

P.E.R.C. NO. 99-52

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MAURICE RIVER TOWNSHIP BOARD
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-99-18

MAURICE RIVER TOWNSHIP
TEACHERS ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of Maurice River Township Board of Education for a restraint of binding arbitration of a grievance filed by the Maurice River Township Teachers Association. The grievance contests the withholding of a teaching staff member's increments for the 1998-1999 school year. The Commission finds that this increment withholding, as a whole, was based predominately on an evaluation of teaching performance. The reasons for the withholding involve concerns about lesson design and delivery, classroom management, student telecasts, regular course-related communications with parents, and student access to the library. Although some aspects of the withholding may involve alleged failures to comply with administrative directions, the Commission finds that the predominate concern involves teaching performance and therefore the review of this withholding must be made 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, Frank DiDomenico, attorney

For the Respondent, Thomas G. Myers, UniServ
Representative, New Jersey Education Association

DECISION

On October 1, 1998, the Maurice River 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 Maurice River Township Teachers Association. The grievance contests the withholding of a teaching staff member's increments for the 1998-1999 school year.

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

The Association represents teaching staff members. The Board and the Association are parties to a collective negotiations agreement effective from July 1, 1996 through June 30, 1999. The grievance procedure ends in binding arbitration.

Rebecca Garton is a school librarian in a kindergarten through eighth grade district. Her duties include library management and providing library instruction to first through eighth grade classes in the school library/media center. She is also responsible for supervising MRT-TV, an in-school, student-operated television network which, during the 1996-1997 school year, was broadcast for fifteen minutes at the beginning and fifteen minutes at the end of the school day. She has been employed by the Board since October of 1966, although it is not apparent from the record how long she has been the librarian.

On November 12, 1997, Garton was given an unsatisfactory "formative" evaluation.^{1/} The evaluation listed Garton's professional development plan as: (1) to learn about the Internet and use it as a resource for curriculum and library; (2) to attend workshops that focus on technology and classroom management; and (3) to continue strengthening and implementing the 1996-97 PDP.^{2/} The evaluation stated that "to date," Garton's performance had been unsatisfactory and listed the following reasons:

Weeding out textbooks in the library was not completed as directed

Teacher resource area was never completed

^{1/} The "summative" evaluation referred to on the form is presumably the required annual evaluation. N.J.A.C. 6:3-4.3.

^{2/} Board forms substitute the term "PDP" for "Professional Improvement Plan" (PIP) used in N.J.A.C. 6:3-4.1.

Newsletter was not published consistently during 1996-97 and has not been published at all for the 1997-98 school year

Monthly theme for library lessons was not evident

No professional workshops on classroom management or curriculum development were attended as suggested

Lesson plans show an overuse of film strips even though told by supervisors not to use filmstrips

Improper assessment of student performance

The evaluation went on to state that these items had been discussed in September, but that no effort had been made to improve. It included directions for correcting the alleged deficiencies.

The evaluation also listed other areas in which Garton needed improvement. Garton was directed to: improve MRT-TV telecasts as students were not speaking loudly or clearly enough; ensure that MRT-TV telecasts were at 8:55 a.m. and 3:05 p.m., not 2:50 p.m.; keep any inappropriate materials behind the librarian's desk; distribute the "Raccoon" reading project; allow enough time to obtain a substitute when calling in sick, and ensure that lesson plans were left for substitutes.

The evaluation also summarized the supervisor's observation of second and third grade classes that Garton taught on November 7. As a result of that observation, Garton was instructed to improve her classroom management and avoid sarcasm or angry tones, improve the delivery of lessons, and discontinue

the use of filmstrips. The evaluation advised that a minimum of two additional formal observations would be scheduled to monitor Garton's instruction and that the library would be visited unannounced to enforce the directive to discontinue the use of filmstrips. The evaluation did commend Garton for "enrolling and attending a graduate level class being offered in the Millville School District on the Internet."

On January 9, 1998, Garton responded to the evaluation. She disagreed with many of the evaluator's comments concerning her library instruction and classroom management. For example, she stated that the Board had not prohibited the use of filmstrips and that she would present the materials in the style that her professional manner dictated. She indicated that she did not receive the "Raccoon" reading program materials until an October in-service meeting and that, although she was told that she would be notified when to begin the program, that notification was never forthcoming. She maintained that her classroom management was effective for a library class setting, where part of the period is devoted to students selecting and checking out library books.

With respect to the comments about her calling in sick, Garton responded that on the day she called in sick late, she did not get sick until she was walking out the door for school. With respect to the comments about the organization of the library, she maintained that reorganization was not possible while school construction was taking place because voting booths, used book

trash cans, and sporting equipment were stored in the library. She also indicated that the library storage area had been taken up by two offices and that library teaching materials were therefore housed in the main library room. Finally, Garton maintained that the MRT-TV newscast was not related to the class observed and that the technological and mechanical problems with the MRT-TV required administrative intervention. With respect to the PDP requirement of attending workshops, she stated that she had been attending a workshop in Millville on Monday evenings and would consider receiving information concerning other workshops in the area.

On May 5, 1998, Garton received a formative evaluation summarizing the evaluator's observation of her April 20 fourth-grade library class.^{3/} The evaluator recommended improvements in using class time, managing the classroom, generating interest in lessons, using modeling/guided practice in future instruction, and including more relevant material in her lessons. In the latter vein, the evaluator commented that Garton had not attempted to meet her PDP goal of integrating subject matter/content areas with the library curriculum.

