the outer office, but would call students to his back office if the principal so desired; he strolled the hallways and grounds many times each day; he always obtained a replacement or received the principal's approval before missing a school function; and he always tried to inform the principal of important matters.^{2/}

On October 4, 1994, Kralovich grieved the withholding. He asserted that the principal's evaluation was unfair and biased and did not identify specifics or content that could result in a meaningful professional improvement plan.

^{2/} The Board's brief also refers to evaluations and memoranda dating back to 1988, 1989 and 1992. We need not detail the contents of these documents for purposes of this decision. We express no opinion about the relevancy of these documents to the merits of the decision to withhold Kralovich's increments.

The superintendent denied the grievance. He asserted that the withholding was for evaluative rather than disciplinary reasons and that the grievance was therefore "not allowable." The Board concurred.

The Association demanded arbitration pursuant to N.J.S.A. 34:13A-26 and 29. The Board filed this petition the day before arbitration was to begin.

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 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.

Thus, we cannot consider the contractual merits of this grievances or any contractual defenses the Board may have. We specifically decline to consider whether the Board had cause to withhold Kralovich's increments and whether, as the Board contends, Kralovich was contractually required to present his grievance to the Association before filing it with the superintendent.

The Association contends that laches bars the Board from filing a scope-of-negotiations petition the day before arbitration was to begin and almost seven months after arbitration was

demanded. However, our policy is to accept scope of negotiations petitions so long as they are filed before an arbitration award issues. Cf. Ocean Tp. Bd. of Ed., P.E.R.C. No. 83-164, 9 NJPER 397 (¶14181 1983) (declining to entertain petition filed after arbitration award was issued).

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]

In Middletown Tp. Bd of Ed., P.E.R.C. No. 92-54, 18 NJPER 32 (¶23010 1991), we applied the tests of N.J.S.A. 34:13A-27 and Scotch Plains-Fanwood to an increment withholding involving a principal. We recognized that principals are teaching staff members, although they do not teach classes. We stated:

[Principals] 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. 18 NJPER at 34.

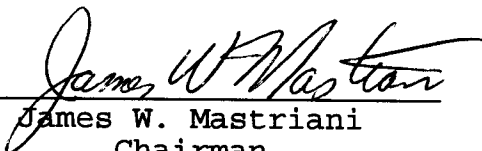
In that case, we held that the withholding was predominately based on an evaluation of the principal's leadership, judgment and management and thus the appropriate forum for reviewing its propriety was before the Commissioner of Education. See also Brigantine Bd. of Ed., P.E.R.C. No. 95-54, 21 NJPER 110 (¶26067 1995); Paterson School Dist., P.E.R.C. No. 95-39, 21 NJPER 36 (¶26023 1994).

Under all the circumstances, we likewise hold that the reasons for this withholding predominately involved an evaluation of the assistant principal's performance as an educational leader and manager. While we have found excessive absenteeism to be a disciplinary reason for a withholding, Scotch Plains-Fanwood, the allegation about absenteeism in this case is not simply based on the number of absences but is subsumed within the larger issue of an alleged lack of communication between the assistant principal and principal concerning school operations. Moreover, this case involves several other issues centering on Kralovich's leadership and effectiveness as an assistant principal. Accordingly, only the Commissioner of Education may issue a binding decision on the merits of this withholding.

ORDER

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

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. Commissioner Boose abstained from consideration.

DATED: September 21, 1995
Trenton, New Jersey
ISSUED: September 22, 1995