

P.E.R.C. NO. 94-86

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

UNION COUNTY VOCATIONAL-TECHNICAL  
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-94-46

UNION COUNTY VOCATIONAL-TECHNICAL  
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Union County Vocational-Technical Education Association against the Union County Vocational-Technical Board of Education. The grievance contests the withholding of a teacher's salary increment. The Board asserts that the teacher did not adequately supervise her students or instruct them about preventing theft. The Commission finds that whether or not that is so is predominately a question of teaching performance that must be answered by the Commissioner of Education.

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Appearances:

For the Petitioner, Bivona, Cohen, Kunzman, Coley, Yospin,  
Bernstein & DiFrancesco, attorneys  
(Judith A. Babinski, of counsel)

For the Respondent, Balk, Oxfeld, Mandell & Cohen, attorneys  
(Sanford R. Oxfeld, of counsel)

DECISION AND ORDER

On November 5, 1993, the Union County Vocational-Technical Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Union County Vocational-Technical Education Association. The grievance contests the withholding of a teacher's increment.

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, 1990 to June 30, 1993. The contractual grievance procedure ends in advisory arbitration, but N.J.S.A. 34:13A-26 and 29 provide for binding arbitration of increments withheld for predominately disciplinary reasons.

Rita Urbanski is a tenured teacher. As a retail business instructor, she teaches special needs students how to operate her school's retail merchandising store successfully.

On August 25, 1993, the Board voted to withhold Urbanski's employment and adjustment increments for the next school year. It accepted the Superintendent's recommendation and adopted his reasons set forth in these written charges:

1. Failure to properly supervise students, failure to implement procedures to prevent theft as demonstrated by:
  - a. After two thefts, which occurred on September 24, 1991 and October 3, 1991, Ms. Urbanski was instructed to closely supervise her students, both near the money and the merchandise, and she was instructed to arrange for ongoing inservice for her students regarding the consequences of the theft. Ms. Urbanski's failure to properly supervise students and provide the proper inservice resulted in two additional thefts.
  - b. After a third theft on February 14, 1992, Ms. Urbanski was instructed to:
    1. Closely supervise students, both near the money and the merchandise;
    2. Allow only one student to be responsible for any given task;
    3. Provide students with an opportunity to participate in educational programs which reflect real life consequences for theft; and

4. Arrange for at least one of the students to be assigned to security on a regular basis.
2. Disregard for administrative authority in refusal to comply with reasonable requests as demonstrated by:
    - a. After two thefts, one occurring September 24, 1991 and the second on October 3, 1991, Ms. Urbanski was advised by memo dated October 7, 1991 to:
      1. Lock her office and file cabinets;
      2. To order a new locking cash box for change and bills;
      3. Closely supervise students, both near the money and merchandise; and
      4. To arrange for ongoing inservice for her students regarding the consequences of theft.
    - b. By a memo dated February 13, 1992 from Paul Griggs, Interim Business Administrator, Ms. Urbanski was instructed to deposit her cash receipts daily in the Business Office between 3:30 p.m. and 4:00 p.m.

After both of the above memos, on February 14, 1992, a third theft occurred in Ms. Urbanski's retail store in which \$50.00 was taken.
    - c. By memo dated February 21, 1992, Ms. Urbanski was again instructed to:
      1. Closely supervise students;
      2. Never keep more than \$20.00 in the cash register at any given time;
      3. Any amounts which exceeds \$20.00 should be placed in a locking cash box and brought to the office for safe keeping;
      4. The office and file cabinet should be kept locked at all times;
      5. There should be only one student responsible for a given task;

6. The room should be rearranged so that the cash register is not out in the open and accessible to theft by a customer. All money should be transacted at one and only one register. The register should be in clear view of the teacher;
7. The students in her class should be provided the opportunity to participate in educational programs which reflect real life consequences for theft; and
8. Arrange to have at least one of the students assigned to security on a weekly basis.

Ms. Urbanski's reluctance and/or refusal to comply with the above reasonable requests and management techniques resulted in a fourth theft on or about February 23, 1993\*FN@The last theft resulted in a loss of \$397.04.@

The Superintendent in turn accepted the recommendation of Urbanski's principal who believed that the thefts had resulted from Urbanski's inadequate supervision of her students and her non-compliance with school policies regarding student supervision and security.

The Association grieved this withholding. 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 (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. [Id. at 154]

Thus, we do not 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 reviewable 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 must 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

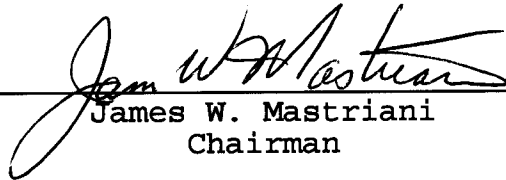
(¶17316 1986), aff'd App. Div. Dkt. No. A-2053-8678 (10/23/87), we will review the facts of each case. We will then balance the competing factors and determine if the withholding predominately involves an evaluation of teaching performance. If not, then the disciplinary aspects of the withholding predominate and we will not restrain binding arbitration. [17 NJPER at 146]

Urbanski's main teaching responsibility is to show her special needs students how to operate the school's retail merchandising store successfully. An aspect of the store's successful operation is preventing theft. According to the Board and its administrators, this aspect required Urbanski to supervise students in the store -- her "classroom" -- closely, to provide students with inservice programs about theft, to have students provide security, to have only one student responsible for each task, and to implement certain other security measures such as limiting the money in the register and locking her office and file cabinets. The Board asserts that Urbanski did not adequately supervise her students or instruct them about preventing theft. Whether or not that is so is predominately a question of teaching performance that must be answered by the Commissioner of Education. We recognize that some of the Board's security concerns may not directly involve teaching performance. Nevertheless, we find that when the reasons for the withholding are viewed as a whole, the concerns about teaching performance predominate. We must therefore restrain binding arbitration.

ORDER

The Union County Vocational-Technical Board of Education's request for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Goetting, Grandrimo and Wenzler voted in favor of this decision. Commissioner Smith voted against this decision. Commissioner Bertolino abstained from consideration. Commissioner Regan was not present.

DATED: February 16, 1994  
Trenton, New Jersey  
ISSUED: February 17, 1994