P.E.R.C. NO. 2000-58

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RIDGEFIELD BOARD OF EDUCATION,

Respondent,

-and- Docket No. SN-2000-58

RIDGEFIELD EDUCATION ASSOCIATION,

Petitioner.

SYNOPSIS

The Public Employment Relations Commission denies the Ridgefield Education Association's request for a declaration that a 1996 memorandum issued by the Ridgefield Board of Education is a reprimand. The Commission concludes that the memorandum was a response to the Association president from the principal in a disagreement over a labor-management issue. The letter does not appear in the teacher's personnel file and the Commission finds that it is not a reprimand subject to arbitration under N.J.S.A. 34:13A-29.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

P.E.R.C. NO. 2000-58

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RIDGEFIELD BOARD OF EDUCATION,

Respondent,

-and- Docket No. SN-2000-58

RIDGEFIELD EDUCATION ASSOCIATION,

Petitioner.

Appearances:

For the Respondent, Ferrara, Turitz, Harraka & Goldberg, P.C., attorneys (Dennis G. Harraka, on the brief)

For the Petitioner, Springstead & Maurice, attorneys (Alfred F. Maurice, on the brief)

DECISION

On December 10, 1999, the Ridgefield Education Association petitioned for a scope of negotiations determination. The Association seeks a determination that a grievance it filed against the Ridgefield Board of Education involves a reprimand subject to binding arbitration under N.J.S.A. 34:13A-29.

The Association represents a negotiations unit of professional staff excluding administrators, and secretaries and custodians. At the time the grievance was filed, the Association and the Board were parties to a collective negotiations agreement with a grievance procedure that did not provide for arbitration. The last step of the procedure was the decision of the Board.

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

On November 27, 1996, Colleen Loughlin, a professional staff member and president of the Association, sent this memorandum to the superintendent:

> As follow up to the concern I expressed to you in our meeting of November 22, I would like to inform you that I have, in fact, determined that one consociate teacher[1/] has been asking members of our association to provide negative information regarding one of their fellow REA members.
>
> I have spoken with the principal of the school involved and have been assured that this has now been discussed with the consociate and that the possibility of a separate file being kept has been investigated, and found not to be the case. I am assured that this individual consociate is now more fully aware of the district's policies in regard to these matters.
>
> I will be reminding our members that they are not in a position to become part of the evaluation process in regard to other members.

On December 4, 1996, the principal referenced in the memorandum responded. Her reply was addressed to "Colleen Loughlin, REA President," and copies were sent to the guidance counselor and the superintendent. The reply stated:

> I am in receipt of a copy of your memo to the Superintendent of Schools re: Consociate Teacher Responsibilities.
>
> I must assume from reading the memo that the specific issue which you raise in the memo is one and the same as that which you discussed with me recently. At that time I assured you that the information you possessed was

---

1/ The term consociate teacher apparently refers to a senior guidance counselor.

incorrect. After speaking with the guidance counsellor in question, I confirmed in a subsequent conversation with you that in fact your information was incorrect and that the counsellor was doing nothing more than what is expected in his role as senior guidance counsellor responsible for all documents which are sent as part of the college application process.

> In spite of these two conversations, you proceeded to write this memo to the Superintendent of Schools filled with false allegations against this professional staff member.
>
> I must emphasize to you that the actions of this guidance counsellor are clearly part of his responsibilities as senior guidance counsellor. It is evident to me that you are continuing in your attempt to harass this individual and to damage his professional reputation. In this light, I resent being involved in such a smear campaign as is implied in your memo to the Superintendent of Schools.
>
> I have advised the Superintendent that I consider your memo an attempt to disrupt the orderly operation of this high school as well as an attempt to participate in the evaluation of this guidance counsellor. I consider your actions improper and as such I am advising you of this with this memo.

On December 17, 1996, the Association filed a grievance on Loughlin's behalf. The grievance asserted that the December 4 memorandum contains statements which are both untrue and improper and that it constitutes an improper reprimand. The grievance sought the removal of the memorandum from Loughlin's file and a letter of retraction to be sent to all individuals who received a copy of the memorandum.

On January 7, 1997, the principal denied the grievance. She asserted that her response was addressed to Loughlin as

Association president and was not part of Loughlin's personnel file.

On January 15, 1997, the Association forwarded the grievance to the Board level. On February 11, the Board's business administrator denied the grievance. His response stated:

> It was obvious to the Board's Committee that notwithstanding the Committee's view and assurance to the grievant that the subject matter "letter" was not and will not be considered a reprimand to Ms. Loughlin, the grievant and the association does not and will not accept such assurances. The Committee views the matter as one where each side's position is a matter of record and consists of two different opinions concerning one incident. It is the Board's opinion, therefore, that no further action is warranted and considers this matter closed.

On March 17, 1997, the Association filed a demand for arbitration. On May 17, the Commission's Director of Arbitration declined to process the request, citing N.J.A.C. 19:12-5.1. That rule provides, in part:

> The Commission deems it in the interests of the public to maintain an arbitration panel whose members are available to assist in the arbitration of unresolved grievances. The availability of this service is intended to comply with the requirement of N.J.S.A. 2A:24-5 that the method for naming or appointing an arbitrator provided in the parties' agreement shall be followed. Accordingly, the release of a panel of arbitrators is predicated solely upon a prima facie showing of the parties' intention to utilize the Commission's arbitration service.

Because their contract contained no provision showing an intent to use the Commission's arbitration service and because they had not submitted a mutual request to use the Commission's services in

this particular case, the Director lacked authority to provide them with a panel of arbitrators.

On March 24, 1998, the Chancery Division of the Superior Court dismissed an Association complaint challenging the refusal to appoint an arbitrator, holding that before an arbitrator could be named the Commission would have to find that the grievance was arbitrable as a reprimand.

