

P.E.R.C. NO. 80-98

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MIDDLESEX BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-80-46

MIDDLESEX EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Chairman of the Commission, in a scope of negotiations proceeding, denies the request of the Board of Education for a permanent restraint of arbitration. The Chairman concluded that although the establishment of criteria for evaluation is neither negotiable nor arbitrable, the application of those criteria in a manner affecting terms and conditions of employment is arbitrable if included in the contractual grievance/arbitration procedure. Therefore, the comments by the principal herein may have a negative effect on terms and conditions of employment and may be arbitrated if the parties' contract so provides.

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Appearances:

For the Petitioner, Stanley C. Gerrard,
Metzler Associates

For the Respondent, Stephen E. Klausner, Esq.

DECISION AND ORDER

On November 8, 1979 the Middlesex Board of Education (the "Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission seeking restraint of a grievance arbitration on the grounds that the subject matter of the dispute with the Middlesex Education Association (the "Association") is not negotiable/arbitrable. An Order to Show Cause seeking interim restraint of the arbitration was also filed by the Board, but the Association agreed to voluntarily stay arbitration pending the decision herein. Briefs have been submitted by both parties, the last of which was filed on December 26, 1979.

Pursuant to N.J.S.A. 34:13A-6(f), the Commission has delegated to the Chairman the authority to issue scope of negotiations decisions when the negotiability of the issue or issues in

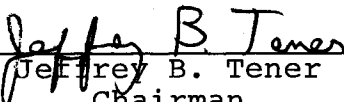
dispute has been previously determined by the Commission and/or the judiciary.

The grievance in this matter concerns two memoranda, placed in the personnel file of a faculty member, which were criticisms of his performance by the principal of his school. No disciplinary action was taken against the teacher beyond placing the memoranda in his file. In In re Hazlet Board of Education, P.E.R.C. No. 79-57, 5 NJPER 113 (¶10066 1979), appeal pending App. Div. Docket No. A-2875-78, the Board had made notations regarding attendance on teacher evaluations. We held that although the establishment of criteria for evaluation is not negotiable/arbitrable, the application of those criteria in a manner affecting terms and conditions of employment is arbitrable if included in the contractual grievance/arbitration procedure. Herein the negative reports by the principal might well have a negative effect on terms and conditions of employment. To that extent it may be arbitrated, assuming the parties' contract so provides, a determination not to be made by this Commission. Ridgefield Park Ed. Assn v. Ridgefield Park Board of Ed, 78 N.J. 144, 153-156 (1978). Accordingly, the request for a restraint of arbitration will be denied.

ORDER

For the foregoing reasons, IT IS HEREBY ORDERED that the request of the Middlesex Board of Education for a permanent restraint of arbitration is hereby denied.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

DATED: February 8, 1980
Trenton, New Jersey