

P.E.R.C. NO. 2002-67

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TRENTON BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2002-17

TRENTON EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Trenton Board of Education for a a restraint of binding arbitration of a grievance filed by the Trenton Education Association. The grievance contests the withholding of a teacher's increment for the 2001-2002 school year. The Commission concludes that the Board's stated reasons for this withholding concern the administration of a district reading program which predominately relate to the evaluation of teaching performance and must be considered 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.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TRENTON BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2002-17

TRENTON EDUCATION ASSOCIATION,

Respondent.

Appearances:

For the Petitioner, Summers, George & Dortch, P.C.,
attorneys (Richard E. Golden, on the brief)

For the Respondent, Bergman & Barrett, attorneys
(Michael T. Barrett, on the brief)

DECISION

On November 14, 2001, the Trenton Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Trenton Education Association. The grievance contests the withholding of a teacher's increment for the 2001-2002 school year.

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

The Association represents certified personnel. The Board and the Association are parties to a collective negotiations agreement effective from September 1, 2000 through August 31, 2004. The grievance procedure ends in binding arbitration.

During the 1999-2000 and 2000-2001 school years, Patricia Parrish was assigned to the Parker Elementary School as a Resource Center Teacher. Resource teachers provide individual instruction to classified students in accordance with Individual Education Plans (IEP). This instruction requires the cooperation of the resource teacher, classroom teacher, teacher facilitator, case manager, and principal.

The Board has adopted the Success for All (SFA) reading program in its elementary schools to comply with Department of Education mandates for districts subject to Abbott v. Burke, 100 N.J. 269 (1985).

On February 10, 2000, Principal Willie Solomon, Jr. wrote to Parrish about a February 8 meeting he had had with her and her representative. He reviewed the concerns discussed. They included leaving students unsupervised in the halls; leaving school without permission; her request that two students be removed from her SFA reading group; her tardiness, and his concerns of a personality conflict between Parrish and the SFA reading facilitator. Solomon characterized her alleged actions as unprofessional and unacceptable.

On February 11, 2000, Solomon sent a memorandum to Parrish about her absence from an assigned duty post. He stated that it was the third time that year that he had to remind her of her duty responsibilities. On February 15, Parrish responded that

she had a valid reason for not being at her post and that she would speak to him about it.

On February 22, 2000, Parrish responded to Solomon's February 10 memorandum. She asserted that the memorandum was full of misconceptions, wrongdoing and untruths. She explained why she had to leave school, that she had notified Solomon's secretary, and that she had good attendance and the right to use her days when necessary. She denied having a personality conflict with the SFA facilitator, but said that the facilitator had threatened her and placed a note under her door. With respect to the SFA reading program, she responded that she had eight SFA students and was assigned another student, but had only eight desks. She pointed out that there was another teacher who had room for the student in her classroom. She stated that she had 14 classified students whose IEPs require math, reading and language arts and that the SFA reading program requires much planning and her Resource Center responsibilities require even more.

On February 23, 2000, Solomon sent a memorandum to Parrish asking for her lesson plans for the week of February 22. In a P.S., he wrote that his records indicated that plans had not been submitted for review for approximately six weeks. On March 3, Solomon wrote to Parrish, stating:

Thank you for finally submitting your lesson plans on February 25, 2000. I apologize for not returning your plans to you sooner; however, I needed the time to review all of your plans, as you had not submitted plans for approximately six weeks.

Please be advised that your plans lack any substance. You do not indicate any lesson objective or procedures. You should have an objective for each lesson taught daily, especially the SFA lessons. Additionally, the fact that you submit lesson plans for a two-week period does not provide me with enough information regarding the goals and objectives that you want to accomplish for the lesson being taught daily.

I trust you will comply with my request. I am ready to assist you in the appropriate writing of your plans. Please inform me in writing, if you need any assistance.

On March 6, 2000, Solomon wrote a follow-up memorandum to Parrish about a conference held in his office on March 2. He asserted that he had had to remind Parrish several times that she was not at her duty station and that her continued failure to perform her assigned duty would not be tolerated. He stated that if there is a valid reason for not being at her assigned duty, he would be willing to assist her. On March 22, Solomon requested that Parrish meet with him about her SFA reading job performance and that she bring her representative. The meeting was apparently rescheduled. The record does not indicate if it was held.

On June 22, 2000, Parrish received her annual evaluation rating her satisfactory for the 1999-2000 school year. The principal commented that she is a "warm and sincere person who does participate in many school-wide activities." Parrish had also attained her PIP goals of having students return completed homework with parents' signatures and increasing her knowledge of

special education to develop new techniques, procedures and ideas in the classroom. Under Areas of Weakness/Further Improvement Needed, Solomon stated:

Ms. Parrish's failure to embrace and implement our SFA Program is of major concern to me. Additionally, her adversarial relationship was not productive with administration. Ms. Parrish must embrace our SFA program and implement it totally and completely or transfer to another school.

