

P.E.R.C. NO. 83-139

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF EDUCATION OF THE  
BOROUGH OF SPOTSWOOD,

Petitioner,

-and-

Docket No. SN-83-31

SPOTSWOOD EDUCATION ASSO-  
CIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance the Spotswood Education Association filed against the Board of Education of the Borough of Spotswood. The grievance alleged that the Board violated its collective negotiations agreement when it withheld a teacher's employment and adjustment increments. The Board denied the grievance because it believed it had a contractual right under the collective negotiations agreement to do so. The Commission ruled that the grievance and the Board's defense predominantly involved a question of contractual interpretation which could be submitted to an arbitrator for resolution.

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Appearances:

For the Petitioner, Golden, Shore, Zahn & Richmond,  
Esqs. (John B. Wolf, of Counsel)

For the Respondent, Rothbard, Harris & Oxfeld, Esqs.  
(Nancy Iris Oxfeld, of Counsel)

DECISION AND ORDER

On October 18, 1982, the Board of Education of the Borough of Spotswood ("Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The petition seeks a permanent restraint of binding arbitration of a grievance the Spotswood Education Association ("Association") has filed. The grievance alleges that the Board, in violation of its collective negotiations agreement, withheld a teacher's employment and adjustment increments.

Both parties have filed briefs and documents. The Board has filed a reply brief.

The Association is the majority representative of teachers employed by the Board. The Association and Board have

entered into an agreement effective September 1, 1981 to August 31, 1983. This agreement contains the following provisions material to this dispute.

Article 16 sets forth the salary guides for 1981/1982 and 1982/1983. Employees are placed on the salary guide according to the number of years of teaching and military experience they have and the educational degrees and graduate coursework they have completed.

Article 20 is entitled Teacher Assignment. Section A of this Article provides that "[e]ach teacher shall be placed on his proper step of the salary schedule at the beginning of the school year in accordance with Section B., paragraph 2. below." Section B, paragraph 2 provides that "[m]ilitary experience shall be included with previous teaching experience so that the totals of both will not exceed the tenth (10th) step of any salary guide." Section D provides: "Teachers with previous experience in the Spotswood Public Schools shall, upon returning to the system, receive full credit on the salary schedule for their outside teaching experience and military experience up to the maximum set forth in Section A. above. To receive credit for a full year's teaching experience, a teacher must have taught at least one hundred (100) days in a duly accredited school. (Emphasis supplied)

Article 22, entitled Teacher Employment, provides that "[e]ach teacher shall be placed on his proper step of the salary schedule at the beginning of each school year."

Article 4 sets forth the parties' grievance procedures for disputes arising under the contract. That procedure culminates in binding arbitration.

For the 1981-82 school year, teacher Anne Marie Winters was placed at the intersection of two points of the salary guide: (1) Step P (based on her 16 years teaching experience) and (2) Master's + 30 credits. She received \$26,585. If she had received her normal employment and adjustment increments for the 1982-83 school year, she would have been placed in an off-guide position and received \$28,733. On April 21, 1982, the Board, while confirming the entitlement of other employees to advancement on the salary guide, voted to pay Winters the same salary she had received in 1981-82 because she did not work 100 days in 1981-82. The superintendent informed Winters by letter of the Board's action.

On April 28, 1982, Winters filed a grievance concerning her placement on the salary guide. She noted that her 1981-1982 salary of \$26,585 did not appear on the guide for 1982-1983 nor did it accurately reflect the number of years experience she had. On May 5, 1982, the Association wrote the superintendent claiming that Winters' placement violated Article 22, Section A and asked that she be placed off-guide at a salary of \$28,773. The Association did not dispute that Winters worked less than 100 days.

On May 18, 1982, the superintendent denied the grievance. She wrote:

As per the negotiated contract, Mrs. Winters has not taught 100 school days in order to move on the salary guide.

She is presently at Step 16 on the guide. The 1982/1983 guide has two off-guide positions. The position which is comparable to her present status is AA-Salary \$26,471. Since this is a lower salary than her present one, she was maintained at her present salary. (Emphasis supplied).

On June 21, 1982, the Board affirmed the superintendent's ruling.

On July 12, 1982, the Association demanded binding arbitration. It characterized the grievance as involving the "...refusal of the Board to provide increment to employee for just cause."

The Board contends that N.J.S.A. 18A:29-14 precludes binding arbitration of all disputes concerning the withholding of increments. This statute provides:

Any board of education may withhold, for inefficiency or other good cause, the employment increment, or the adjustment increment, or both, of any member in any year by a recorded roll call majority vote of the full membership of the board of education. It shall be the duty of the board of education, within 10 days, to give written notice of such action, together with the reasons therefor, to the member concerned. The member may appeal from such action to the commissioner under rules prescribed by him. The commissioner shall consider such appeal and shall either affirm the action of the board of education or direct that the increment or increments be paid. The commissioner may designate an assistant commissioner of education to act for him in his place and with his powers on such appeals. It shall not be mandatory upon the board of education to pay any such denied increment in any future year as an adjustment increment.

It also cites Bd. of Ed. of Bernards Township v. Bernards Township Ed. Assn., 79 N.J. 311 (1979) and East Brunswick Ed. Assn. v. East Brunswick Bd. of Ed., App. Div. Docket No. A-4497-77 (3/9/79).

