

P.E.R.C. NO. 94-115

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PATERSON SCHOOL DISTRICT,

Petitioner,

-and-

Docket No. SN-94-23

PATERSON EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Paterson School District for a restraint of binding arbitration of grievances filed by the Paterson Education Association involving increment withholding disputes of seven teachers. All the withholdings predominantly center on matters relating to teaching performance. The Commissioner of Education must review the validity of these withholdings.

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Appearances:

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

For the Respondent, Bucceri & Pincus, attorneys
(Gregory T. Syrek, of counsel)

DECISION AND ORDER

On September 13, 1993, the Paterson School District petitioned for a scope of negotiations determination. The District seeks a restraint of binding arbitration over increment withholding disputes involving seven teachers represented by the Paterson Education Association.

The District filed an affidavit of the District superintendent and exhibits. Both parties filed briefs. These facts appear.

The Association represents the District's teachers and other personnel. The parties entered into a collective negotiations agreement effective from July 1, 1991 until June 30, 1994. The grievance procedure ends in binding arbitration of disciplinary increment withholdings. See N.J.S.A. 34:13A-26 and 29.

On August 6, 1993, the Association demanded binding arbitration on behalf of 24 teaching staff members whose employment and adjustment increments were withheld for the 1993-1994 school year. The District then filed this petition seeking to restrain arbitration over seven of these withholdings. The District believes that these disputes center on teaching performance reasons and must therefore be heard by the Commissioner of Education while the Association believes that these disputes center on disciplinary reasons and must therefore be submitted to binding arbitration. The facts of record surrounding each dispute follow.

Kevin Bashaw

Kevin Bashaw teaches at John F. Kennedy High School. The superintendent informed him that his employment and adjustment increments for the 1993-1994 school year would be withheld for these reasons:

1. You have not demonstrated satisfactory teaching techniques.
2. You have not demonstrated satisfactory planning and organizational skills.
3. You have not demonstrated satisfactory parental relationships.
4. You have been absent 28.5 days during the 92-93 school year.

Bashaw's annual performance report was also submitted. He received "unsatisfactory" ratings in all five subheadings under "Teaching Techniques" and "Needs Improvement" ratings in five of the eight

subheadings under "Professional Relationships, Achievements and Traits." Comments included in the report criticized Bashaw's lack of preparation, his failure to motivate students, his failure to incorporate hands-on-activities in his lesson plans, and the negative impact of his poor attendance on his class.

Joyce Huster

Joyce Huster teaches at School No. 12. The superintendent informed her that her employment and adjustment increments for the 1993-1994 school year would be withheld for these reasons:

1. You have not demonstrated satisfactory teaching techniques.
2. Your classroom organization and management skills are unacceptable.

Huster's annual performance report was also submitted. She received "Unsatisfactory" ratings in two subheadings under "Classroom Organization and Management" and "Needs Improvement" ratings in one subheading under "Scholarship," four subheadings under "Teaching Techniques," two subheadings under "Classroom Organization and Management," and two subheadings under "Professional Relationships, Achievements and Traits." Comments included in the report criticized her techniques for addressing the needs of limited English speakers, assessment skills, planning skills, recordkeeping, and attendance.

Ellen Rubin

Ellen Rubin teaches at School No. 4. The superintendent informed her that her employment and adjustment increments for the 1993-1994 school year would be withheld for these reasons:

1. You have not demonstrated satisfactory teaching techniques.
2. Your classroom organization and management skills are unacceptable.
3. You have not demonstrated satisfactory parental relationships.
4. Your professional relationships with co-workers and administrators are unacceptable.

Her annual performance report was also submitted. She received "Unsatisfactory" ratings in all five subheadings under "Teaching Techniques" and four of the seven subheadings under "Classroom Organization and Management." She received "Needs Improvement" ratings in one subheading under "Scholarship," three subheadings under "Classroom Organization and Management," and five subheadings under "Professional Relationships, Achievements and Traits." Comments included in the report criticized her lack of understanding of urban education, her unsuccessful pedagogical strategies, her failure to follow suggestions, her inability to provide for student safety and well-being, her lack of discipline and organization, her lack of cooperation with the administration and staff, and her poor judgment and tact with parents. Five critical classroom observations and two complaints from students about demeaning and profane language were also submitted.

