

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HOBOKEN BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-84-74

HOBOKEN TEACHERS ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants in part and denies in part the request of the Hoboken Board of Education that it restrain binding arbitration of a grievance the Hoboken Teachers Association filed. The grievance had alleged that the Board's system of evaluating teachers violated its collective negotiations agreement with the Association. The Commission restrains binding arbitration of those portions of the grievance challenging the evaluators' professional judgment that certain criteria are inapplicable; the identity of the evaluators; and the content of job descriptions. The Commission declines to restrain binding arbitration of those portions of the grievance concerning the provision of notice of evaluation criteria.

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Appearances:

For the Petitioner, Murray & Granello, Esqs.
(Robert Emmet Murray, of Counsel; Stephen E.
Trimboli, on the Brief)

For the Respondent, Schneider, Cohen & Solomon, Esqs.
(Bruce D. Leder, of Counsel)

DECISION AND ORDER

On March 16, 1984, the Hoboken Board of Education ("Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The Board seeks to restrain binding arbitration of a grievance that the Hoboken Teachers Association ("Association") has filed against it. The grievance alleges that the Board has violated its collective negotiations agreement with the Association by the manner in which it is evaluating its teachers.

The parties have filed briefs and documents. The following facts appear.

The Association is the majority representative of the Board's certified personnel with the exception of managerial executives and supervisory personnel. The Board and the Association have entered a collective negotiation agreement effective

between July 1, 1981 and June 30, 1984. The agreement contains a grievance procedure culminating in binding arbitration. Article XIV, entitled Teacher Evaluation, provides, in pertinent part:

14.1 Formal evaluation of teachers shall be made utilizing the instrument adopted by the Board.

14.2 Each tenured teaching staff member shall be evaluated annually by appropriately certified administrators or supervisors against criteria which evolve logically from the instructional priorities and program objectives of each staff member's position as specified in the job description for his/her position.

The Board uses a standardized job description for all teaching positions. This job description outlines the functions, duties, responsibilities, and work relationships of a teacher.

Since the 1979-1980 school year, the Board has used a certain "instrument" in evaluating teachers. This instrument lists seven specific "job tasks" and several criteria for each task. The teacher is given a score of from "0" (inadequate) to "4" (excellent) on each criterion. If a specific item is deemed inapplicable, the notation "N/A" is given in lieu of a score. A teacher must score 64 points in order to pass, but the passing score is reduced by two points for each inapplicable item. Each teacher is supplied with a copy of the job description and evaluation instrument by October 1 each year.

The Board evaluates tenured teachers once a year and non-tenured teachers three times a year. Teachers at Hoboken High School may be evaluated by one of the following certified

persons: the principal, either vice-principal, or a district supervisor in a particular area (e.g., Industrial Arts, Home Economics, Language Arts, Mathematics, and Reading). A teacher's designated evaluator meets with the teacher before each classroom observation in order to review the teacher's plan book, class register, and lesson plan for the class to be observed. After the classroom observation, the evaluator fills out a report, confers with the teacher about the report, and signs and files the report, together with any comments or objections the teacher wishes to append.

During the 1979-1980 and 1980-1981 academic year, the high school district supervisors reported some difficulty in assigning scores to certain of the evaluation criteria. Prior to the 1981-1982 school year, the high school principal and vice-principals reviewed the evaluation instrument and decided that certain criteria (for example, attendance at various functions; discharge of certain duties; absence and tardiness; interaction with parents; rapport with students, and prompt submission of records) could not be adequately scored based solely on classroom observation and review of pre-observation materials. It was therefore decided that the principal and vice-principals would assign a score on these criteria based on their consensus judgment of the individual's performance during the whole school year. In addition, if an evaluator, because of a lack of sufficient information, was unable to assign a score for any of the other evaluation criteria, the principal and vice-principals would

assist in assigning a score and would meet, upon request, with the teacher challenging that evaluation. At the same time, the principals and vice-principals decided that the criterion (no. 23) entitled "Frequently absent without justifiable cause" would not be scored between "0" and "4" but would instead be scored by recording the total number of days that year the teacher was absent. In addition, the criteria (nos. 19 and 32) concerning appropriate dress and student progress and growth were deemed inapplicable for all teachers.

