

I.R. NO. 90-9

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

UPPER PITTSBORO BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-90-12

UPPER PITTSBORO EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

A Commission Designee declines to temporarily restrain an arbitration. A number of teachers who were evaluated submitted rebuttals to those evaluations. The Board submitted amended evaluations in response to the rebuttals. The Association seeks to arbitrate whether these amendments to the evaluations were in fact surrebuttals and are therefore improper since they are not part of the evaluation procedures. It is unclear how the Commission will ultimately rule on this matter. Procedures for evaluations are arbitrable but amendments to evaluations are not. In allowing this matter to proceed to arbitration, the scope petition is being processed and the Commission will ultimately rule on this matter.

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Appearances:

For the Petitioner
William C. Horner, Esq.

For the Respondent
Selikoff and Cohen, Esqs.
(Steven R. Cohen, of counsel)

INTERLOCUTORY DECISION

On September 13, 1989, the Upper Pittsboro Board of Education ("Education") filed a Petition for Scope of Negotiations Determination and an Order to Show Cause with the Public Employment Relations Commission ("Commission") seeking to restrain an arbitration with the Upper Pittsboro Education Association ("Association") scheduled for October 2, 1989. The Order was executed and made returnable for September 28, 1989. A hearing was conducted on that date and the parties were afforded an opportunity to submit briefs, introduce evidence and argue orally.

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 contract provides that after a teacher is evaluated:

The teacher will receive a written report of all formal classroom observations. The teacher may add pertinent comments to the report. A conference between the teacher and the evaluator shall follow receipt within fifteen (15) days. All non-tenure teachers shall be evaluated openly and with full knowledge of the teacher three (3) times per year.

A number of teachers, who were evaluated, submitted rebuttals to those evaluations. The Board evaluators then submitted rebuttals to the teachers' rebuttals. The Association objected to this procedure. The Board agreed not to have the evaluators respond to the teachers' rebuttals. However, subsequently the Board evaluators submitted amended evaluations on all the evaluations in question and those amended evaluations are substantially the same as the Board's rebuttals to the teachers' rebuttals. The Association seeks to arbitrate the issue of whether such amendments are in fact evaluators' rebuttals to the teachers' rebuttals and are improper


^{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).

since they are not part of the evaluation procedure. The Board seeks to restrain the arbitration, asserting that it has a non-negotiable and non-arbitrable right to amend the teachers' evaluations at any time.

At this stage of the proceeding, I cannot say that the Board has a substantial likelihood of success of prevailing on the law before the Commission. It is unclear how the Commission will ultimately rule on this case. The procedures for evaluations are negotiable. See 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). However, amendments to evaluations are not arbitrable. See Trenton Bd. of Ed., P.E.R.C. No. 89-82, 15 NJPER 246.

No irreparable harm will flow from allowing this matter to proceed to arbitration. The scope petition is being processed and the Commission shall ultimately rule on this matter.

Accordingly, the Board's request for a temporary restraint of the scheduled arbitration is denied.



Edmund G. Gerber
Commission Designee

DATED: September 28, 1989
Trenton, New Jersey