^{3/} Instead of the three PDP components listed in the November evaluation, this evaluation listed her Professional Development Plan as "[t]o pursue New Jersey Core Curriculum Content Standards across the curriculum by employing the writing process with particular focus on the Open Court thematic units." It may be that this element was part of the 1996-1997 PDP that the November evaluation referred to but did not quote.

On May 5, 1998, Garton responded to the April 20 evaluation. She disagreed with many of the evaluation comments, but stated that she was receptive to realistic recommendations and suggestions that would contribute to continued professional development with regard to classroom management and instructional methods.

The Board has also submitted a May 7, 1998 memorandum from Garton's supervisor to Garton concerning "various items." The memorandum stated that Garton did not attend a scheduled post-observation conference. It also discussed problems with the MRT-TV broadcasts and Garton's attitude toward other staff and the superintendent. The last paragraph of the memorandum states:

In reviewing these incidents, I continue to have serious concerns about your attitude toward your responsibilities and the unprofessional manner in which you conduct yourself when addressing staff, colleagues, and supervisors. If your professional demeanor does not improve, it will result in an official reprimand.

On June 17, 1998, the Board's attorney advised Garton that the Board had voted to withhold her employment and adjustment increments and negotiated salary and longevity increases for contract year 1998-1999. The reasons for the withholding were as follows:

1. During school year 1997-98, you failed to comply with your PDP. The PDP required you to enroll in courses in lesson design and classroom management and although repeatedly counseled, you failed to comply.

2. Inefficiency, especially with regards to communications with parents of students. Numerous complaints were received by parents that you failed to communicate with them regarding students' grades; and you failed to return telephone calls by parents. You were counseled on this problem.

3. Inefficiency in that you left a student on the library restricted list for an entire marking period, again as a result of your failure to communicate properly.

4. Inefficiency in that you were tasked to insure that MRT-TV was operating properly. Your failure to do so resulted in MRT-TV finally going off the air as a failure.

5. You were repeatedly counseled by your Supervisor with regards to proper lesson design and proper lesson delivery. Although five observations were conducted by your Supervisor, you continued to have poor lesson design and poor delivery with the ultimate result that the students suffered.

On June 26, 1998, the Association filed a grievance. The grievance was denied by the principal and the superintendent. On August 18, the Board denied the grievance as based purely on performance and not subject to the grievance procedure. On September 14, 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 (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 contractual merits of the grievance or any contractual defenses the Board may have.

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-27a. 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 maintains that the withholding relates predominately to the evaluation of Garton's teaching performance because the reasons cited for the withholding were poor teaching habits, non-compliance with her PDP, and poor instructional preparation, design and delivery. The Association counters that four of the five reasons cited in the Board's statement of reasons -- although couched in terms of "inefficiency" -- in fact criticize Garton for not complying with administrative procedures and are therefore not predominately related to the evaluation of teaching performance. See Red Bank Reg. H.S. Dist. Bd. of Ed., P.E.R.C. No. 99-23, 24 NJPER 474 (¶29221 1998). It also suggests that given Garton's 33 years of service with largely positive evaluations, the Board's motivation for the withholding is to

encourage Garton to retire, a subject that administrators have broached with her. At another point, it contends that Garton's absenteeism may have been the basis for the withholding, but that the Board was reluctant to so state in light of cases holding that withholdings for excessive absenteeism were not based predominately on the evaluation of teaching performance. Edison; Scotch Plains.

We will not look behind the cited reasons to see if they are pretextual. That is not a proper role for us in our function as forum gatekeeper. Parsippany-Troy Hills Bd. of Ed., P.E.R.C. No. 98-153, 24 NJPER 339 (¶29160 1998); Saddle River Bd. of Ed., P.E.R.C. No. 96-61, 22 NJPER 105 (¶27054 1996). Where we find a withholding to be predominately related to the evaluation of teaching performance, the Commissioner of Education may evaluate a contention that the cited reasons are pretextual. Parsippany-Troy Hills; Saddle River.

Applying the standards in Scotch Plains, we conclude that the cited reasons for this withholding were predominately based on the evaluation of teaching performance. The Association concedes that the fifth of the Board's reasons -- poor lesson design and delivery -- is a teaching-performance reason. We accept this concession but reject the Association's contention that the reason is less significant than the others because it was listed last. The record includes two evaluations that detail numerous alleged problems in Garton's instruction. The Board's statement of


reasons indicates that five observations during the 1996-1997 school year showed poor lesson design and delivery. We are satisfied that this reason was a significant factor in the Board's action and on this record there is no basis for finding that it was less (or more) significant than any other factor.

We conclude that this withholding, as a whole, was based predominately on the evaluation of teaching performance. The reasons for the withholding involve concerns about lesson design and delivery, classroom management, student telecasts, regular course-related communications with parents, and student access to the library. Although some aspects of this withholding may involve alleged failures to comply with administrative directives, the predominate concern involves teaching performance and therefore the withholding must be reviewed by the Commissioner of Education.

ORDER

The request of the Maurice River 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 and Ricci voted in favor of this decision. None opposed. Commissioner Boose abstained from consideration.

DATED: December 17, 1998
Trenton, New Jersey
ISSUED: December 18, 1998