

P.E.R.C. NO. 93-58

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NORTH PLAINFIELD
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-93-50

NORTH PLAINFIELD
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the North Plainfield Education Association against the North Plainfield Board of Education. The grievance contests a portion of an evaluation report commenting on an employee's attendance. Absent any indication that the comments in the evaluation report were disciplinary, the Commission restrains arbitration over the informational comments.

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Appearances:

For the Petitioner, Cassetta, Taylor and Whalen, consultants
(Raymond A. Cassetta, consultant)

For the Respondent New Jersey Education Association, John
A. Thornton, Jr., representative

DECISION AND ORDER

On December 17, 1992, the North Plainfield Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the North Plainfield Education Association. That grievance contests a portion of an evaluation report commenting on an employee's attendance.

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

The Association represents the Board's teachers and certain other personnel. The parties have entered into a collective

negotiations agreement effective from July 1, 1991 to June 30, 1994. The grievance procedure ends in binding arbitration.

Deborah Brody is a teacher employed by the Board. On May 7, 1991, she received her annual evaluation report. That report stated, in part:

As of March 28, 1991, Ms. Brody has been absent 8 days due to illness, 5 days for professional reasons and 1 day for private reasons. This attendance record should improve as several days of absence interrupt the continuity of the educational program.

The report recommended that Brody's increments for the next school year be granted.

On May 31, 1991, the Association filed a grievance. It asserted that the Board had violated the collective negotiations agreement by including these comments in her evaluation.

On September 6, 1991, the Board granted the grievance in part. It ordered the evaluation rewritten to state:

As of March 28, 1991, Ms. Brody has been absent eight days due to illness and one day for private reasons. This total of occasional absences exceeds state monitoring guidelines.

On October 8, 1991, the Association demanded binding 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].

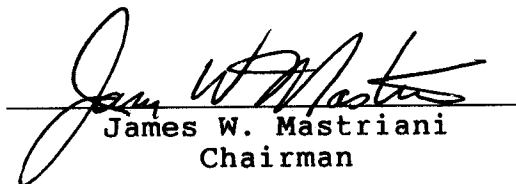
Thus, we do not consider the contractual merits of the Association's grievance or any contractual defenses the Board may have.

In a similar case between these parties, we restrained arbitration over an evaluation report's informational comments concerning an employee's attendance. North Plainfield Bd. of Ed., P.E.R.C. No. 89-94, 15 NJPER 252 (¶20102 1989). Absent any indication that the comments in the revised evaluation report were disciplinary, we restrain arbitration in this case as well. See also Old Bridge Tp. Bd. of Ed., P.E.R.C. No. 88-129, 14 NJPER 413 (¶19165 1988); Neptune Tp. Bd. of Ed., P.E.R.C. No. 88-114, 14 NJPER 349 (¶19134 1988).

ORDER

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

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Goetting, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Regan abstained from consideration. Commissioner Grandrimo was not present.

DATED: January 28, 1993
Trenton, New Jersey
ISSUED: January 29, 1993