The Association does not dispute that N.J.S.A. 18A:29-14 authorizes the Board to withhold an increment for inefficiency

or other good cause. It claims that the Board based its decision not to increase the grievant's salary on the negotiated agreement, not on its statutory right to withhold an increment. Consequently, the Association argues that the dispute concerns the interpretation of Article 20D, which is a proper matter for arbitration. It cites, e.g., In re Deptford Bd. of Ed., 8 NJPER 316 (¶13142 1982) and In re Oakland Bd. of Ed., P.E.R.C. No. 82-125, 8 NJPER 378 (¶13172 1982), appeal pending, App. Div. Docket No. A-4975-81T3 ("Oakland"). In addition, the Association asserts that the grievant's increment should not have been denied because the Board did not comply with N.J.S.A. 18A:29-14's requirement that "a recorded roll call majority vote of full membership" take place. The instant petition ensued.<sup>1/</sup>

At the outset, we note the limitations on our jurisdiction:

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.

Ridgefield Park Ed. Assn. v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154; In re Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55, 57 (1975). Thus, we will not consider the merits of the grievance.

<sup>1/</sup> The parties agreed to a stay of arbitration until the issuance of the Commission's decision.

It is well-settled that a Board's decision to withhold an increment for inefficiency or other good cause pursuant to N.J.S.A. 18A:29-14 is not arbitrable. Bernards Township, supra and East Brunswick, supra. See also, Clifton Teachers Assn. v. Bd. of Ed. of Clifton, 136 N.J. Super. 336 (App. Div. 1975). In Bernards Township, the Supreme Court stated:

The decision to withhold an increment - although directly affecting the work and welfare of a teacher - is thus dependent upon an evaluation of the quality of the services which the teacher has rendered. The purpose of the statute is thus to reward only those who have contributed to the educational process thereby encouraging high standards of performance. In determining whether to withhold a salary increment, a local board is therefore making a judgment concerning the quality of the educational system. It is reasonable to assume that an adversely affected teacher will strive to eliminate the causes or bases of "inefficiency."  
Supra. at p. 321.

The Court distinguished Galloway Tp. Bd. of Ed. v. Galloway Tp. Ed. Ass'n, 78 N.J. 25 (1978), where the employer committed an unfair practice when it unilaterally altered, during contract negotiations, the automatic right of all teachers to an annual salary increment, because Galloway did not concern the Board's ability to evaluate particular teachers.

It is also well-settled that placement of employees generally on a salary guide is a mandatorily negotiable matter. Bd. of Ed. of Englewood v. Englewood Teachers Ass'n, 64 N.J. 1 (1973); Oakland. Thus, a board, for example, may not unilaterally change the negotiated rules for determining where employees with a certain number of graduate school credits or years of teaching experience belong on a salary guide and may not refuse to arbitrate such disputes. Oakland; Englewood.

In the instant case, the Board, accepting the superintendent's recommendation, denied the increments Winters normally would have received not because it was dissatisfied with her individual teaching performance, but because it interpreted the contract differently than the Association. The Board believed it had a contractual right to deny increments to all employees who worked less than 100 days, regardless of its evaluation of any individual teacher's performance. The predominant issue, therefore, is an interpretation of the parties' agreement concerning the normal placement of all employees on the salary guide, not the Board's right to depart from the negotiated salary guide increments when a particular employee's job performance is found unsatisfactory pursuant to N.J.S.A. 18A:29-14.<sup>2/</sup> We do not believe that it would significantly interfere with any major educational policy determination to permit the Board's interpretation of the contract clause to be challenged through the parties' negotiated grievance procedure. The arbitrator should be allowed to render

<sup>2/</sup> Even if the the Board had attempted to exercise its right under N.J.S.A. 18A:29-14 to withhold an increment based on a particular employee's unsatisfactory job performance, a question would have arisen whether the Board legally did so given the apparent absence of either a recorded roll call majority vote or an affirmative resolution setting forth its decision to withhold Winters' increments and the specific reasons for that decision. Kuehn v. Bd. of Ed. of Township of Teaneck, OAL Docket No. EDU#1077-81 (State Bd. of Ed., Feb. 1, 1983); Schwab v. Bd. of Ed. of Borough of Manasquan, OAL Docket No. EDU-3329-81, Comm. of Ed. #342-83 (1982). Under Ridgefield Park, supra, however, that question is not for us to answer.

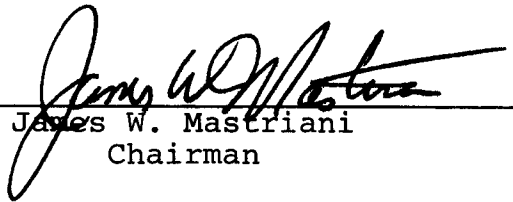


a binding decision on that contractual issue. Thus, we will allow arbitration to proceed on that contractual issue.<sup>3/</sup>

ORDER

The request of the Board of Education of the Borough of Spotswood for a permanent restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Hartnett, Butch and Graves voted for this decision. Commissioner Suskin voted against this decision. Commissioners Hipp and Newbaker abstained.

DATED: Trenton, New Jersey  
April 19, 1983  
ISSUED: April 20, 1983

<sup>3/</sup> We recognize that under Bernards Township, a dispute concerning the withholding of an individual teacher's increment is non-arbitrable if the arbitrator is given binding power to substitute his judgment on the employee's performance for that of the Board. Here, an arbitrator would not be substituting his judgment of an employee's job performance for that of the Board, but solely his interpretation of a contractual clause affecting the placement of all employees on the salary guide.