

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NORTH BRUNSWICK BOARD OF
EDUCATION,

Petitioner,

-and-

Docket No. SN-80-70

NORTH BRUNSWICK TOWNSHIP
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Chairman of the Commission, in a scope of negotiations proceeding, grants the Board's request for a restraint of arbitration. The Chairman concluded, consistent with Hazlet Twp. Bd of Ed v. Hazlet Twp. Teachers Assn, P.E.R.C. No. 79-57, 5 NJPER 113 (¶10066 1979), PERC rev'd, App. Div. Docket No. A-2875-78 (3/27/80), that written comments made in an observation report of an elementary school teacher fall within the confines of evaluation criteria and are not mandatory subjects of negotiations. The instant grievance was, therefore, not arbitrable and the Board's request for restraint of arbitration was granted.

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Appearances:

For the Petitioner, Borrus, Goldin & Foley, Esqs.
(Mr. James E. Stahl, of Counsel)

For the Respondent, Stephen E. Klausner, Esq.

DECISION AND ORDER

On January 14, 1980, the North Brunswick Board of Education ("Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission seeking the restraint of a grievance arbitration on the grounds that the subject matter of the dispute with the North Brunswick Township Education Association ("Association") was not negotiable/arbitrable within the meaning of the New Jersey Employer-Employee Relations Act ("Act"). Briefs were submitted by both parties, the last of which was filed on February 21, 1980.

Pursuant to N.J.S.A. 34:13A-6(f), the Commission has delegated to the undersigned the authority to issue scope of negotiations decisions when the negotiability of the issue or

issues in dispute has been previously determined by the Commission and/or the judiciary.

The grievance in this matter concerns written comments made by a school principal in a classroom visitation report while observing the performance of an elementary school teacher. The Association grieved the inclusion of certain comments in the observation report because the comments were allegedly extraneous to the observation, and violated the parties' collective agreement and tenure teacher evaluation regulations. The Board argued that the comments in question were part of the overall evaluation procedure and did not relate to a mandatory subject of negotiations.

In a recent decision, Hazlet Township Board of Ed v. Hazlet Township Teachers Assn, P.E.R.C. No. 79-57, 5 NJPER 113 (¶10066 1979), PERC rev'd Docket No. A-2875-78 (3/27/80), the court held that there is no distinction between evaluation criteria and their application, and thus that comments made on an evaluation form are not terms and conditions of employment and are neither mandatorily negotiable nor arbitrable. The court stated, however, that the Association in that case could still argue before the Commissioner of Education concerning comments in a formal evaluation.

The Association argues that the disputed comments occurred in an "observation" rather than in an "evaluation" and that extraneous comments are not permitted in an observation.

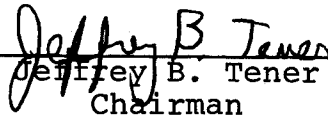
The undersigned acknowledges the difference between observations and evaluations, but finds that the former is an integral part of the latter and cannot be separated for the purpose of collective negotiations.

Accordingly, the undersigned finds that since the court in Hazlet, supra, held that the application of criteria made in an evaluation context are not mandatory subjects of negotiations, the instant grievance is likewise neither negotiable nor arbitrable. Therefore, arbitration in this matter must be restrained.

ORDER

For the foregoing reasons, IT IS HEREBY ORDERED that the North Brunswick Township Education Association refrain from arbitrating or seeking to arbitrate a grievance concerning written comments which were included in an observation report of an elementary school teacher.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

DATED: Trenton, New Jersey
April 16, 1980