

P.E.R.C. NO. 79-83

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

POINT PLEASANT BOROUGH BOARD
OF EDUCATION,

Petitioner,

Docket No. SN-79-58

-and-

POINT PLEASANT BOROUGH TEACHERS
ASSOCIATION,

Respondent.

SYNOPSIS

The Commission, in a scope of negotiations proceeding, declines to restrain arbitration of a grievance filed by the Association alleging that a teacher was denied contractual rights to representation during a student disciplinary hearing in which the teacher was called as a witness on behalf of the Board.

The Commission, recognizing the Board's right to conduct student disciplinary hearings in confidential settings, rules that the presence of Association representation at the hearing during the period the teacher is testifying would not compromise the confidentiality of such a proceeding. In so ruling, however, the Commission notes that it is not passing upon whether the Board, in denying such representation, would be in violation of the contractual provision.

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Appearances:

For the Petitioner, Doyle and Oles, Esqs.
(Mr. John Paul Doyle, of Counsel and on the Brief)

For the Respondent, Starkey, Kelly, Cunningham
and Blaney, Esqs.
(Mr. James M. Blaney, of Counsel and on the Brief)

DECISION AND ORDER

A Petition for Scope of Negotiations Determination was filed with the Public Employment Relations Commission (the "Commission") on January 17, 1979 by the Point Pleasant Borough Board of Education (the "Board") seeking a determination as to whether a certain matter in dispute between the Board and the Point Pleasant Borough Teachers Association (the "Association") is within the scope of collective negotiations within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"). Briefs have been filed by both parties in support of their respective positions, the last of which was received on March 6, 1979.

The negotiability dispute has arisen pursuant to a grievance filed by the Association alleging that the Board, in requiring a teacher to testify at a student disciplinary hearing without the presence of an Association representative, violated a provision of the collectively negotiated agreement in force between the parties. The Board seeks a permanent restraint of arbitration.

The facts, as set forth in the Board's brief, which are not disputed by the Association, show that the Board, on October 12, 1978, commenced a formal disciplinary hearing for three students who were given three-day suspensions from school for possessing and consuming alcoholic beverages during a school function some five days earlier. The suspensions were predicated upon the complaint of a teacher who was chaperoning the school function. The teacher was present at the October 12, 1978 hearing, presumably at the request of the Board, which states that the teacher was the only faculty eye witness to the incident and that the Board planned to call him as a witness in the disciplinary proceeding. Also present at the October 12, 1978 hearing were the President and Vice-President of the Association. An attorney representing the three students objected to the presence of the Association officers who had no direct knowledge of the incident. The Board directed the officers to leave, but the teacher also left with the officers. The hearing was not completed and the Board subpoenaed the teacher to a second disciplinary hearing on October 31, 1978. The teacher again appeared with the Association

officers, but this time stayed and testified after the two Association officers were again directed to leave. The result of the hearing was that two of the three students cited were adjudged to have committed the offenses charged and their suspensions were upheld by the Board.

According to the Board, the Association's grievance asserts that by excluding the Association officers from the hearing, the Board was denying the teacher representation rights in violation of Article IV, Paragraph 3 of the agreement which reads:

Whenever any teacher is required to appear before the Board of Education or any committee of the Board of Education concerning any matter which could adversely affect the continuation of that teacher in his office, position or employment or the salary or any increments pertaining thereto, then he shall be given prior written notice of the reasons for such meeting or interview and shall be entitled to have a representative of the Association present to advise him and represent him during such meeting or interview. Any suspension of a teacher shall be in accordance with N.J.S.A. Title 18A.

The Association asserts that although the hearing was a student disciplinary hearing, the manner in which the teacher handled the disciplinary incident could have been called into question in such a proceeding and any statements made or facts adduced could lead to and be used in disciplinary action against the teacher.

In support of its request that the instant grievance be restrained from proceeding to arbitration, the Board asserts that it is obligated to hold student disciplinary proceedings in

closed, private sessions and thus cannot permit non-essential persons to be present in such proceedings. The Board also asserts that if the teacher refused to appear (as he initially did on October 12, 1978) at a student disciplinary hearing without representation, the Board would be thwarted in its responsibility to regulate offensive student conduct.

