

I.R. NO. 96-17

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MANCHESTER TOWNSHIP BOARD OF EDUCATION,

Petitioner,

-and-

Docket Nos. SN-96-94 & SN-96-95

MANCHESTER TOWNSHIP EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

A Commission Designee declines to restrain an arbitration over the placement of letters into personnel files of two teachers. Both letters were predominantly disciplinary, as opposed to evaluatory, and accordingly, it was appropriate for these matters to proceed to arbitration pending a final Commission decision.

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Appearances:

For the Petitioner,  
Richard K. Sacks, attorney

For the Respondent,  
John A. Thornton, Jr.

INTERLOCUTORY DECISION

The Manchester Township Board of Education filed two Scope of Negotiations petitions with the Public Employment Relations Commission seeking to have the Commission determine that the subject matter of two arbitrations scheduled for March 18, 1996 were non-negotiable and restrain the arbitration in both these matters.

The Board also seeks a temporary restraint of the arbitration proceeding pending a final Commission decision. I executed an order to show cause made returnable for March 12, 1996. Both parties were given an opportunity to present evidence and argue orally.

Both matters concern the placement of letters into the personnel files of two teachers, Michael Boyd and Joyce Dworkin, by

a supervisor. Both letters had to do with the manner in which the respective teachers conducted and supervised their classrooms. The letter to Boyd's file ends:

As the professional in that classroom it is your responsibility to make certain all students are actively engaged in the learning process. Since we have discussed similar matters as they relate to teaching and learning, and you have not shown improvement, I am left with no alternative but to place this letter in your personnel file.

I also stated at our conference that this incident, as well as others, will be reflected on your Annual Evaluation form.

and similarly the letter to Dworkin's file ends:

As I stated in our conference since there have been many conversations with you this year, both formal and informal, about this very thing and since at the faculty meeting I left no doubt as to what I expected relative to classroom instruction, I am left with no alternative but to place this letter in your personnel file.

The standards that have been developed by the Commission for evaluating interim relief requests are similar to those applied by the Courts when addressing similar applications. The moving party must demonstrate that it has a substantial likelihood of success on the legal and factual allegations in a final Commission decision and that irreparable harm will occur if the requested relief is not granted. Further, in evaluating such requests for relief, the relative hardship to the parties in granting or denying the relief must be considered. Crowe v. DeGioia, 90 N.J. 126 (1982);  Tp. of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER

41 (1975); Tp. of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975).

In Holland Tp. Bd. of Ed., P.E.R.C. No. 87-43, 12 NJPER 824 (¶17316 1986), the Commission described the test for distinguishing between disciplinary matters which are appropriate for submission to binding arbitration and evaluations which are managerial prerogative and may not go to arbitration.<sup>1/</sup>

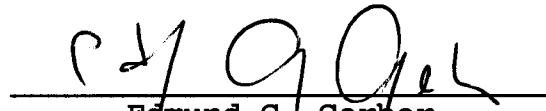
We realize that there may not always be a precise demarcation between that which predominantly involves a reprimand and is therefore disciplinary within the amendments to N.J.S.A. 34:13A-5.3 and that which pertains to the Board's managerial prerogative to observe and evaluate teachers and is therefore non-negotiable. We cannot be blind to the reality that a "reprimand" may involve combinations of an evaluation of teaching performance and a disciplinary sanction; and we recognize that under the circumstances of a particular case what appears on its face to be a reprimand may predominantly be an evaluation and vice-versa. Our task is to give meaning to both legitimate interests. Where there is a dispute we will review the facts of each case to determine, on balance, whether a disciplinary reprimand is at issue or whether the case merely involves an evaluation, observation or other benign form of constructive criticism intended to improve teaching performance. While we will not be bound by the label placed on the action taken, the context is relevant. Therefore, we will presume the substantive comments of an evaluation relating to teaching performance are not disciplinary, but that statements or actions which are not designed to enhance teaching performance are disciplinary.

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<sup>1/</sup> This standard is different from the standard used in a denial of increment case. See Scotch Plains-Fanwood, P.E.R.C. No. 91-67, 17 NJPER 144 (¶22057 1991).

In the Boyd letter, the supervisor reiterated that similar matters have been discussed before and he was "left with no alternative but to place this letter in your personnel file" and goes on to state that these incidents will be reflected on Boyd's evaluation form. Similarly in the Dworkin letter, the supervisor states that they had many conversations about this very thing and the supervisor was "left with no alternative but to place this letter in your personnel file." The final paragraphs in both memos may be read to imply the placement of the letters into the respective personnel files was disciplinary in nature.

Admittedly, these letters are also evaluative. However, the employer here has not met its heavy burden and I cannot predict with certainty that the Commission will find those letters predominantly evaluative. There is a significant chance that the Commission will find them predominantly disciplinary. Accordingly, the application for interim restraints is denied. Arbitration is not restrained. However, as this is an interim decision only, this matter will go forward to the Commission for a final determination.

  
Edmund G. Gerber  
Commission Designee

DATED: March 12, 1996  
Trenton, New Jersey