

P.E.R.C. NO. 85-96

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BOARD OF EDUCATION OF THE
BOROUGH OF RUTHERFORD,

Petitioner,

-and-

Docket No. SN-85-28

RUTHERFORD EDUCATION
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance that the Rutherford Education Association filed against the Board of Education of the Borough of Rutherford. The grievance alleged that the Board violated its collective negotiations agreement with the Association when the junior varsity baseball coach was evaluated by a person not certified as a supervisor. The Commission holds that the identity of an evaluator is a non-negotiable managerial prerogative which may not be submitted to binding arbitration.

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Appearances:

For the Petitioner, H. Ronald Levine, Esq.

For the Respondent, Bucceri & Pincus, Esqs.
(Sheldon H. Pincus, of Counsel; Gregory T. Syrek,
on the Brief)

DECISION AND ORDER

On November 9, 1984, the Rutherford Board of Education ("Board") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission. The Board seeks a restraint of binding arbitration of a grievance which the Rutherford Education Association ("Association") has filed against it. The grievance alleges that the Board violated the contract when the junior varsity baseball coach was evaluated by a person not certified as a supervisor.

The Association is the majority representative of the Board's teachers and other employees. The Board and the Association are parties to a collective negotiations agreement effective from July 1, 1983 through June 30, 1985. The agreement's grievance procedure ends in binding arbitration.

The grievance alleges that the Board violated the contract when Thomas Slezak was observed and evaluated by an individual not certified as a supervisor. The evaluation concerned Selzak's position as a junior varsity baseball coach. The Board denied this grievance at all intermediate steps of the grievance procedure. On August 30, 1984, the Association initiated binding arbitration. The instant petition ensued.

The Association contends that this grievance may be submitted to arbitration because N.J.A.C. 6:3-19 and 6:3-1.21^{1/}

1/ N.J.A.C. 6:3-1.19:

(a) For the purpose of this Section, the term "observation" shall be construed to mean a visitation to a classroom by a member of the administrative and supervisory staff of the local school district, who holds an appropriate certificate for the supervision of instruction, for the purpose of observing a nontenured teaching staff member's performance of the instructional process:

1. Each of the three observations required by law shall be conducted for a minimum duration of one class period in a secondary school, and in an elementary school for the duration of one complete subject lesson.

(b) The term "evaluation" shall be construed to mean a written evaluation prepared by the administrative or supervisory staff member who visits the classroom for the purpose of observing a teaching staff member's performance of the instructional process.

N.J.A.C. 6:3-1.21 :

(b) The purpose of the annual evaluation shall be to:

1. Promote professional excellence and improve the skills of teaching staff members;

(Footnote continued on next page)

require that teachers be supervised by individuals holding appropriate certifications and such a requirement is incorporated into the contract. In the alternative, it contends that the issue that certificates be required for evaluators is a mandatory subject for negotiations. The Board contends that the method of evaluation of a coach is a managerial prerogative.

We have held that the identity of an evaluator is non-negotiable managerial prerogative. Hoboken Bd. of Ed., P.E.R.C. No. 84-139, 10 NJPER 353 (Para. 15164 1984). While the provisions of statutes and regulations concerning employment are sometimes

(Footnote continued from previous page)

2. Improve pupil learning and growth;
3. Provide a basis for the review of performance of tenured teaching staff members.

(c) The policies and procedures shall be developed under the direction of the district's chief school administrator in consultation with tenured teaching staff members and shall include but not be limited to:


1. Roles and responsibilities for implementation of the policies and procedures;
2. Development of job descriptions and evaluation criteria based upon district goals, program objectives and instructional priorities;
3. Methods of data collection and reporting appropriate to the job description including, but not limited to, observation of classroom instruction;
4. Observation conference(s) between the supervisor and the teaching staff member;
5. Provision for the use of additional appropriately certified personnel where it is deemed available;
6. Preparation of individual professional improvement plans;
7. Preparation of an annual written performance report by the supervisor and an annual summary conference between the supervisor and the teaching staff member.

incorporated by reference into collective negotiations agreements, such incorporation only occurs when the statutes and regulations cover terms and conditions of employment within the meaning of the New Jersey Employer-Employee Relations Act as interpreted by the courts of this State. Op. of W. Windsor v. PERC, 78 N.J. 98 (1978) State v. State Supervisory Employees Ass'n, 78 N.J. 54 (1978). In this case, therefore, it would appear that the certification requirement of N.J.A.C. 6:3-1.19 and 6:3-1.21 is not incorporated by reference into the parties contract because it concerns an otherwise non-negotiable subject.^{2/} Accordingly, we must restrain arbitration of the instant grievance.

ORDER

The Rutherford Board of Education's request for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION



 James W. Mastriani
 Chairman

Chairman Mastriani, Commissioners Butch, Suskin and Wenzler voted in favor of this decision. Commissioner Graves was opposed. Commissioner Hipp abstained.

DATED: Trenton, New Jersey
 March 15, 1985
 ISSUED: March 18, 1985

^{2/} We have some doubts, which we need not resolve, whether these regulations apply to the evaluation of an athletic coach. Barber v. Bd. of Ed. of the Town of Kearny, 1975 S.L.D. 58 (decided Feb. 10, 1975). The Commissioner of Education is the appropriate person to answer this question. We decide only the abstract negotiability issue. We express no opinion on the wisdom or legality of the decision to have a non-certified employee evaluate this coach. See Newark Bd. of Ed., P.E.R.C. No. 85-26, 10 NJPER 551, 553, n.3 (Para. 15256 1984).