

P.E.R.C. NO. 88-140

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PERTH AMBOY BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-88-40

PERTH AMBOY FEDERATION
OF TEACHERS, LOCAL 857,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Perth Amboy Federation of Teachers, Local 857 against the Perth Amboy Board of Education. The grievance claims that comments on an annual evaluation of a teaching staff member violated the parties' negotiated agreement. The Commission finds that the Board has the managerial prerogative to observe and evaluate teachers.

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Appearances:

For the Petitioner, Sills, Cummis, Zuckerman, Radin,
Tischman, Epstein & Gross, Esqs.
(Barbara Barbash Kalish, of counsel)

For the Respondent, Dwyer & Canellis, Esqs.
(Paul J. Burns, of counsel)

DECISION AND ORDER

On December 18, 1987, the Perth Amboy Board of Education ("Board") filed a Petition for Scope of Negotiations Determination. The Board seeks to restrain arbitration of a grievance filed by the Perth Amboy Federation of Teachers, Local 857 ("Federation"). The grievance claims that comments on an annual evaluation of a teaching staff member violated the parties' negotiated agreement.

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

The Federation is the majority representative of the Board's professional personnel, including classroom teachers. The parties entered a collective negotiations agreement effective from

July 1, 1985 through June 30, 1987. Its grievance procedure ends in binding arbitration.

On October 20, 1986, March 30 and April 15, 1987, A. John Calhoun, a teacher, was observed by Music/Art Supervisor George A. Schneck. Calhoun and Schneck had conferences on October 20, 1986 and March 30 and May 12, 1987. On April 9, 1987, vice-principal Susan C. Keating wrote a "Professional Staff Observation Report." On April 13, 1987, she held a conference with Calhoun.

On June 12, 1987, Schneck prepared an "Annual Written Performance Report" (AWPR). It contains 45 spaces for entries. Schneck marked 31 entries "Satisfactory," 7 spaces "Improvement needed," and 7 spaces both "Satisfactory" and "Improvement needed." None were marked "Unsatisfactory". Schneck listed discipline and classroom management as needing improvement. In several places he commented that better discipline was needed. Schneck also described specific methods for improving discipline. Also on June 12, 1987, Schneck prepared forms entitled "Professional Improvement Plan" (PIP) and "Annual Evaluation Summary Conference." On the latter he noted "discipline in [Calhoun's] classes has not been good."

On June 18, 1987, Superintendent Frank M. Sinatra wrote Calhoun, advising him that if he did not note a significant improvement in Calhoun's evaluation next year "it may be necessary to consider disciplinary action."

On July 2, 1987, Calhoun submitted a rebuttal to his 1986-87 AWPR and PIP. He rebutted the manner in which Keating

observed his classroom, Schneck's comment that Calhoun should secure pupils' purposeful participation, and Schneck's comments about the need for improvement in "discipline" and "classroom management." Calhoun also suggested that because he had successfully grieved comments on his prior annual evaluation, his most recent evaluation was a reprisal.

On July 29, 1987, the Federation grieved Calhoun's evaluation and requested that it be removed from his personnel file and destroyed. The grievance also protested the Superintendent's letter.^{1/} On September 25, the Board denied the grievance. However, on October 13, Sinatra rescinded the letter and removed it from Calhoun's personnel file. The Federation demanded arbitration and this petition ensued.^{2/}

The Board asserts that Calhoun's evaluation was within its non-negotiable, non-arbitrable prerogative to observe and evaluate teachers. It cites 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); Union Beach Bd. of Ed., P.E.R.C. No. 87-44, 12 NJPER 828 (¶17317 1986), aff'd App. Div. Dkt. No. A-1714-86T7 (10/2/87); Lincoln Park Bd. of Ed., P.E.R.C. No. 87-45, 12 NJPER 829 (¶17318

^{1/} The grievance alleges that the evaluation violated four contract clauses; three pertaining to the evaluation procedure (Articles V.C.2, V.C.6 and V.D.), the other (V.P) barring changes in working conditions without negotiations.

^{2/} On February 2, 1988, Commission designee Edmund G. Gerber granted an interim restraint of arbitration.

1986) and Caldwell-W. Caldwell Bd. of Ed., P.E.R.C. No. 87-136, 13 NJPER 358 (¶18147 1986).

The Association insists that the disciplinary aspect of Calhoun's evaluation remains, notwithstanding the Superintendent's rescission. It too relies on Holland Tp.

At the outset of our analysis, we stress the narrow boundaries of our scope of negotiations jurisdiction. In Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978), the Supreme Court, quoting from In re Hillside Bd. of Ed., P.E.R.C. No. 76-11, 1 NJPER 55 (1975), stated:

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. [78 N.J. at 154]

Holland Tp. recognized that grievances challenging alleged disciplinary reprimands require the balancing of "two important and legitimate but potentially conflicting interests: the teacher's interest in challenging alleged unjust discipline and the Board's interest in evaluating and observing teaching performance." Id. at 826.^{3/} It continued:

^{3/} See N.J.S.A. 34:13A-5.3 which provides in part that "Nothing herein shall be construed as permitting negotiation of the standards or criteria for employee performance."

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; emphasis supplied]

See also Neptune Bd. of Ed., P.E.R.C. No. 88-114, 14 NJPER ____ (____ 1988).

The letter threatening discipline was rescinded. The comments by Calhoun's evaluators about the need for better classroom "discipline" and the need to "discipline" students were evaluative and not disciplinary. See Lincoln Park.

ORDER

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

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Johnson, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Reid abstained.

DATED: Trenton, New Jersey
June 23, 1988
ISSUED: June 24, 1988