George Sichuk

George Sichuk teaches at Eastside High School. The science department chairperson recommended that his employment and adjustment increments for the 1993-1994 school year be withheld for these reasons:

1. He has failed to maintain classroom control.
2. He has failed to provide satisfactory instruction to his students.
3. He fails to motivate and hold the attention of students during a lesson.
4. He has been ineffective in relating to our students.
5. He has not followed through in various recommendations regarding workshops/conferences, etc. to assist in improving skills/techniques.
6. He has not always made provision for or maintained a safe classroom.

His annual performance report was also submitted. He received "Unsatisfactory" ratings in three subheadings under "Teaching Techniques" and four subheadings under "Classroom Organization and Management." He received "Needs Improvement" ratings in one subheading under "Teaching Techniques," and five subheadings under "Professional Relationships, Achievements and Traits." The report criticized his skills in meeting student needs and his governing skills so that "the classroom would be conducive to learning." A series of critical memoranda, evaluations, and observation reports over the last three years was also submitted.

Gloria Veleber

Gloria Veleber teaches at School No. 1. The superintendent informed her that her employment and adjustment increments for the 1993-1994 school year would be withheld for these reasons.

1. She has failed to maintain classroom control.
2. She has failed to provide satisfactory instruction to her students.

Her principal had recommended the withholding for those reasons. A Classroom Teacher Evaluation was also submitted. That evaluation praised her attendance and effort, but criticized her ineffective skills, lack of social control, and inconsistent rapport with students. She received a rating of "F" in the subheading of "Social Control (governing skills)" under "Classroom Organization and Management," and a rating of "D" in the subheadings of "Attitude Towards Criticism," "Teacher-Pupil Rapport," and "Self-control, poise" under "Professional Relationships, Achievements and Traits." She received ratings of "A," "B," or "C" in all other subheadings.

John Waters

John Waters teaches perceptually impaired students at School No. 7. His principal informed the assistant superintendent that Waters' increments for the 1993-1994 school year should be withheld for these reasons:

1. Mr. Waters has been absent 64 days so far for the 1992-93 school year....
2. Mr. Waters has failed to demonstrate satisfactory performance as a teacher during the 1992-93 school year as evidenced in the attached observations and evaluation report.

Specifically, Mr. Waters has been unsatisfactory in the following areas:

- a. He has failed to maintain classroom control.
- b. He has failed to maintain up-to-date lesson plans and has failed to cover the required subject matter.
- c. He has failed to provide satisfactory instruction to his students.

His annual performance report was also submitted. He received "Unsatisfactory" ratings in one subheading under "Teaching Techniques" and two subheadings under "Classroom Organization and Management." He received "Needs Improvement" ratings in one subheading under "Scholarship," four subheadings under "Teaching Techniques," four subheadings under "Classroom Organization and Management," and seven of the eight subheadings under "Professional Relationships, Achievements, and Traits." The report also included comments criticizing Waters for an inability "to demonstrate an accurate knowledge of the material" and "to present it to his students on an appropriate level of understanding," uninteresting and unchallenging lessons, refusal to accept or follow through on technical assistance, poor classroom discipline and control, chronic absenteeism, and erratic behavior.^{1/}

Zalman Zager

Zalman Zager teaches science at Eastside High School. The science department chairperson recommended that his employment and

^{1/} We do not consider an undated portion of a psychological evaluation.

adjustment increments for the 1993-1994 school year be withheld for these reasons:

1. He has failed to maintain classroom control.
2. He has failed to provide satisfactory instruction to his students.
3. He has failed to motivate and hold the attention of his students during daily lesson presentations.
4. He has been ineffective in relating to our students.
5. He has been issued a letter of warning and has not fulfilled the recommendations satisfactorily.

