

P.E.R.C. NO. 90-98

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MATAWAN-ABERDEEN REGIONAL
SCHOOL DISTRICT,

Petitioner,

-and-

Docket No. SN-90-46

MATAWAN REGIONAL TEACHERS
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission declines to restrain binding arbitration of a grievance filed by the Matawan Regional Teachers Association against the Matawan-Aberdeen Regional School District. The grievance alleges that the Board violated the parties' collective negotiations agreement and board policy when the middle school principal formerly observed a tenured teacher for a second time in one school year. The Commission finds that the employer could agree to abide by its announced procedure precluding additional formal observations unless requested by either party after an unfavorable observation.

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Appearances:

For the Petitioner, DeMaio & DeMaio, attorneys
(Vincent C. DeMaio, of counsel)

For the Respondent, Mark J. Blunda, attorney

DECISION AND ORDER

On February 6, 1990, the Matawan-Aberdeen Regional School District petitioned for a scope of negotiations determination. The District seeks a restraint of binding arbitration of a grievance filed by the Matawan Regional Teachers Association. The grievance alleges that the Board violated its collective negotiations agreement and Board policy when the middle school principal formally observed a tenured teacher for a second time in one school year.

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

The Association represents the Board's teachers. The parties entered into a contract effective from July 1, 1986 through June 30, 1990. The grievance procedure defines a grievance as

including a violation of established Board policy and ends in binding arbitration of contractual disputes.

Board Policy no. 412 provides, in part:

There shall be one observation for each tenured employee in the performance of his or her assigned duties by a certified supervisor. Additional observations may be requested by either party in the event of an unfavorable observation.

Albert Benaquista is a tenured science teacher in the Middle School. On January 7, 1988, his principal observed him teach a class. The principal wrote an evaluation report based on this observation. The report praised Benaquista's excellent command of his subject; his pleasant, yet businesslike interaction with students; and his students' behavior and participation. The report recommended also that Benaquista review prior learnings with students, tell them what he expected them to learn, stick to the main objective, review and summarize new learnings, and determine whether students had learned the skills introduced. The report ended by stating: "A follow-up observation will be made in the near future to assess progress on the above observation."

On March 28, 1988, the principal observed Benaquista again and wrote a second evaluation report. That report noted that involving students in a review of prior learnings helped Benaquista to determine their readiness; telling students what he planned to teach helped them focus their attention, and several other techniques helped students retain what they were taught and encouraged participation. The report noted that Benaquista's manner

is low-key, friendly, yet businesslike, and suggested a firmer approach may be needed to avoid being taken advantage of. The report recommended using a technique to get a better sampling of how many students understand the lesson; avoiding being drawn into discussions which are not congruent with the lesson's objective; setting specific behavioral guidelines; using a seating plan, and having students use an outline format.

The Association filed a grievance alleging that the second formal observation violated Board Policy no. 412 and contractual provisions on recognition, negotiations procedure, grievance procedure, teacher rights, teacher evaluation, employee benefits and miscellaneous matters. The grievance asked that the second report be destroyed.

After a hearing, the superintendent denied the grievance. He stated that the Board had a right and a duty to evaluate teachers and improve instruction. The Association demanded binding arbitration. The parties agreed to stay arbitration proceedings pending the filing and disposition of this petition.

At the outset of our analysis, we stress the narrow boundaries of our jurisdiction. 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]

We therefore do not consider the grievance's merits, its contractual arbitrability, or any contractual defenses.

We also note the limited nature of the dispute before us. The Board has not contended that a second observation was necessary because the original observation was in whole or in part unfavorable. Nor was the new observation a limited continuation of the original formal observation.^{1/} Cf. 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) (follow-up memorandum considered continuation of evaluation process). Instead it contends it had a prerogative to deviate from its announced procedure on evaluations by conducting a second formal evaluation.

Evaluation procedures which do not conflict with statutes or regulations are, in general, mandatorily negotiable and enforceable through agreements to arbitrate such disputes. Bethlehem Tp. Ed. Ass'n v. Bethlehem Tp. Bd. of Ed., 91 N.J. 38 (1982); Upper Pittsgrove Bd. of Ed., P.E.R.C. No. 90-78, 16 NJPER 174 (¶21073 1990); Greater Egg Harbor Reg. H.S. Dist., P.E.R.C. No. 88-37, 13 NJPER 813 (¶18312 1987). The frequency and number of


^{1/} The parties submitted the second evaluation upon our request.

formal observations are mandatorily negotiable. Bethlehem at 48-49; Brookdale Community College, P.E.R.C. No. 84-84, 10 NJPER 111 (¶15058 1984); Manchester Reg. H.S. Bd. of Ed., P.E.R.C. No. 79-65, 5 NJPER 125 (¶10074 1979). Under this case law, the employer could agree to abide by its announced procedure precluding additional formal observations unless requested by either party after an unfavorable observation. Such a procedure does not preclude informal observations and discussions about teaching performance or restrict the contents of the required annual written performance report. Compare Fair Lawn Bd. of Ed., P.E.R.C. No. 83-39, 9 NJPER 648 (¶14281 1983); N.J.A.C. 6:3-1.21.

ORDER

The request for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION



 James W. Mastriani
 Chairman

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

DATED: Trenton, New Jersey
 May 14, 1990
 ISSUED: May 15, 1990