

P.E.R.C. NO. 97-72

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RED BANK REGIONAL HIGH SCHOOL
DISTRICT BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-96-25

RED BANK REGIONAL
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the Red Bank Regional High School District Board of Education's request for a restraint of binding arbitration of a grievance filed by the Red Bank Regional Education Association. The grievance asserts that the Board violated the parties' collective negotiations agreement when it withheld salary increments from a social studies teacher without just cause. The Commission finds that the majority of the allegations involve teaching performance and that therefore the withholding must be reviewed 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.

P.E.R.C. NO. 97-72

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RED BANK REGIONAL HIGH SCHOOL
DISTRICT BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-96-25

RED BANK REGIONAL
EDUCATION ASSOCIATION,

Respondent.

Appearances:

For the Petitioner, James P. Granello, attorney

For the Respondent, Klausner & Hunter, attorneys
(Stephen B. Hunter, of counsel)

DECISION AND ORDER

On September 11, 1995, the Red Bank Regional High School District Board of Education petitioned for a scope of negotiations determination. The employer seeks a restraint of binding arbitration of a grievance filed by the Red Bank Regional Education Association. The grievance asserts that the Board violated the parties' collective negotiations agreement when it withheld salary increments from a social studies teacher without just cause.

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

The Association represents the Board's teachers. The parties entered into a collective negotiations agreement effective

from July 1, 1993 until June 30, 1996. Section C of Article IV provides:

No teacher shall be disciplined or reprimanded without just cause. Any such actions asserted by the Board, or any agent or representative thereof, shall be subject to the grievance procedure herein set forth.

The grievance procedure ends in binding arbitration.

Brandon Hardison is a tenured social studies teacher. On April 19, 1995, the Board voted to withhold his salary increment for the 1995-1996 school year. On April 21, the Board's secretary/school business administrator wrote Hardison a letter listing these reasons for the withholding:

- 1.0 Policy 328, Item 29: To carry out all additional duties and directives that are requested by the immediate supervisor, principal or chief school administrator.
 - 1.1 Your failure to turn in the B.A.C.A. account book at the end of the school year (June 1994) forced the district to go into the 1993-94 audit with incomplete and inaccurate records for the student activities account. You served as the paid B.A.C.A. advisor during the 1993-94 school year, and its account contained several problems of which you were advised in a letter from the high school principal dated July 11, 1994.
 - 1.2 There were several serious problems with your final exam procedures during June, 1994. (See supervisor's memo to you dated June 30, 1994 included in principal's letter of July 11, 1994).
 - 1.3 Several VHS programs ordered for preview by you on October 19, 1993 were not returned until October 14, 1994 (almost one year later). In addition, one of them was never located creating an accountability problem.

- 1.4 Items number 1.0 and 2.0 in your 1994-1995 Professional Improvement Plan for 1994 were not complied with.
- 2.0 Policy 328, Item 28: To avoid sarcasm or negativity regarding the child, his/her family, or social background.
 - 2.1 A formal complaint was filed about you by a parent for comments that you made in your class implying that the parents had deliberately lied to their children. (See memo from Mr. Strangia dated December [5], 1994).
- 3.0 Policy 328, Item 21: To carry out explicitly the administrative directives of the school and the district in all manners pertaining to the school program.
 - 3.1 You were rated as unsatisfactory by the athletic director for your performance in the spring of 1994 as a track coach.
 - 3.2 You received a reprimand from the district superintendent as a result of irregularities in your chaperoning of Red Bank Regional students that you escorted to a special program presentation at Brookdale Community College (See Dr. Warner's letter dated February 3, 1995).
 - 3.3 You failed to attend the end of the year faculty meeting in June, 1994. (See Mr. Strangia's memo to you dated June 30, 1994).

The letter noted that these reasons had been included in Hardison's annual performance report for the 1994-1995 school year, along with recommendations for improvements.

With respect to Item 1.1, the B.A.C.A. is the Black American Cultural Association. A memorandum from the principal

dated September 7, 1994 alleges that Hardison had omitted certain withdrawals and deposits and that his accounts had shown a negative balance of \$984.51. Hardison filed a response.

With respect to Item 1.2, the June 30, 1994 memorandum from the principal stated that Hardison had not obtained the principal's approval of his final examination in African-American History; Hardison had run off copies of the exam the morning of the test and left a copy on the copy machine; Hardison had inappropriately shown a video during the examination; and the exam was too brief because it consisted of only 10 matching questions, 20 multiple choice questions and two short essays.

With respect to Item 1.3, the complaint about Hardison's alleged failure to return video tapes promptly is self-explanatory.

With respect to Item 1.4, the items referenced -- 1.0 and 2.0 in the 1994-1995 Professional Improvement Plan -- are:

- 1.0 Complete your graduate course work.
- 2.0 Continue your involvement in our extracurricular program with activities such as BACA, Mock Trial and coaching.

With respect to Item 2.1, a parent complained that Hardison had told his World History class that they had been lied to and that Jesus Christ was black. The principal met with the parent, the child's guidance counselor, and Hardison. After the meeting, the principal wrote a file memorandum attaching the Board's policy on

"Teaching Controversial Issues" and stating that although there was some basis for discussion of the issue, Hardison had crossed over the line.

With respect to item 3.1, Hardison was the head coach of the boys' track team. The athletic director evaluated his performance and listed these areas needing improvement:

1. Missed many practices due to other commitments.
2. Missed actual track meets due to other commitments.
3. Many times assistant coaches were left to run practices.

With respect to item 3.2, the February 3, 1995 letter from the superintendent stated that Hardison had chaperoned a field trip to Brookdale Community College to hear a lecture; he had allowed at least six students to leave the auditorium at the start of the lecture and to remain unsupervised; and they had missed the entire lecture. Hardison filed a response stating that he allowed the students to go eat lunch in the college cafeteria because the high school cafeteria would be closed when they returned.

With respect to item 3.3, a memorandum to Hardison had noted that he had not been excused from the faculty meeting.

The Association filed a grievance asserting that the Board did not have just cause to withhold Hardison's salary increment. The Board denied this 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 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]

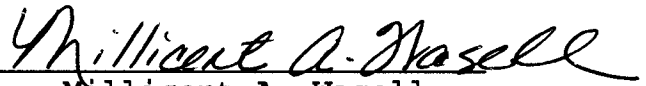
Upon review of all the factors, we cannot say that the basis for the increment withholding is predominately disciplinary and thus subject to binding arbitration under N.J.S.A. 34:13A-26 and 29. We recognize that the case includes circumstances both disciplinary and related to teaching performance. For example, the Board's concerns about the content of the final examination, Hardison's teaching of controversial material and alleged statements during class that parents had lied to their children; and his allegedly unsatisfactory supervision of students during a lecture all center on teaching performance. Other allegations such as

failure to attend a faculty meeting or to return a video are not related to teaching performance, but we do not believe that these other allegations predominate in this case.^{1/} We will therefore restrain arbitration.

ORDER

The request of the Red Bank regional High School Board of Education for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Acting Chair

Acting Chair Wasell, Commissioners Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioner Boose abstained from consideration.

DATED: December 19, 1996
Trenton, New Jersey
ISSUED: December 20, 1996

^{1/} The Association asserts that we should not consider any allegations concerning incidents before the 1994-1995 school year because the Commissioner of Education will not consider such allegations. Whether the Commissioner would consider such allegations is for the Commissioner, not us, to decide. However, if we considered only allegations concerning the 1994-1995 school year, we would still hold that the reasons were predominately related to teaching performance given the allegations about teaching controversial material and letting students miss a lecture and remain unsupervised.