

P.E.R.C. NO. 90-118

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LOWER CAMDEN COUNTY REGIONAL
HIGH SCHOOL DISTRICT NO. 1
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-90-38

LOWER CAMDEN COUNTY REGIONAL
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Lower Camden County Regional Education Association against the Lower Camden County Regional High School District No. 1 Board of Education. The grievance seeks the removal of certain comments from a teacher's evaluation. The Commission finds that the comments on the evaluation are predominantly evaluative.

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Appearances:

For the Petitioner, Weinberg & McCormick, attorneys
(Joseph M. Weinberg, of counsel)

For the Respondent, Jim Geiger, NJEA UniServ
Representative

DECISION AND ORDER

On January 19, 1990, the Lower Camden County Regional High School District No. 1 Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Lower Camden County Regional Education Association. The grievance seeks the removal of certain comments from a teacher's evaluation.

Both parties have filed briefs and documents. These facts appear.

The Association is the majority representative of the Board's teachers. The Board and Association entered into a collective negotiations agreement effective from July 1, 1986 through June 30,

1989.^{1/} The agreement's grievance procedure ends in binding arbitration.

On May 30, 1989, Leigh MacDuff, a tenured teacher, received a year-end evaluation report prepared by his supervisor and his school's principal. The report contains 24 rating standards, grouped into five general categories. Each standard is to be checked either satisfactory or unsatisfactory. MacDuff's only unsatisfactory rating was under Professional Development: "Attends meetings, courses, workshops, seminars related to professional development." In the space for comments about this rating, the report states:

Mr. MacDuff should take advantage of opportunities to meet the parents of his students face-to-face on Back to School Night. He should also seek to grow professionally through district/school sponsored in-service programs.

The report's closing comments follow next and read:

Mr. MacDuff is a very valuable component to our educational program. We feel he will benefit from the workshops and parents will benefit from the information he has regarding their kids. In all other ways Mr. MacDuff continues to be an asset to our students and administration....

On June 5, 1989 MacDuff wrote this rebuttal:

This is a most unfair criticism. In the 25 years that I have been employed by the district, I have missed one Back to School Night. I applied for a personal day in this instance and I never received a response. I missed one professional in-service meeting this year: it was important enough for me to use a personal day

^{1/} The parties have also executed a successor agreement through June 30, 1992. This grievance arises under the prior contract.

in that instance. In both cases, I followed the existing agreement procedures honestly and openly. Now, months later, I am criticized for exercising my contractual rights. Is this the way to end the school year? Is this the way to set the tone for next year? I certainly don't think so!^{2/}

On the same day, MacDuff filed an informal grievance with his supervisor. After an informal meeting the supervisor changed the unsatisfactory rating to satisfactory, saying the rating had been a mistake, but declined to change the accompanying comments. The grievance was formalized. It asserts that: no mention was made of MacDuff's failure to attend these events when they were held; MacDuff followed proper leave procedures and permission to use leave was not denied; and MacDuff was treated differently from other faculty who did not attend the workshop, including some who were allegedly golfing. The superintendent issued this response:

The grievance is denied on grounds that while the evaluation for the year 1988-89 has a comment related to meeting parents, it has not brought about any disciplinary action and in part is only a statement which is corroborated by Mr. MacDuff in his written comments that he did not attend the session. He further has carried out his right to comment on the evaluation. In the event that this opportunity to meet parents in the future is again missed, then a negative comment or disciplinary action may occur.

Specifically the grievance is denied for the content of an evaluation is not grievable and in this case a statement of fact has been indicated.

^{2/} The contract clause governing personal leave (Article 22A) requires 24 hours notice for a personal leave request. Approval is not required unless more than 2 consecutive days of personal leave are sought.

The Board then heard and denied the grievance. The Association demanded arbitration and this petition ensued.^{3/}

The Board contends that the grievance is not arbitrable under the standards set forth in 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), because it contests evaluative rather than disciplinary comments. The Association asserts that the grievance is arbitrable because the comments warn of "inappropriate action and possible discipline in the future." It disputes that the initial unsatisfactory rating was a "mistake," insisting that the change was made in response to the grievance.

In Holland, we stated that the disciplinary amendments to N.J.S.A. 34:13A-5.3 were designed to permit negotiation and arbitration of allegedly unjust punitive action by a public employer, but not to permit binding arbitration where an employer has merely evaluated teaching performance. The context of the employer's action is important and we will examine all the circumstances of each case.

Here, we find that the comments on MacDuff's evaluation are predominantly evaluative. The comments and rating were made on an annual performance evaluation summary, consistent with the Board's obligation under N.J.A.C. 6:3-1.21. See Neptune Tp. Bd. of Ed., P.E.R.C. No. 88-114, 14 NJPER 349 (¶19134 1988). Compare Freehold Bd. of Ed., P.E.R.C. No. 89-80, 15 NJPER 97 (¶20044

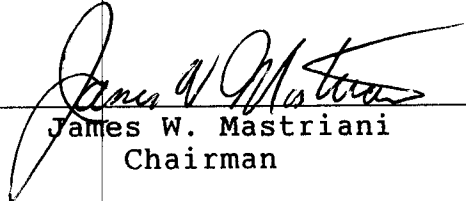
^{3/} The parties have voluntarily postponed arbitration pending this decision.

1989). The supervisor tied MacDuff's not attending a workshop and a back-to-school night to a specific standard on the evaluation form. The evaluation does not formally reprimand MacDuff or warn him of more severe discipline if he does not attend those meetings in the future. The only place any reference to possible discipline appears is in the superintendent's response to the grievance, not on the evaluation form which the grievance challenged. Contrast Perth Amboy Bd. of Ed., P.E.R.C. No. 88-140, 14 NJPER 460 (¶19191 1988).

ORDER

The Board's request for a permanent restraint of binding arbitration is granted.

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
July 19, 1990
ISSUED: July 20, 1990