

P.E.R.C. NO. 95-74

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

KEYPORT BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-95-32

KEYPORT TEACHERS ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Keyport Teachers Association against the Keyport Board of Education. The grievance seeks the removal of certain comments from a teacher's evaluation. The Commission concludes that the substantive comments on the evaluation form are intended to improve teaching performance and are not disciplinary. The grievance therefore cannot be submitted to binding arbitration.

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.

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Appearances:

For the Petitioner, Kenney, Gross, McDonough and Stevens,  
attorneys (Mark S. Tabenkin, of counsel)

DECISION AND ORDER

On October 13, 1994, the Keyport Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Keyport Teachers Association. The grievance seeks the removal of certain comments from a teacher's evaluation.

The Board has filed a brief, a certification and exhibits. The Association did not file a response. These facts appear.

The Association represents the Board's certificated personnel with certain exceptions. The parties entered into a collective negotiations agreement with a grievance procedure ending in binding arbitration of contractual disputes and disciplinary reprimands. N.J.S.A. 34:13A-29.

Dr. Stuart Cristo is a social studies teacher in the high school. On March 24, 1994, his principal prepared Cristo's

evaluation form for the 1993-1994 school year. The evaluation contained many positive comments. However, under the evaluative criterion of Contribution to Total School Effort, the principal wrote:

During this school year there was one area that caused the administration and the district a great deal of distress: the implementation of the in-class support program in two of Dr. Cristo's World History classes. This program in Dr. Cristo's class has been a point of concern from its inception until the program was discontinued by the end of December.

Dr. Cristo has the sentiment that he did not need the program and was quite able to instruct those students identified as needing in-class support services. He was uncooperative with efforts to work with the program and refused to work with the teacher in support. Comments made to the parents at "Back to School Night" that the program is a "wash out" emphasized his point of view.

After numerous meetings with myself, Mr. Dumfort, Mrs. Delaney and union representatives, Dr. Cristo still refused to adhere to the elements set forth in my October 7, 1993 notice. After much turmoil between Dr. Cristo and myself as well as other staff members and students it was decided administratively that this program be discontinued. I certainly view this entire affair on Dr. Cristo's part as a detriment to the overall climate of the high school.

On May 10, 1994, the Association filed a grievance with the principal. The grievance contested the critical remarks in Cristo's evaluation.<sup>1/</sup>

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<sup>1/</sup> The grievance also contested two related reprimands, both of which were later withdrawn by the Board.

On May 19, 1994, the principal denied this grievance as untimely. The superintendent and the Board also denied the grievance for the same reason. The Association demanded arbitration and this petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (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.

Thus, we do not consider the contractual timeliness or merits of this grievance.

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), we distinguished between a school board's prerogative to evaluate its employees and its power to agree to arbitral review of disciplinary reprimands. We stated:

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;

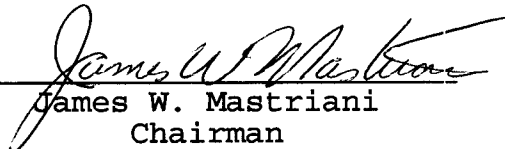
and we recognize that under the circumstances of a particular case what appears on its face to be a reprimand may predominantly be an evaluation and vice-versa. Our task is to give meaning to both legitimate interests. Where there is a dispute we will review the facts of each case to determine, on balance, 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]

Applying this test, we conclude that the substantive comments on the evaluation form are intended to improve teaching performance and are not disciplinary. We therefore restrain arbitration.

ORDER

The request of the Keyport Board of Education for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. Commissioner Buchanan voted against this decision. Commissioner Boose abstained from consideration.

DATED: March 24, 1995  
Trenton, New Jersey  
ISSUED: March 27, 1995