The Board used these criteria and procedures in evaluating teachers during the 1981-1982 and 1982-1983 academic years. On May 26, 1983, the Association filed a grievance. The grievance alleged that the Board's evaluation system violated Article 14, sections 1 and 2, as well as other portions of the contract. The grievance specifically stated:

Evaluations for teachers are being used differently. Questions are left blank for certain individuals whose jobs and responsibilities are similar. Teachers do not have knowledge as to what questions are non-applicable as these change from year to year. Administrators have no knowledge of the answers to certain questions they answer. The "job description" does not include instructional priorities, program objectives and criteria, etc.

The grievance asked that all evaluations conducted in violation of statute or contract be declared invalid.

The parties did not resolve the grievance at the lower level of the grievance procedure.^{1/} On July 11, 1983, the

^{1/} The Board makes certain allegations of fact relevant to the question of whether the Association complied with the contractual requirements concerning the pre-arbitration processing
(continued)

Association demanded arbitration. The instant petition ensued.^{2/}

The Board contends that the grievance is not arbitrable because it allegedly challenges the selection and application of the Board's evaluation criteria. The Association contends that the grievance is arbitrable because it concerns the allegedly procedural issue of whether unilaterally adopted evaluation criteria must be uniformly applied.

In IFPTE Local 195 v. State, 88 N.J. 393, 403-404 (1982), our Supreme Court summarized the tests for determining when a subject is mandatorily negotiable between public employers and employees:

...a subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions.

See also Bd. of Ed. of Woodstown-Pilesgrove v. Woodstown-Pilesgrove Ed. Ass'n, 81 N.J. 582 (1980).

^{1/} (continued)

of grievances. That question is not properly addressed to the Commission in a scope of negotiations proceeding and will not be further discussed. Ridgefield Park Bd. of Ed. v. Ridgefield Park Ed. Ass'n, 78 N.J. 144, 154 (1978); In re Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55, 57 (1975). Pursuant to these cases, we also refrain from considering the contractual merits of the Association's claims or the Board's defenses.

^{2/} The parties have apparently agreed to postpone arbitration pending the issuance of this decision.

In Bethlehem Twp. Bd. of Ed. v. Bethlehem Twp. Ed. Ass'n, 91 N.J. 38 (1982) ("Bethlehem"), the Court applied these tests to several proposals concerning evaluation criteria and procedures. As a general rule, the Court held that evaluation criteria are not mandatorily negotiable while evaluation procedures are. See also State v. State Supervisory Employees Ass'n, 78 N.J. 54 (1978); State v. State Troopers NCO Ass'n, 179 N.J. Super. 80 (App. Div. 1981); Fair Lawn Bd. of Ed. v. Fair Lawn Ed. Ass'n, 174 N.J. Super. 554 (App. Div. 1980); Byram Twp. Bd. of Ed. v. Byram Twp. Ed. Ass'n, 152 N.J. Super. 12 (App. Div. 1977); In re Twp. of Edison Bd. of Ed., P.E.R.C. No. 83-40, 8 NJPER 599 (¶13281 1982); In re Willingboro Twp. Bd. of Ed., P.E.R.C. No. 82-67, 8 NJPER 104 (¶13042 1982); In re North Brunswick Bd. of Ed., P.E.R.C. No. 81-128, 7 NJPER 264 (¶12117 1981); In re East Brunswick Bd. of Ed., P.E.R.C. No. 81-123, 7 NJPER 242 (¶12109 1981), aff'd in part, rev'd in part, App. Div. Docket No. A-4488-80T2 (5/3/82); In re Rutgers, The State University, P.E.R.C. No. 82-47, 7 NJPER 671 (¶12303 1981); In re East Orange Bd. of Ed., P.E.R.C. No. 81-28, 6 NJPER 435 (¶11223 1980); In re Boonton Bd. of Ed., P.E.R.C. No. 80-78, 6 NJPER 12 (¶11006 1979), In re Fairview Bd. of Ed., P.E.R.C. No. 80-18, 5 NJPER 378 (¶10193 1979); and In re Fair Lawn Bd. of Ed., P.E.R.C. No. 83-39, 9 NJPER 648 (¶14281 1983).

We now apply the distinction between evaluation criteria and evaluation procedures to the allegations of the grievance before us.^{3/} We will restrain arbitration except to the limited

^{3/} We note that there is an absence of concrete examples of alleged violations pertaining to each sentence of the grievance.

extent the grievance raises the mandatorily negotiable issue of giving teachers notice of evaluation criteria.

