

P.E.R.C. NO. 89-128

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,

Petitioner,

-and-

Docket No. SN-89-51

COMMUNICATIONS WORKERS  
OF AMERICA,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies a restraint of binding arbitration of a grievance filed by the Communications Workers of America, AFL-CIO against the State of New Jersey (Office of Employee Relations). The grievance asserts that the employer violated the parties' collective negotiations agreement when a supervisor failed to make records of her conferences with Narinda Guatam. The Commission finds that a grievance alleging a breach of contractual evaluation procedures is legally arbitrable.

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE OF NEW JERSEY,

Petitioner,

-and-

Docket No. SN-89-51

COMMUNICATIONS WORKERS  
OF AMERICA,

Respondent.

Appearances:

For the Petitioner, Peter N. Perretti, Jr., Attorney  
General (Richard J. Fornaro, Deputy Attorney General)

For the Respondent, Michelle M. Dunham, Esq.

DECISION AND ORDER

On January 24, 1989, the State of New Jersey (Office of Employee Relations) filed a Petition for Scope of Negotiations Determination. The petition seeks a restraint of binding arbitration of a grievance filed by the Communications Workers of America, AFL-CIO ("CWA"). The grievance asserts that the employer violated the parties' collective negotiations agreement when a supervisor failed to make records of her conferences with Narinder Guatam.

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

CWA and the employer entered a collective negotiations agreement covering professional employees. Article 18 is entitled

"Performance Assessment Review." Section D is entitled "Less than Standard Rating" and provides, in part:

1. a. Where the performance of an employee is less than "Standard," the designated supervisor will confer with such employee at least once every three (3) months and shall set forth the deficiencies and improvement goals required to achieve a "Standard" level of performance or better.

b. A record of such conference shall be made and a copy given to the employee within two (2) weeks of the conference.

The grievance procedure ends in binding arbitration of alleged contractual violations, but Article 18 also states that grievances evolving from the inability of the employee and supervisor to agree on performance and improvement goals and work standards may not be submitted to binding arbitration.

Narinder Guatam is an insurance analyst III. For the period of May 15, 1987 to May 15, 1988, he received an evaluation rating of "marginally below standard." This rating did not result in an increment being withheld.

On May 31, 1988, Guatam filed a grievance asserting that Article 18 had been violated because he had not received a written record of conferences with his supervisor. The grievance asked that he be given a standard rating for the year in question and that his supervisor be directed to follow the PAR procedures.

The supervisor denied the grievance. She stated that Guatam got written confirmation of work problems and improvement plans when he received a final PAR rating in May 1987, an interim

rating in November 1987 and another final rating in May 1988. The supervisor also stated that Guatam and she met several times to discuss ways to improve his performance; Guatam had complained that past written confirmation of problems was stressful for him and unnecessary; Guatam had been referred to the Employee Advisory Service, and personnel representatives had also attended conferences with Guatam.

CWA appealed this denial. On July 21, 1988, an employer-appointed hearing officer found that the failure to issue reports violated Article 18. He ordered the supervisor to comply with Article 18, but ruled that the performance rating should not be changed to standard because Guatam had been adequately counselled in ways to improve his job performance.

On August 10, 1988, CWA demanded binding arbitration. The employer questioned the legal and contractual basis for arbitration and CWA's attorney responded that the issue to be arbitrated was: "[w]hether the Department through its supervisor...violated [Article 18] when she failed to make written records of her conference discussions with employee Narinder Guatam and if so what should be the remedy?" This petition ensued.

The employer argues that it has a non-negotiable prerogative to evaluate employees and Guatam thus may not challenge his rating. It relies on State of New Jersey (Office of Employee Relations), P.E.R.C. No. 89-8, 14 NJPER 512 (¶19216 1988). CWA responds that Article 18 covers mandatorily negotiable evaluation

procedures and the grievance thus is legally arbitrable. It relies on Delaware Tp., P.E.R.C. No. 87-50, 12 NJPER 840 (¶17323 1986).

At the outset of our analysis, we stress the narrow boundaries of our scope of negotiations jurisdiction. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (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. [78 N.J. at 154]

Thus, we do not decide whether the grievance is contractually arbitrable or meritorious.

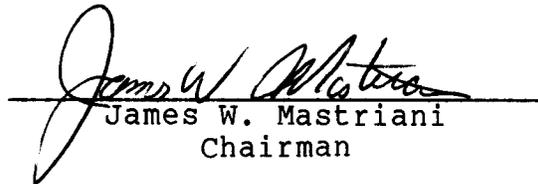
N.J.S.A. 34:13A-5.3 prohibits negotiations over standards or criteria for evaluating performance. See also Bethlehem Tp. Bd. of Ed. v. Bethlehem Tp. Ed. Ass'n, 91 N.J. 38 (1982). Given that prohibition, we have restrained arbitration over challenges to non-disciplinary evaluative judgments. See, e.g., Holland Tp. Bd. of Ed., P.E.R.C. No. 87-43, 12 NJPER 824 (¶17316 1986) (contrasting evaluations with reprimands); State of New Jersey. But evaluation procedures remain mandatorily negotiable and legally arbitrable. Bethlehem.

It is undisputed that Article 18 codifies evaluation procedures rather than evaluation criteria. Delaware Tp. A grievance alleging a breach of these contractual procedures is legally arbitrable. State of New Jersey is inapposite because the grievant there attacked the substance of the evaluative judgment itself. The reach of this grievance is clearly procedural. While we will not speculate about what remedy might be proper if CWA proves a breach of Article 18's procedures we doubt whether it can extend to imposing a new evaluative judgment. Deptford Bd. of Ed., P.E.R.C. No. 81-84, 7 NJPER 88 (¶12034 1981).

ORDER

The request for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

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

DATED: Trenton, New Jersey  
May 15, 1989  
ISSUED: May 16, 1989