On March 30, 1999, the Appellate Division dismissed the Association's appeal of the lower court's ruling and remanded the case to the Chancery Division. Ridgefield Bd. of Ed. v. Ridgefield Ed. Ass'n, 25 NJPER 183 (¶30084 App. Div. 1999). On July 2, the Hon. Marguerite T. Simon J.S.C. transferred the dispute to the Commission for a scope of negotiations determination. The Court retained jurisdiction for the purpose of appointing an arbitrator under N.J.S.A. 2A:24-5 if necessary.

Pursuant to that order, the Association filed this petition. It seeks a determination that the grievance involves a reprimand requiring binding arbitration.

N.J.S.A. 34:13A-29 provides:

> The grievance procedures that employers covered by this act are required to negotiate pursuant to section 7 of P.L. 1968, c. 303 (C. 34:13A-5.3) shall be deemed to require binding arbitration as the terminal step with respect to disputes concerning imposition of reprimands and discipline as that term is defined in this act.

The Association asserts that the principal's memorandum is a reprimand as it accuses Loughlin of misconduct and makes a

series of charges against Loughlin ranging from insubordination to dishonesty to unbecoming conduct. The Board asserts that the principal's memorandum to Loughlin is not a reprimand. It portrays the document as part of an exchange between the district's administrators and the REA president pertaining to a labor-management dispute.

Framing the dispute, the Appellate Division observed, "It seems clear that the Board and its various administrators regarded the December memorandum as nothing other than a criticism of Loughlin in her capacity as REA president having nothing to do with her professional performance." 25 NJPER at 183. It is undisputed that the memorandum does not evaluate Loughlin's performance as a teaching staff member so we need not apply the standards in Holland Tp. Bd. of Ed., P.E.R.C. No. 87-43, 12 NJPER 824 (¶17316 1986), aff'd NJPER Supp.2d 183 (¶161 App. Div. 1987), for distinguishing between evaluations of teaching performance and disciplinary reprimands.

This dispute stems from Loughlin's activity as REA president. Black Horse Pike Reg. Bd. of Ed., P.E.R.C. No. 82-19, 7 NJPER 502 (¶12223 1981), sets the ground rules governing a public employer's responses to the activities of one of its employees when that person acts as an official of an employee organization.

> A public employer is within its rights to comment upon those activities or attitudes of an employee representative which it believes are inconsistent

> with good labor relations, which includes the effective delivery of governmental services, just as the employee representative has the right to criticize those actions of the employer which it believes are inconsistent with that goal. However, as we have held in the past, ...the employer must be careful to differentiate between the employee's status as the employee representative and the individual's coincidental status as an employee of that employer. See, In re Hamilton Township Board of Education, P.E.R.C. No. 79-59, 5 NJPER 115 (¶10068 1979) and In re City of Hackensack, P.E.R.C. No. 78-30, 4 NJPER 21 (¶14001 1977).

Black Horse Pike held that the employer committed an unfair practice when it placed a letter criticizing an employee's comments made in the capacity of employee representative in his personnel file. We stressed that a board cannot use its power as an employer to convert that criticism into discipline or other adverse action against the individual as an employee when the conduct which the board finds objectionable is protected activity. See also Middletown Tp. Bd. of Ed., P.E.R.C. No. 96-45, 22 NJPER 31 (¶27016 1995), aff'd 23 NJPER 53 (¶28036 App. Div. 1996), certif. den. and notice of app. dism., 149 N.J. 35 (1997); Ridgefield Park Bd. of Ed. and Duffy, P.E.R.C. No. 85-93, 11 NJPER 202 (¶16083 1985), aff'd NJPER Supp.2d 161 (¶142 App. Div. 1986); Hopatcong Bd. of Ed., P.E.R.C. No. 89-51, 14 NJPER 694 (¶19296 1988). The Association has not submitted an unfair practice charge, but we have found that a grievance which asserts that documents critical of an employee's protected activities have been improperly placed in a personnel file may be arbitrated. See Jackson Tp. Bd. of Ed., P.E.R.C. No. 82-70,

8 NJPER 108 (¶13045 1982)(denying request to restrain arbitration of grievance seeking removal of comments chastising employee for filing grievances).

Examining the exchange of documents in light of these precedents we find that the principal's December 4, 1996 memorandum was not a reprimand The full details of the dispute are not known to us, but the context is apparent. Loughlin wrote to the superintendent as the REA president, i.e. from the head of the majority representative organization to her counterpart in the school administration. Her memorandum, not copied to the other staff involved, asserts that: (1) teaching staff who are in the REA unit should not be participating in the evaluation of teachers; and (2) Loughlin had spoken to the principal, who had acknowledged that the employee's actions were inappropriate. The principal's response disputes those representations, defends the actions of the guidance counselor, and sets forth management's position that the disputed actions were part of his normal job responsibilities. The principal's memorandum does not appear in Loughlin's personnel file. The focus of the exchange is a disagreement over a labor-management issue. See West Windsor-Plainsboro Reg. Bd. of Ed., P.E.R.C. No. 97-99, 23 NJPER 168 (¶28084 1997)(document was not disciplinary where Board stated that it was not disciplinary and thereby gave up any future right to use it as a previous reprimand).

Because the December 4, 1996 memorandum was not a reprimand under N.J.S.A. 34:13A-29, arbitration is not statutorily mandated.

ORDER

The request of the Ridgefield Education Association for a declaration that the December 4, 1996 memorandum is a reprimand is denied.

BY ORDER OF THE COMMISSION

Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, Madonna, McGlynn, Muscato, Ricci and Sandman voted in favor of this decision. None opposed.

DATED: January 27, 2000
Trenton, New Jersey
ISSUED: January 28, 2000