

P.E.R.C. NO. 95-39

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PATERSON SCHOOL DISTRICT,

Petitioner,

-and-

Docket No. SN-94-40

PATERSON ADMINISTRATORS
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Paterson Administrators Association against the Paterson School District. The grievance contests the withholding of salary increments from a vice-principal. Under all the circumstances of this case, the Commission holds that the reasons for this increment withholding predominately involved an evaluation of the vice-principal's performance as an educational leader and manager.

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Appearances:

For the Petitioner, Rand, Algeier, Tosti & Woodruff, P.C.,
attorneys (Philip E. Stern, of counsel)

For the Respondent, Zazzali, Zazzali, Fagella & Nowak,
attorneys (Kenneth I. Nowak, of counsel; Edward H. O'Hare,
on the brief)

DECISION AND ORDER

On October 18, 1993, the Paterson School District petitioned for a scope of negotiations determination. The District seeks a restraint of binding arbitration of a grievance filed by the Paterson Administrators Association. The grievance contests the withholding of salary increments from a vice-principal.

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

The Association represents certain of the District's administrators and supervisors, including vice-principals. The parties entered into a collective negotiations agreement effective from July 1, 1991 to June 30, 1994. The grievance procedure ends in binding arbitration of disputes involving increments withheld for predominately disciplinary reasons. See N.J.S.A. 34:13A-29.

Gloria O. Grenker has been employed in the Paterson school district for 40 years. Since 1967 she has been a vice-principal. Two years ago she was transferred to the position of vice-principal of Elementary School No. Ten. There she is supervised by her principal, George Hirschberg.

In March 1993, Hirschberg wrote an annual performance report evaluating Grenker's work. That report is broken down into three categories with subcategories in each one. In the category of "Administrative and Professional Responsibilities," Grenker received one rating of "commendable," two ratings of "effective," and thirteen ratings of "needs improvement." She was rated as especially needing improvement in delegating authority. In the category of "Instructional Supervision," she received two ratings of "effective" and four ratings of "needs improvement." In the category of "Personal Traits," she received one rating of "commendable" and five ratings of "needs improvement." Hirschberg listed this Professional Improvement Plan: "Learn role as Vice-Principal at School Ten."

Grenker rejected her performance report. She responded that her ratings had been excellent; the principal had said her ratings would suffer because she had won a grievance against him; the principal spent an entire day spying on her; and the principal shouted at her in front of teachers, children and parents.

During the 1992-1993 school year, Grenker received three memoranda from the principal. Copies of each one were sent to the Assistant Superintendent and placed in Grenker's personnel file.

One memorandum -- dated September 8, 1992 -- advised her that she should not cover her office window because teachers needed to know they could speak with her. That memorandum also stated that she was in charge of the laminating machine and that this machine had to be kept in her office. The memorandum warned that failure to follow directives could lead to charges of insubordination despite her many fine years of work. Grenker responded to this memorandum by noting that she had accepted the directives so there was no insubordination. The second memorandum -- dated October 20, 1992 -- discussed Grenker's assignments and noted that School No. Ten was a very large building needing full attention and that an administrator had to work beyond the regular school day and contractual time if necessary to complete tasks. A third memorandum -- dated May 5, 1993 -- stated that Grenker had failed to complete an assignment of recording and listing the five model numbers of the new Dulcane projectors. Grenker responded that the principal had not given her this assignment until five minutes before the end of her work day and that she had done the job the next morning. Grenker believes that these memoranda evidence a pattern of harassment and discrimination against her.

The principal recommended that Grenker's salary increments for the 1993-1994 school year be withheld. The Assistant Superintendent for School Operations and the Director of Personnel concurred. The State District Superintendent accepted these recommendations and withheld Grenker's increments. The reasons cited by the Superintendent tracked the March 1993 performance

report and did not refer to any other memorandum. The letter notifying Grenker of the withholding specified these problems:

- A. Deficiencies in the area of administrative and professional responsibilities as identified by Principal George Hirschberg in your performance report dated March 29, 1993. Specifically, deficiencies have been observed in the following areas of responsibility.

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| Criteria A.1 | You have failed to accept constructive criticism. |
| Criteria A.2 | You have failed to show the initiative expected of a vice-principal. |
| Criteria A.4 | You have failed to delegate authority effectively. |
| Criteria A.5 | You have failed to provide positive leadership. |
| Criteria A.6 | You have failed to provide for the health and safety of students. |
| Criteria A.7 | You have failed to be receptive to new ideas. |
| Criteria A.9 | You have failed to submit reports which are accurate, complete, objective and on time. |
| Criteria A.10 | You have failed to maintain adequate reports and records on students and interpret them accurately. |
| Criteria A.11 | You have failed to attend required meetings. |
| Criteria A.13 | You have failed to ensure proper communication and articulation in with [sic] the schools. |

Criteria A.14 You have failed to promote constructive relationships between the school, district and community.

Criteria A.15 You have failed to plan for the efficient operation of the school plant.

Criteria A.16 You have failed to effectively maintain the school plan with the resources available.

B. Deficiencies in the area of instructional supervision as identified by Principal George Hirschberg in your performance report dated March 29, 1993. Specifically, deficiencies have been observed in the following areas:

Criteria B.1 You have failed to visit the classrooms regularly.

Criteria B.2 You have failed to plan with appropriate staff for more effective teaching.

Criteria B.3 You have failed to assist staff in using community resources.

Criteria B.4 You have failed to assist staff in providing a classroom atmosphere.

C. Deficiencies in the area of personal traits as identified by Principal George Hirschberg in your performance report dated March 29, 1993. Specifically, deficiencies have been observed in the following areas:

Criteria C.1 You have failed to maintain a personal appearance which is neat and appropriate.

Criteria C.3 You have failed to work effectively with others.

- Criteria C.4 You have failed to exhibit through manner, speech and poise a professional image as vice-principal.
- Criteria C.5 You have failed to confer privately with staff members whose performance is unacceptable.
- Criteria C.6 You have failed to maintain confidentiality.

The Association filed a grievance contesting the withholding. The District 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 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 the Association's grievance or any contractual defense the District 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]

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. Id. at 34.

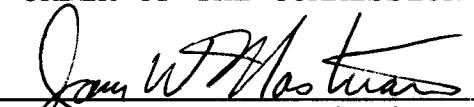
In that case, we held that the withholding was predominately based on an evaluation of the principal's leadership, judgment and management and thus the appropriate forum for reviewing its propriety was before the Commissioner of Education.

Under all the circumstances of this case, we likewise hold that the reasons for this increment withholding predominately involve an evaluation of the vice-principal's performance as an educational leader and manager. Accordingly, this withholding must be reviewed by the Commissioner of Education, not an arbitrator. Grenker may raise any claims of harassment or discrimination before the Commissioner.

ORDER

The request of the Paterson School District for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Goetting, Klagholz and Ricci voted in favor of this decision. None opposed. Commissioner Bertolino abstained from consideration. Commissioner Wenzler was not present.

DATED: December 16, 1994
Trenton, New Jersey
ISSUED: December 19, 1994