

I.R. NO. 89-6

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TRENTON BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-89-8

TRENTON EDUCATIONAL SECRETARIES ASSOCIATION,

Respondent.

SYNOPSIS

In an action brought by the Trenton Board of Education, a Commission Designee grants an interim restraint against the Trenton Educational Secretaries Association. The Association sought to arbitrate a revision of an evaluation which substantially alters that evaluation. However, the arbitration was not restrained to the extent that the arbitration concerns the failure of the Trenton Board of Education to comply with the evaluation procedures.

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Appearances:

For the Petitioner

Lemuel H. Blackburn, Jr., Esq.
(Gregory G. Johnson, of counsel)

For the Respondent

Selikoff & Cohen, Esqs.
(Steven R. Cohen, of counsel)

INTERLOCUTORY DECISION

The Trenton Board of Education ("Board") filed a petition for scope of negotiations determination on August 8, 1988, with the Public Employment Relations Commission ("Commission") seeking a decision that certain matters it disputes with the Trenton Educational Secretaries Association ("Association") are not within the scope of negotiations. The petition was accompanied by an Order to Show Cause requesting that the Association show cause why an order should not be issued staying the arbitration of the dispute pending a final determination of the negotiability issue by the Commission. The Order to Show Cause was executed on September 23,

1988, and was made returnable on October 6, 1988, at which time the parties submitted briefs and other documents and argued orally at the hearing.

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.^{1/}

The parties executed a collective negotiations contract which contains procedures for employee evaluation and a grievance procedure ending in binding arbitration. The Association seeks to arbitrate a revised evaluation of Carol Wright. Robert Graham, Director of Adult Education, is Wright's immediate supervisor. He completed her evaluation on April 12, 1988. Graham rated her "outstanding" and recommended that she receive an increment. The evaluation also stated:

...Mrs. Wright is a highly experienced and professional secretary. Her duties and

^{1/} 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).

responsibilities are far greater than that of a Senior Secretary. Mrs. Wright, on a daily basis, and without supervision, performs the duties of an Administrative Secretary. The Senior Secretarial title assigned to the Adult Learning Center is most definitely an injustice to Mrs. Wright's outstanding performance.

Dr. Crosby Copeland, Superintendent of Schools, reviewed the evaluation and determined that the quoted portion was inappropriate and directed Graham to eliminate it. On May 9, 1988, Graham removed the language.

The Association filed a grievance concerning the revised evaluation and later filed a Demand for Arbitration on the grievance.

The Board contends that the grievance is not mandatorily negotiable because absent disciplinary/punitive action against an employee, State law prohibits arbitration of an evaluation. Teaneck Bd. of Ed. v. Teaneck Teachers' Assn., 94 N.J. 9 (1983); Wayne Tp., 220 N.J. Super 340 (App. Div. 1987); Perth Amboy Bd. of Ed., P.E.R.C. No. 88-140, 14 NJPER 460 (¶19191 1988). Evaluative criteria in employee evaluations are not negotiable or arbitrable.

The Association contends that the disputed language merely reports Wright's performance of tasks that happen to fall under another job description. It therefore denies that the sentences are a "substantive assessment." Accordingly, it argues that an arbitrator will not have to decide "criteria" in the evaluation. Moreover, the Association argues that the evaluation procedure in the parties' agreement does not contemplate review at a higher managerial level.

In Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55 (1975), the Commission stated that in scope of negotiations procedures it only addresses the question of whether the disputed subject matter is within the scope of collective negotiations; contractual arbitrability and issues of fact in the grievance are for the arbitrator to resolve.

The Association's argument that the sentences stricken from Wright's evaluation are objective rather than subjective in nature is not persuasive. All criteria, whether objective or subjective, are not arbitrable. Teaneck Bd. of Ed. v. Teaneck Teachers' Assn., 94 N.J. 9 (1983); Wayne Tp., 220 N.J. Super 340 (App. Div. 1987); Perth Amboy Bd. of Ed., P.E.R.C. No. 88-140, 14 NJPER 460 (¶19191 1988) (Commission determined non-arbitrable a grievance alleging, in part, that negative comments in evaluation were reprisal for grieving prior year's evaluation); Neptune Bd. of Ed., P.E.R.C. No. 88-114, 14 NJPER 349 (¶19134 1988); and Englewood Bd. of Ed., P.E.R.C. No. 88-141, 14 NJPER 461 (¶19192 1988).

However, the Association's other argument is that the Board improperly altered the procedures of Wright's evaluation after it was issued. Evaluation procedures are negotiable and arbitrable. Bethlehem Tp. Ed. Assn. v. Bethlehem Tp. Bd. of Ed., 91 N.J. 38 (1982) and Greater Egg Harbor Reg. H.S. Dist., P.E.R.C. No. 88-37, 13 NJPER 813 (¶18312 1987).

To the extent that the grievance alleges that the revision of the evaluation substantively alters the evaluation, the grievance

is non-negotiable and non-arbitrable. Accordingly, the Association is restrained from proceeding with the arbitration on this issue pending a decision of the full Commission.

To the extent that the grievance alleges that the Board did not comply with the evaluation procedures as outlined in the parties' collective negotiations agreement, the issue is mandatorily negotiable and arbitrable. Accordingly, the arbitration is not restrained and may go forward on this issue.



Edmund G. Gerber
Commission Designee

DATED: October 7, 1988
Trenton, New Jersey