The Association argues that the statutes and cases cited by the Board relating to the rights of juveniles to confidential hearings do not apply to disciplinary hearings conducted by school officials. The Association alternatively argues that even if the Board is required to or decides to hold student disciplinary hearings in private, the right of teachers to union representation when their employment may be adversely affected outweighs the student's right to confidentiality or can be accommodated by limiting the presence of the Association representative to the testimony of the teacher.

Before resolving the negotiability issues raised by the above-outlined dispute, we note that in a scope of negotiations proceeding it is not our task to decide whether or not the Board has violated the provisions of Article IV, Paragraph 3 or any other provision of the contract. That would be the function of the arbitrator if it is determined that the instant dispute may be submitted to arbitration. See In re Hillside Board of Ed., P.E.R.C. No. 76-11, 1 NJPER 55, 57 (1975) cited with approval in Ridgefield Pk Education Ass'n v. Ridgefield Pk Board of Education, 78 N.J. 144, 154 (1978).

What we must determine is assuming arguendo that Article IV, Paragraph 3 can be interpreted to apply to the instant situation, whether such a provision is negotiable and therefore arbitrable. Nothing herein should be construed as indicating our position regarding the merits of this grievance. We are simply determining the negotiability of the disputed subject.

Initially, we observe that whether the Board is required by statute or regulation to provide a confidential student disciplinary hearing or merely observes such formalities based upon a policy it has decided to follow is immaterial herein. We believe that the Board's decision to conduct student disciplinary hearings in private constitutes an exercise of its judgment concerning matters of educational policy and is therefore non-negotiable, Ridgefield Park, supra. This determination, however, does not resolve the instant dispute because the Board's right to hold confidential disciplinary hearings is not, in our view, necessarily threatened by the Association's grievance.

The contract provision in question relates to the ability of teachers to have Association representatives present when they appear before the Board or a committee thereof concerning their continued employment or salary. It is apparent that this provision pertains to terms and conditions of employment, as it "intimately and directly affects the work and welfare of employees." Ridgefield Park, supra, 78 N.J. at 156, citing

Dunellen Bd. of Ed. v. Dunellen Ed. Ass'n, 64 N.J. 17, 25 (1973).^{1/}

We also believe that such a provision will not significantly interfere with the matters of educational policy the Board cites herein, i.e. the conduct of student disciplinary hearings in a confidential setting. We agree with the Association that the presence of an Association representative, solely during the period the teacher is testifying, will not compromise the student's right to a confidential hearing. To the extent the Board can require its members, the parents and attorneys of the students, the teacher, the non-teaching staff members of the school district and prospective witnesses (whom the Board asserts were "directly" involved in the hearing) to remain silent about the matters which transpire at the hearing, it would seem that a similar practice can be adhered to with respect to the representative of the teacher.

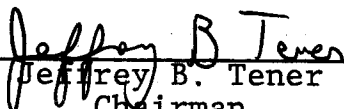
Inasmuch as the instant grievance relates to a term and condition of employment, the matter may proceed to arbitration if otherwise arbitrable under the terms of the parties' agreement. We again emphasize that we are not passing upon the applicability of the cited contractual provision to the instant controversy nor whether that provision has been violated.

^{1/} We have previously considered the rights of public employees to representation by union officials at investigatory and/or disciplinary meetings in two unfair practice decisions. See In re Clinton Township Bd of Ed, P.E.R.C. No. 78-45, 4 NJPER 78 (¶4038 1978), adopting recommendations of Hearing Examiner, H.E. No. 78-17, 3 NJPER 410 (1977) and In re North Warren Reg. Bd of Ed., P.E.R.C. No. 79-9, 4 NJPER 417 (¶4187 1978), adopting in relevant part, H.E. No. 79-3, 4 NJPER 279 (¶4142 1978). See also In re Dover Board of Education, P.E.R.C. No. 77-43, 3 NJPER 81 (1977).

ORDER

The request for a permanent restraint of arbitration is hereby denied.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Graves, Hartnett and Parcels
voted for this decision. None opposed. Commissioners Hipp
and Newbaker abstained.

DATED: Trenton, New Jersey
April 26, 1979
ISSUED: May 1, 1979