

P.E.R.C. NO. 96-3

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEWTON BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-95-62

NEWTON EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Newton Education Association against the Newton Board of Education. The grievance asserts that the Board withheld a teacher's salary increment without just cause. Under all the circumstances of this case, the Commission holds that the reasons for this withholding predominately involve an evaluation of teaching performance and must be reviewed by the Commissioner of Education. This case centers on the appropriateness of a teacher's interactions with her students during class.

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, Rand, Algeier, Tosti & Woodruff,
attorneys (Russell J. Schumacher, on the brief)

For the Respondent, Bucceri & Pincus, attorneys (Gregory T.
Syrek, on the brief)

DECISION AND ORDER

On January 9, 1995, the Newton Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Newton Education Association. The grievance asserts that the Board withheld a teacher's salary increment without just cause.

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

The Association represents the Board's teachers and certain other employees. The parties entered into a collective negotiations agreement effective from July 1, 1994 to June 30, 1997. Their grievance procedure ends in binding arbitration of disputes over increments withheld for predominately disciplinary reasons. See N.J.S.A. 34:13A-26; 29.

Joan Alnor teaches seventh grade science classes. She is tenured. On February 25, 1994, her principal, John Hannum, wrote a memorandum to Alnor concerning a parent's complaints about Alnor's interactions with her child during a science class on January 25, 1994. The parent alleged that Alnor had:

1. Borrowed V.'s [initials are used to protect the privacy of the student] book to show someone. Yelled at V. for not working; and when V. replied, "you took my book," slammed the book on her desk.
2. Proceeded to shake V.'s chair.
3. Raised [her] hand as if to hit V.
4. Threatened to bring suit and fail V.
5. Discussed the incident with students in other classes.

The principal stated that he had investigated these complaints and concluded that Alnor had acted inappropriately and that it was also unprofessional for her to discuss this incident with students in other classes. The memorandum also alleged that on earlier occasions Alnor had told a parent at Back to School night that a particular class was "a rotten mix" and had called a student a "smart ass." The memorandum concluded that the principal would recommend that Alnor's salary increment for the next school year be withheld.

On March 11, 1994, Alnor wrote a reply memorandum. She denied the parent's allegations and suggested that the student had provoked her by being disruptive and uncooperative. She ended with:

Mr. Hannum is convinced that my "behavior in this matter was inappropriate." I am convinced that my actions were appropriate. I am left with many questions concerning the manner in which this "matter" was investigated.

On May 12, 1994, Hannum wrote a memorandum to the superintendent recommending that Alnor's increment be withheld. He cited the reasons in his memorandum and Alnor's lack of contrition or recognition of the need to change her behavior.

On June 15, 1994, Hannum signed Alnor's annual evaluation. Under "Areas Needing Improvement," he wrote:

In addition, Mrs. Alnor must insure that the behavior addressed in the 2/25/94 memo will not occur again. Particularly, Mrs. Alnor must treat students with respect including no threatening behavior, no communications about students with other students, no intimidation and no inappropriate language or any other unprofessional conduct.

On June 28, 1994, the Board voted to withhold Alnor's salary increment for the next school year. The Business Administrator/Board Secretary wrote a letter listing these four reasons for that decision:

1. Failure to demonstrate positive interpersonal relationships with students.
2. Threatening a student verbally and physically.
3. Failing to maintain student confidentiality.
4. Failure to take responsibility for your actions.

On September 23, 1994, the Association filed a grievance asserting that the withholding was arbitrary, capricious and without basis in fact and that the Board did not have just cause to

discipline Alnor. The Board denied the 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 do not consider the contractual merits of this 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]

Under all the circumstances of this case, we hold that the reasons for this withholding predominately involve an evaluation of Alnor's teaching performance and must be reviewed by the Commissioner of Education. This case centers on the appropriateness of a teacher's interactions with her students during class.

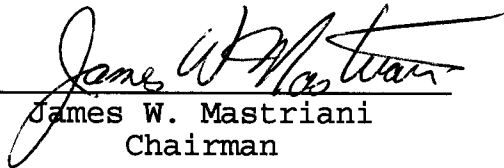
Arbitration has been restrained in other cases involving educational judgments about allegedly inappropriate interactions with students, language, discussions, and disciplinary techniques during classes. See, e.g., River Edge Bd. of Ed., P.E.R.C. No. 95-76, 21 NJPER 161 (¶26099 1995); Red Bank Reg. Bd. of Ed., P.E.R.C. No. 94-106, 20 NJPER 229 (¶25114 1994); Roxbury Tp. Bd. of

Ed., P.E.R.C. No. 94-80, 20 NJPER 78 (¶25034 1994); Wayne Tp. Bd. of Ed., P.E.R.C. No. 93-107, 19 NJPER 272 (¶24137 1993); Florham Park Bd. of Ed., P.E.R.C. No. 93-76, 19 NJPER 159 (¶24081 1993); Upper Saddle River Bd. of Ed., P.E.R.C. No. 91-69, 17 NJPER 148 (¶22059 1991). Contrast Morris Hills Reg. Bd. of Ed., P.E.R.C. No. 92-69, 18 NJPER 59 (¶23025 1991) (single true or false allegation of illegal corporal punishment). We restrain arbitration here as well.

ORDER

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

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

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

DATED: July 28, 1995
Trenton, New Jersey
ISSUED: July 28, 1995