

P.E.R.C. NO. 92-128

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WEST ORANGE BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-92-97

WEST ORANGE EDUCATION
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the West Orange Board of Education's request for a restraint of arbitration of a grievance filed by the West Orange Education Association. The grievance alleged that the Board violated contractual evaluation procedures when it included material based on complaints in the evaluation of the head soccer coach. The Commission finds that the Association's demand for arbitration is limited to mandatorily negotiable evaluation procedures.

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Appearances:

For the Petitioner, Stephen J. Christiano, attorney

For the Respondent, Balk, Oxfeld, Mandell & Cohen,
attorneys (Nancy I. Oxfeld, of counsel)

DECISION AND ORDER

On April 15, 1992, the West Orange Township Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the West Orange Education Association. The demand for arbitration asserts that the Board violated contractual evaluation procedures when it included material based on complaints in the evaluation of the head soccer coach.

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

The Association represents the Board's certificated personnel. The parties entered into a collective negotiations

agreement effective from July 1, 1990 through June 30, 1992.

Article IV is entitled Teachers' Rights. Sections D and E provide:

D. Any complaint regarding a teacher made to any member of the administration by any parent, student, or other person shall be communicated to the teacher as soon as practicable and, in any event, within two (2) school days. Any complaint which does or may influence the evaluation of a teacher shall be processed as follows:

1. The principal or immediate supervisor shall meet with the teacher to apprise the teacher of the source and nature of the complaint.
2. Upon communication of the complaint to the teacher, the teacher may request a conference with the complainant and, if the complainant is willing to attend such a conference, one shall be scheduled by the administrator involved. The teacher, at such conference, shall be given full opportunity to respond to the complaint.

E. No material derogatory to a teacher's conduct, service, character, or personality, and no written memorandum relating to a complaint against any teacher or the resolution thereof, shall be placed in a teacher's personnel file unless the teacher has an opportunity to review the material. The teacher shall acknowledge that he has had the opportunity to review such material by affixing his signature to the copy to be filed with the express understanding that such signature in no way indicates agreement with the contents thereof. The teacher shall also have the right to submit a written answer to be attached to such material.

The grievance procedure ends in binding arbitration of contractual disputes. But the contract excludes from the grievance procedure complaints which arise from non-reemployment of a non-tenured teacher or non-retention in any position for which tenure is not possible or required.

George Del Monte teaches English and is the head soccer coach at West Orange High School. On February 14, 1992, the Athletic Director issued Del Monte's annual evaluation report. Del Monte received a rating of "satisfactory" in 17 categories, "needs improvement" in 3 categories, and "unsatisfactory" in 2 categories. The narrative portion of the evaluation acknowledged that Del Monte was an experienced and knowledgeable coach who taught skills well and who had been named Soccer Coach of the Year in the Northern Hills Conference. Nevertheless, the narrative listed several problems which had allegedly occurred that year. According to the evaluation, Del Monte improperly called other schools and demanded to speak with the Athletic Director after being told a game was scheduled to be played; sent a letter accusing another school's staff and officials of unethical practices; circumvented the line of authority with respect to his concerns about field preparation and equipment procedures; made inappropriate negative statements at the fall pep rally and final season wrap up; made untimely and inappropriate comments at a sports award program; failed to meet with town soccer organizations; and did not do all he could to help senior soccer players get into colleges and obtain scholarships. The Athletic Director concluded that he could not recommend Del Monte for the position of head soccer coach for the next year. No action has yet been taken on that recommendation.

On February 26, 1992, the Association filed a grievance. It asserted that the evaluation violated Sections D and E of Article

IV. It demanded that the evaluation be rescinded and a new one written.^{1/}

On March 2, 1992, the superintendent denied the grievance. He concluded that a grievable action had not occurred. He specifically stated that "the very essence of the contract grievance language precludes grieving one-year duration appointments such as those used in coaching."

On March 10, 1992, the Association filed another grievance statement. It reiterated its belief that the evaluation violated Sections D and E of Article IV. It added that if Del Monte was not reappointed as soccer coach, the Association reserved its right to grieve that issue under N.J.S.A. 34:13A-23.

On March 20, 1992, the Board's attorney responded to the March 10 grievance statement. His letter stated that coaching positions were non-tenurable and that any aspect of coaching positions was thus non-grievable. He stated that N.J.S.A. 34:13A-23 made certain matters related to extracurricular activities mandatorily negotiable, but not necessarily contractually grievable. Finally, he noted that the Board had not discussed whether to reappoint Del Monte as soccer coach.

On March 24, 1992, the Association demanded binding arbitration. Its demand described the nature of the dispute as follows:

^{1/} It also asked that Del Monte be "reinstated" as soccer coach. As noted, however, the Board has not yet decided whether or not to reappoint Del Monte for the next school year.

The employer violated the agreement by including in the coaching evaluation of George Del Monte material based on complaints without following the procedures mandated by the collective bargaining agreement.

The demand asked that "these areas based on complaints be excised." This petition ensued.

The Board asserts that any alleged violation concerning a coaching evaluation is not contractually grievable and that Section D and E of Article IV apply to evaluations of teachers, not coaches. The Association responds that Del Monte has not yet been denied reappointment and thus "the only issues being submitted [to arbitration] are the procedural aspects of the evaluation."

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 whether the grievance is contractually grievable or whether Sections D and E of Article IV cover coaches as well as teachers.

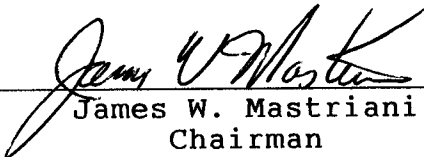
Evaluation procedures are mandatorily negotiable and a grievance alleging a violation of evaluation procedures is legally arbitrable. Bethlehem Tp. Bd. of Ed. v. Bethlehem Tp. Ed. Ass'n, 91

N.J. 38 (1982); Matawan-Aberdeen Reg. Sch. Dist. Bd. of Ed., P.E.R.C. No. 90-98, 16 NJPER 300 (¶21123 1990), recon. den. P.E.R.C. No. 91-4, 16 NJPER 434 (¶21185 1990), aff'd App. Div. Dkt. No. A-66-90T1 (6/5/91); Ocean Tp. Bd. of Ed., P.E.R.C. No. 85-123, 11 NJPER 378 (¶16137 1985), aff'd App. Div. Dkt. No. A-4753-85T1 (4/9/86), certif. den. ___ N.J. ___ (1986). The Board does not dispute that Sections D and E address mandatorily negotiable evaluation procedures and the Association has limited its demand for arbitration to the question of whether complaints were included in Del Monte's evaluation without following these evaluation procedures. We decline to restrain arbitration over that procedural issue. See Cherry Hill Bd. of Ed., P.E.R.C. No. 92-119, 18 NJPER ___ (¶_____ 1992).

ORDER

The request of the West Orange Board of Education for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Goetting, Grandrimo, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Regan abstained from consideration.

DATED: June 25, 1992
Trenton, New Jersey
ISSUED: June 26, 1992