P.E.R.C. NO. 92-51

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MANVILLE BOARD OF EDUCATION,

Petitioner,

-and- Docket No. SN-92-9

MANVILLE EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Manville Education Association against the Manville Board of Education. The grievance asserts that a "needs improvement" rating and the related narrative on a teacher's annual evaluation violated the parties' collective negotiations agreement. Under the circumstances, the Commission does not find the challenged rating and comments to be predominately disciplinary in nature.

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Appearances:

For the Petitioner, Cassetta, Taylor and Whalen, consultants (Garry M. Whalen, on the brief)

For the Respondent, John A. Thornton, Jr., NJEA Representative

DECISION AND ORDER

On August 1, 1991, the Manville Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance which the Manville Education Association has filed. The grievance asserts that a "needs improvement" rating and the related narrative on a teacher's annual evaluation violated the parties' collective negotiations agreement.

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

The Association represents the Board's teachers. The parties entered into a contract effective from July 1, 1988 to June 30, 1991. The grievance procedure ends in binding arbitration of contractual disputes.

Dorothy Story teaches business classes. On February 7, 1991, her Introduction to Business class was observed. Her supervisor's observation report stated that Story should have used the pause control during a film to emphasize or clarify points and that she should have reviewed the correct responses immediately after collecting a quiz. Story wrote a detailed rebuttal; her supervisor wrote a response; and Story wrote a rebuttal to the response.

On March 15, 1991, Story received her Summative Evaluation of Teacher Performance. Her supervisor gave her the highest rating -- a 3 for "Accomplished Role Expectations" -- in every subcategory but one. In the subcategory of "Willingness to work out procedures designed to improve instruction," Story received a rating of 2 for "Needs Improvement." The accompanying narrative stated, in part:

> While these are most commendable attributes, Dorothy's response to several recommendations related to an Introduction to Business class observation indicates a need for increased willingness to accept suggestions that are directed toward improvement of instruction and enhancement of student learning.

On March 22, 1991, the Association filed a grievance asserting that Story's rating "was artificially and punitively reduced because the grievant had earlier exercised Right to comment on observation report; and because evaluators had been instructed to reduce ratings in order to require [professional improvement plans]." The grievance alleged that the Board had violated contractual provisions requiring just cause for discipline,

reprimands and adverse evaluations; mandating compliance with State Board regulations and Board policies; and prohibiting discrimination. The grievance requested that the rating be upgraded to a 3; the narrative paragraph be deleted; punitive damages of $90,000 or less be paid to each grievant; and the Board, all administrators and all evaluators be enjoined from reducing ratings to require professional improvement plans.

The Superintendent and the Board denied the grievance. They asserted that the summative evaluation did not violate the contract or constitute discipline and that Story's supervisor had not been instructed to lower her rating to require a professional improvement plan. The Association demanded binding arbitration. This petition ensued.

The Board asserts that Story's evaluation may not be contested through binding arbitration. The Association responds that this dispute involve the imposition of discipline and illegal actions by the administration.

We stress our narrow jurisdiction. 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 merits of this grievance.

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), we concluded that the discipline amendment to N.J.S.A. 34:13A-5.3 permitted negotiations and arbitration of allegedly unjust discipline but not binding arbitration of evaluations of teaching performance. We stated, in part:

> 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.

The challenged rating and comments were made on an annual performance evaluation consistent with the Board's obligation under N.J.A.C. 6:3-1.21. See Holmdel Tp. Bd. of Ed., P.E.R.C. No. 92-6, 17 NJPER 378 (¶22178 1991); Lower Camden Cty. Reg. H.S. Dist. No. 1,

P.E.R.C. No. 90-118, 16 NJPER 427 (¶21181 1990); Ridgefield Park Bd. of Ed., P.E.R.C. No. 90-70, 16 NJPER 139 (¶21054 1990); State of New Jersey, P.E.R.C. No. 89-8, 14 NJPER 512 (¶19216 1988); Neptune Tp. Bd. of Ed., P.E.R.C. No. 88-114, 14 NJPER 349 (¶19134 1988). The evaluation does not formally reprimand Story or warn her of more severe consequences if she files further rebuttals. Holland. Under these circumstances, we do not find the challenged rating and comments to be predominately disciplinary in nature. The Association's allegations of administrative abuse would appear to be within the jurisdiction of the Commissioner of Education.

ORDER

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

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Goetting, Grandrimo, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Regan abstained from consideration.

DATED: October 17, 1991
Trenton, New Jersey
ISSUED: October 18, 1991