Zager's annual performance report was also submitted. He received "Unsatisfactory" ratings in four subheadings under "Teaching Techniques" and one subheading under "Classroom Organization and Management." He received "Needs Improvement" ratings in two subheadings under "Classroom Organization and Management" and five subheadings under "Professional Relationships, Achievements and Traits." Comments included in the report criticized his not motivating students or meeting their needs and his unacceptable managerial skills making his classroom uncondusive to learning. A series of critical memoranda, evaluations and observation reports over the last two years was also submitted.

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 App. Div. Dkt. No. A-2053-8678 (10/23/87), 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]

Kevin Bashaw

One of the reasons cited for withholding Bashaw's increments was his alleged excessive absenteeism. We have considered this reason to be disciplinary. See, e.g., Scotch

Plains-Fanwood. But that reason is only one of the four reasons cited; the other reasons relate to teaching performance. In addition, the annual performance report alleges several problems in the classroom. On balance, we hold that this withholding predominately involves an evaluation of teaching performance.

Joyce Huster

The two reasons cited for withholding Huster's increments relate to teaching performance. The annual performance report also alleges several problems in the classroom. While the report also alludes to a need to improve attendance, on balance we hold that this withholding predominately involves an evaluation of teaching performance.

Ellen Rubin

The reasons cited for withholding Rubin's increments mostly relate to her teaching performance. The annual performance report also alleges several classroom problems and rates her "unsatisfactory" in all subheadings relating to teaching techniques and most subheadings relating to classroom organization and management. While she is also criticized for alleged lack of cooperation and poor relationships with co-workers and administrators, on balance we hold that this withholding predominately involves an evaluation of teaching performance.

George Sichuk

The reasons cited for withholding Sichuk's increments relate to his teaching performance. The annual performance report and a series of memoranda, evaluations and observations also allege

teaching problems. While he is also criticized for an alleged lack of cooperation, on balance we hold that this withholding predominately involves an evaluation of his teaching performance.

Gloria Veleber

The reasons cited for withholding Veleber's increments relate to her teaching performance. The annual evaluation also alleges many classroom problems. While the Association asserts that the documents submitted do not support the reasons given, these reasons are educational in nature and it is therefore up to the Commissioner of Education to determine whether or not they have been substantiated. On balance, we hold that this withholding predominately involves an evaluation of her teaching performance.

John Waters

The reasons cited for withholding Waters' increments relate to his alleged excessive absenteeism and poor teaching performance. The reasons cited in his annual performance report also speak to both concerns as well as allegedly erratic behavior. Several classroom problems -- inability to demonstrate an accurate knowledge of material or to present it to a class, uninteresting and unchallenging lessons, lack of discipline and control -- are alleged. On balance, we hold that the withholding predominately involves an evaluation of teaching performance.

Zalman Zager

The reasons cited for withholding Zager's increments mostly relate to his alleged classroom problems. His annual performance

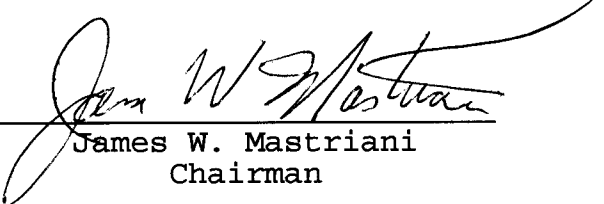
report and a series of memoranda, evaluations and observations also allege teaching problems. While he is also criticized for an alleged lack of cooperation, on balance we hold that this withholding predominately involves an evaluation of teaching performance.

In sum, we believe that all these withholdings predominantly center on matters relating to teaching performance. The Commissioner of Education must review the validity of these withholdings.

ORDER

The request of the Paterson School District for a restraint of binding arbitration of the Bashaw, Huster, Rubin, Sichuk, Veleber, Water, and Zager increment withholdings is granted.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

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

DATED: May 25, 1994
Trenton, New Jersey
ISSUED: May 26, 1994