The first two sentences of the grievance allege that evaluations for teachers are being used differently and that questions are left blank for some, but not all individuals whose jobs and responsibilities are similar. This grievance apparently challenges the determination of some evaluators that an evaluation criterion is inapplicable to some employees, but perhaps not to others. We believe that the decision of the evaluator to assign either a score on a specific item or a "non-applicable" rating requires the use of professional evaluation judgment which an arbitrator may not review. Bethlehem. An adversely affected employee may, however, challenge the reasonableness of such a decision before the Commissioner of Education. Bd. of Ed. of Township of North Bergen v. North Bergen Fed. of Teachers, 141 N.J. Super. 97 (App. Div. 1976).

The third sentence of the grievance asserts that "teachers do not have knowledge as to what questions are non-applicable as these change from year to year." It appears that this sentence of the grievance may encompass two different situations: (1) the Board's unilateral decision that certain criteria (e.g., appropriate dress and student progress) will be inapplicable to all teachers in a given year, and (2) the decision of an individual evaluator, based on his review of the teacher's performance in a given year, that a criterion is "non-applicable" while a different evaluator, observing the same teacher in a subsequent year, may deem the same item applicable. It has been held that the provision of

advance notice of evaluation criteria is a mandatorily negotiable subject. Department of Law & Public Safety, Division of State Police v. State Troopers NCO Ass'n of N.J., 179 N.J. Super. 80 (App. Div. 1981). To the extent that the Board unilaterally decides, as in the first situation described above, that an evaluation criterion will be inapplicable during a forthcoming school year, it may contractually bind itself to notify teachers of that decision. To the extent, however, that an individual evaluator decides that an evaluation criterion is inapplicable to a particular teacher based on his review of that teacher's duties and performance, as in the second situation described above, that judgment, even if allegedly inconsistent with previous judgments, is non-arbitrable. Since the determination of inapplicability in these situations seems to be tied into the evaluation review itself, it does not appear that advance notice would be feasible or mandatorily negotiable.

The fourth sentence of the grievance states that administrators have no knowledge of the answers to certain questions they answer. It appears that this sentence of the grievance may also encompass two different situations: (1) the Board's decision to allow principals and vice-principals jointly to assign ratings on evaluation criteria not entirely based on classroom observations; and (2) the Board's decision to allow principals and vice-principals to assist district supervisors in assigning evaluation criteria based on classroom observations. The issue of who evaluates a teacher is not mandatorily negotiable, although advance notice of the evaluators' identities is mandatorily negotiable. Bethlehem;

In re Tenafly Bd. of Ed., P.E.R.C. No. 83-51, 8 NJPER 621 (¶13297 1982); In re Brookdale Community College, P.E.R.C. No. 84-16, 9 NJPER 560 (¶14234 1983). Because the fourth sentence of the instant grievance, as applied in either of the two situations described, predominantly concerns the non-negotiable issue of who will participate in the evaluation process, we will restrain arbitration on that allegation.^{4/}

The last sentence of the grievance asserts that the job descriptions do not include instructional priorities, program objectives, and criteria. The content of job descriptions is not a mandatorily negotiable subject except to the extent it specifies terms and conditions of employment such as, for example, compensation and hours of work. In re West Deptford Bd. of Ed., P.E.R.C. No. 80-95, 6 NJPER 56 (¶11030 1980). We reiterate, however, that a board of education may agree that it will provide its employees with advance notice of the evaluation criteria it has unilaterally selected. Because the grievance predominantly concerns the non-negotiable issue of content of job descriptions, rather than the negotiable issue of notice of evaluation criteria, we will restrain arbitration on that allegation.

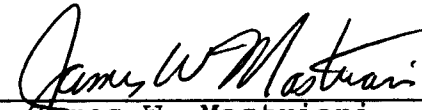
ORDER

The request of the Hoboken Board of Education is granted except to the limited extent the grievance alleges that the

^{4/} We do not consider the negotiability of a proposal that a board of education agree to notify employees of the circumstances under which principals and vice-principals may contribute to the assignment of scores based on classroom observations.

Board has not given teachers notice of its unilaterally selected or rejected evaluation criteria.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Butch, Suskin and Wenzler voted in favor of this decision. Commissioner Graves voted against the decision and would find the entire grievance to be arbitrable. Commissioners Hipp and Newbaker abstained.

DATED: Trenton, New Jersey
May 30, 1984
ISSUED: June 1, 1984