On September 12, 2000, Parrish allegedly refused to complete paperwork needed to register for SFA training. She also allegedly refused to accept the paperwork from the school secretary and the principal. In mid-September, Parrish was reminded to adjust her schedule to set time aside to comply with SFA reading program requirements.

On September 29, 2000, Parrish was instructed to hang a sign outside her door indicating the story being read that day by the students. Parrish allegedly refused to do so and returned the sign to Solomon's mailbox.

In November 2000, Parrish was notified that she had not submitted lesson plans for the week of November 14. On December 11, she was notified that her plans were deficient. Parrish responded by asking what right Solomon had to question what she was teaching; asking how she was expected to accomplish objectives when she was not able to get supplies for her resource students; and stating that there is a personal vendetta against her. She further responded that when she received the supplies, she would

be able to supply the pertinent information. Solomon responded on January 11, 2001. He instructed Parrish to submit the appropriate lesson plans for his review and to follow the format in the Staff Handbook for lesson plan submission.

On January 29, 2001, Parrish was advised that she had failed to report for her cafeteria duty assignment.

On March 6, 2001, Solomon sent a memorandum to Parrish about his request that she remove stickers and other material from the window in the door to her classroom which obstructs the view into the classroom. He stated that her failure to remove the stickers might result in charges of insubordination.

On April 27, 2001, Solomon sent a memorandum to Parrish accusing her of refusing to cooperate with respect to duty assignments.

On May 8, 2001, the assistant superintendent wrote to Parrish and advised her that the Board would be meeting in closed session to discuss recommendations to withhold her increment for the 2001-2002 school year.

On June 6, 2001, the assistant superintendent of human resources sent the following letter to Parrish:

In reply to your request [...] regarding a statement of reason for "withholding of increment" for the 2000-2001 school year, please be advised as follows:

The Trenton Board of Education determined to withhold your increment due to your failure to embrace and implement the "Success For All" program model as outlined by the Parker School

administration. It was the Board's conclusion that the above-mentioned reason warranted a withholding of your increment for this school year. The specific evidence of your performance is chronicled in the packet of documents provided to you.

There is no final evaluation in the record for the 2000-2001 school year.

On August 27, 2001, the Association grieved the increment withholding. The grievance was denied. On August 30, the Association demanded arbitration. This petition ensued.

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 argues that this increment withholding is based on teaching performance and is not disciplinary. The Board states that Parrish's refusal to attend a seminar to improve her instruction, her request to remove a student from her class and repeated refusal to cooperate with staff and administration in the implementation of a state-mandated reading program, and her failure to submit timely and adequate lesson plans all involve the evaluation of teaching performance.

The Association argues that the withholding is predominantly disciplinary. It states that Parrish has been a

teacher in the district for over 20 years and that she has been teaching the SFA reading program despite her lack of certification to do so. The Association asserts that this withholding is to punish Parrish for her criticizing how the SFA reading program is administered and is therefore disciplinary and subject to arbitration.


We conclude that this withholding predominately involves an evaluation of teaching performance. While some of the incidents referred to in documents submitted by the Board do not involve teaching performance (tardiness; refusal to remove stickers from classroom door), the Board's stated reasons for the withholding address the Board's concerns about Parrish's administration of the SFA reading program. These concerns involve allegations of submitting untimely and inadequate lesson plans, failing to accept the State-mandated reading program; failing to include the reading program in lesson plans; refusing to attend reading program training; seeking removal of assigned students from the reading program, and refusing to post daily reading assignments for the students. These issues predominately involve teaching performance. Essex Cty. Voc. Sch. Bd. of Ed., P.E.R.C. No. 97-31, 22 NJPER 371 (¶27195 1996) (failure to submit adequate lesson plans and curriculum maps); Willingboro Tp. Bd. of Ed., P.E.R.C. No. 96-28, 21 NJPER 388 (¶26239 1995) (failure to cooperate with case manager and other child study team members to

implement IEPs); Passaic Cty. Reg. H.S. Dist. #1 Bd. of Ed., P.E.R.C. No. 92-125, 18 NJPER 359 (¶23156 1992) (failure to carry out curriculum). Whether these reasons are meritorious or pretextual must be considered by the Commissioner of Education; we will not look behind them. Saddle River Bd. of Ed., P.E.R.C. No. 96-61, 22 NJPER 105 (¶27054 1996). We therefore restrain binding arbitration.

ORDER

The request of the Trenton Board of Education for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION


Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Katz, Muscato, Ricci and Sandman voted in favor of this decision. Commissioner McGlynn was not present. None opposed.

DATED: May 30, 2002
Trenton, New Jersey
ISSUED: May 31, 2002