

P.E.R.C. NO. 90-70

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RIDGEFIELD PARK BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-90-17

RIDGEFIELD PARK EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Ridgefield Park Education Association against the Ridgefield Park Board of Education. The grievance claims that a statement in a tenured teacher's annual performance review was discipline without just cause. The Commission finds that, on balance, the statement is part of an evaluation relating to teaching performance and is not disciplinary.

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Appearances:

For the Petitioner, Sills, Cummis, Zuckerman, Radin,
Tischman, Epstein & Gross (James L. Plosia, Jr., of
counsel)

For the Respondent, Klausner & Hunter, Esqs.
(Stephen B. Hunter, of counsel)

DECISION AND ORDER

On October 10, 1989, the Ridgefield Park Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Ridgefield Park Education Association. The grievance claims that a statement in a tenured teacher's annual performance review was discipline without just cause.

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

The Association is the majority representative of the Board's classroom teachers. The parties entered into a collective

negotiations agreement effective from July 1, 1988 through June 30, 1991. Its grievance procedure ends in binding arbitration.

Every spring teachers receive an annual performance review. The following statement was included in Francesca Caldwell's 1989 performance review:

The principal of Roosevelt School has expressed deep concern over the poor performance of your students on this year's pre-HSPT test. Although students in Roosevelt School's 8th grade passed the reading and mathematics portions of the examination at a rate of 90.3% (28 of 31 pupils) and 100% (31 of 31 pupils) respectively, only 54.8% were successful in the writing section. This is a stark contrast which brings into question the quality of your classroom instruction in this area.

Everything professionally possible must be done in order to prevent a recurrence of this extremely poor showing. It is therefore imperative that Ms. Caldwell work closely with her immediate supervisor, on a day-to-day basis if necessary, to develop new instructional techniques, lessons, materials and whatever else may be necessary to rectify this situation.

On June 16, 1989, the Association grieved the statement and demanded that it be deleted from the annual performance review.

On June 19, Caldwell's principal denied the grievance. He noted that the students' test scores in other classes had not dropped, rejected suggestions that other factors may have caused the drop, and stated that the comments were not meant as a "reprimand," but "a factual statement of concern and a suggested plan of remediation."

On June 20, the Association asked the superintendent to expunge the statements from Caldwell's evaluation. The next day,

the superintendent denied that request. On June 28, the Association demanded binding arbitration, again asking that the statements be expunged. This petition ensued.

The Board asserts that the matter is not arbitrable because it concerns a non-disciplinary performance evaluation. The Association asserts that the matter is arbitrable because the comments are disciplinary and not constructive criticism intended to improve the quality of Caldwell's teaching performance.

At the outset of our analysis, we stress the narrow boundaries of our scope of negotiations jurisdiction. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978) stated:

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. [78 N.J. at 154]

We thus do not determine whether there was just cause for the statement.

Holland Tp. Bd. of Ed., P.E.R.C. No. 87-43, 12 NJPER 824 (¶17316 1986), aff'd App. Div. Dkt. No. A-2053-86T8 (10/23/87), sets

the standard for determining whether a document is evaluative or disciplinary:


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. [Id. at 826]

This statement is part of an annual performance review and concentrates on the quality of Caldwell's classroom instruction in writing. It suggests that her instruction caused low test scores. It concludes by calling for meetings between Caldwell and her supervisor to discuss "new instructional techniques, lessons, materials and whatever else may be necessary, to rectify this situation." On balance, we find that this statement is part of an evaluation relating to teaching performance and not disciplinary.

ORDER

The Board's request for permanent restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Wenzler, Ruggiero, Johnson and Smith voted in favor of this decision. None opposed. Commissioners Reid and Bertolino abstained from consideration.

DATED: January 31, 1990
Trenton, New Jersey
ISSUED: February 1, 1990