

P.E.R.C. NO. 87-136

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CALDWELL-WEST CALDWELL
BOARD OF EDUCATION

Respondent,

-and-

Docket No. SN-87-20

CALDWELL-WEST CALDWELL
EDUCATION ASSOCIATION

Petitioner,

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance which the Caldwell-West Caldwell Education Association filed against the Caldwell-West Caldwell Board of Education. The grievance challenges comments on a classroom teacher's evaluation. The Commission finds that the grievance predominantly involves an evaluation.

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Appearances:

For the Petitioner, Metzler Associates
(James L. Rigassio)

For the Respondent, NJEA, Carol Rosenfeld, Uniserv
Representative

DECISION AND ORDER

On October 20, 1986, the Caldwell-West Caldwell Board of Education ("Board") filed a petition for Scope of Negotiations Determination. The Board seeks to restrain arbitration of a grievance filed by the Caldwell-West Caldwell Education Association ("Association"). The grievance challenges comments on a classroom teacher's evaluation.

Both parties have filed briefs and documents. The following facts appear.

The Board and the Association are parties to a collective negotiations agreement covering the 1985-1986 and 1986-1987 school years. The Association is the majority representative of teachers

and other employees. The negotiated grievance procedure ends in binding arbitration.

On February 24, 1986 the principal of the Jefferson school completed a written evaluation of classroom teacher Lynn Topp. The evaluation is three and one half pages long and is divided into four sections: "I. The Teacher in the Classroom; II. The Teacher as a Person; III. The Teacher as a Member of the Profession and IV. The Teacher With Parents and Community." Section I takes up the first two and one half pages of the evaluation. Sections II and III consist of one paragraph each. The comments in all three sections indicate excellent performance. Section IV contains two paragraphs. The first is positive. The second reads:

Mrs. Topp did not [volunteer to] participate in the January 23, 1986 H.S.A. (Home and School Association) Curriculum Meeting. In my opinion, this indicates she is not sensitive to the educational needs expressed by this group. This meeting afforded her an opportunity to show her competence as a teacher. It would have given her a chance to interpret the curriculum and its objectives to this group. It is unfortunate she did not take advantage of this opportunity.^{1/}

Article XX Section A.8 allows a teacher to write and attach a written disclaimer to the evaluation. On February 28, 1986 Topp prepared a one-page response. She pointed out that attendance at the January 23, 1986 conference was voluntary and stated that the

^{1/} The words "volunteer to" were deleted from the evaluation after the Board considered the grievance.

comments about her failure to attend were inappropriate. She requested the comments be deleted.

On March 24, 1986 the Association filed a grievance alleging that the comments concerning Topp's failure to attend a voluntary evening meeting constituted a reprimand without just cause.^{2/} The grievance sought the removal of the comments and a commitment that lack of attendance at a voluntary meeting not be used in the future to review teaching performance. The Board denied the grievance, asserting that the comments on the evaluations were observations, not a reprimand.

The Board contends that the grievance is not arbitrable because it primarily involves the establishment and application of evaluative criteria. It cites Teaneck Bd. of Ed. v. Teaneck Teachers Ass'n, 161 N.J. Super. 75 (App. Div. 1978) and Hazlet Bd. of Ed. v. Hazlet Tp. Teachers Ass'n, App. Div. Dkt. No. A-2875-78, 6 NJPER 191 (¶11093 1980).

The Association contends that the grievance is arbitrable because it challenges disciplinary action pursuant to the amendment to section 5.3. It also contends that the comments undermine teachers' contractual rights not to attend voluntary meetings. It distinguishes Teaneck and Hazlet as antedating the amendment.

^{2/} It is undisputed that attendance at the meeting was voluntary.

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 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. [Id. at 154]

Thus, we do not consider the merits of the Association's grievance or any of the Board's potential defenses.

Under all of the circumstances of this case, we conclude that the Association may not submit this grievance to binding arbitration. The February 24, 1986 evaluation was issued pursuant to the Board's obligation under N.J.A.C. 6:3-1.21 to evaluate its teachers periodically. The disputed comments concern the teacher's relationships with parents of pupils, one of four areas subject to evaluation. The evaluation does not warn that the teacher will be disciplined if she does not attend such meetings, nor do the comments constitute discipline within the meaning of the principles set forth in Holland Tp. Bd. of Ed., P.E.R.C. No. 87-43, 12 NJPER 824 (¶17316 1986), appeal pending App. Div. Dkt. No. A-2053-86T8.

The Board acknowledges that the meeting was voluntary and states that it does not consider the comments in the evaluation to be a reprimand. The teacher was afforded an opportunity to rebut the comments and her response remains part of the evaluation. We do not express any opinion concerning the validity of the evaluation contents or the response by the employee.

ORDER

The Board's request for a permanent restraint of binding arbitration of the grievance filed on behalf of Lynn Topp 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
April 22, 1987
ISSUED: April 23, 1987