

P.E.R.C. NO. 97-100

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

GREATER EGG HARBOR REGIONAL  
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-97-8

OAKCREST-ABSEGAMI TEACHERS' ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Greater Egg Harbor Regional Board of Education for a restraint of binding arbitration of a grievance filed by the Oakcrest-Absegami Teachers Association. The grievance asserts that comments in a teachers' year-end evaluation constituted discipline without just cause. The Commission finds that, on balance, this dispute predominately involves the Board's right to observe and evaluate its teachers.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Petitioner, Cassetta, Taylor, Whalen & Hybbeneth  
(William J. Yanonis, consultant)

For the Respondent, Eugene J. Sharp, NJEA UniServ  
Representative

DECISION AND ORDER

On August 2, 1996, the Greater Egg Harbor Regional Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Oakcrest-Absegami Teachers' Association. The grievance asserts that comments in a teacher's year-end evaluation constituted discipline without just cause.

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

The Association represents the Board's certified personnel, including classroom teachers. The parties entered into a collective negotiations agreement effective from July 1, 1994 to June 30, 1997. The grievance procedure ends in binding

arbitration of contractual and disciplinary disputes. N.J.S.A. 34:13A-29. Section C of Article 4, entitled Teacher Rights, provides that "[n]o teacher shall be disciplined without just cause." Section J reads:

Whenever any teacher is required to appear before the Superintendent or his designee (Principal, Vice-Principal, Athletic Supervisor and/or Supervisor of Special Services), Board or committee thereof, concerning any matter which could adversely affect the continuation of that teacher in his office or position, then he shall be given prior written notice of the reasons for such meeting or interview and shall, at his request, be entitled to have a representative of the Association present. If the Administrator, prior to the time of such meeting does not know the issue(s) is disciplinary in nature, then the above shall not apply.

Roy Cramer has taught mathematics in the district for more than 25 years. Sandra Brone became the math department supervisor at Oakcrest High School in the 1993-1994 school year.

On October 27, 1994 and February 9, 1995, Brone observed Cramer's classes and issued observation reports. These reports contained mostly positive comments. The first report suggested that Cramer issue detentions to students who arrived late and made a recommendation about explaining hard problems.

On March 9, 1995, Cramer was observed by vice-principal Steven Ciccariello. The vice-principal's observation report praised Cramer's performance and suggested an instructional technique. Ciccariello wrote that Cramer "taught a strong lesson

and achieved the stated objective. Non-teaching duties were handled in an efficient and effective manner."

On May 12, 1995, Cramer filled out a referral form used in sending a student to an administrator for possible discipline. The form stated that a ninth grade student had been absent for two weeks and indicated that the student had been cutting classes.

On May 18, 1995, Brone sent a memorandum to Cramer about the student. The memorandum stated that records showed that the student had only been in class for four days during that marking period and that the student told Brone that she had turned in her math book to Cramer at the teacher's request. Brone asked Cramer for an explanation.

On May 22, 1995, Cramer wrote a response. He referred to a discussion with Brone which he thought had resolved Brone's concerns and asked why Brone needed more information. He also asked whether, if the material was used to discipline him, it would be part of his evaluation or placed in his personnel file. He requested a written response to his inquiry and more time to consult with an Association representative before responding to Brone's request.

On May 24, 1996, Brone sent Cramer a memorandum stating that his May 22 memorandum would be attached to his annual evaluation, but that no decision had been made as to how the information about the student would be used. The memorandum

repeated her May 18 requests, set a May 30 deadline for a response, and requested other documents concerning the student.

On May 30, 1996, Cramer provided the requested information. He wrote that from April 3 to May 12, his grade book showed that the student had been in class, absent from school, or attending "in-school suspension." He listed her as having "cut" class during the week of May 8-12 when he submitted the referral. Cramer's memorandum explained that the student was not working in class or submitting homework, was failing the course, and was often absent. Because there was a shortage of textbooks, Cramer asked the student if she planned on doing math work. When she said no, he asked if she would object to turning in her book. She agreed and he gave it to a student working without a text. He then asked if she wanted worksheets used by students lacking texts, but she declined.

Brone prepared a year-end evaluation report rating which rated Cramer as satisfactory in 21 of 23 categories. Cramer was listed as needing improvement in two categories: "Methods of presentation are appropriate to accomplish objectives of lessons" and "Follows district and school policies and procedures." The annual evaluation also contained these comments:

For the 1994-1995 school year, Mr. Cramer's assignments included: two sections of Algebra 1, two sections of Algebra A, and one section of Math Lab Grade 10. For his professional improvement plan he maintained a file containing examples of how math is used in various careers, trades, professions. Mr.

Cramer also attended a two-day workshop on TI-82 graphing calculators held at Oakcrest.

One area cited for needing improvement is B-3. It is recommended Mr. Cramer develop ways to get students more actively involved to accomplish lesson objectives. Motivational techniques should be used to encourage students through each stage of development when learning a new skill. It is recommended that Mr. Cramer attend NJEA workshops which become available on motivational techniques. Also, it is further recommended that Mr. Cramer read at least one article per month for the 95-96 school year on the subject of student motivation and summarize each in writing.

Another job task area which needs to be improved is D-5. It is recommended that Mr. Cramer follow the district and school policies and procedures, with specific regard to the procedure used for reporting students' cutting of classes as communicated in the attached supervisor memos and teacher responses. A more comprehensive method of recording student attendance should be established by Mr. Cramer along with proper follow-up procedures.

In addition, it is recommended that under no circumstances should a student's textbook ever be taken away because that student is not doing any work. All efforts to obtain books for students in the class should be exhausted. (In reference to memo attached regarding a scarcity of textbooks: extra Algebra texts have been available since February 9 in the Math office. The need for additional classroom texts was not made known by Mr. Cramer.)

Significant improvement should be noted in the above two areas in order for an increment not to be withheld for the 1996-97 school year.

On June 7, 1995, Brone sent Cramer a memorandum scheduling a conference on the year-end evaluation. The memorandum also stated that "since it is possible you may view

this evaluation conference as disciplinary, please feel free to bring a representative with you." After the conference, Brone revised the evaluation by adding the phrase "or other suitable workshops" after the reference to "NJEA workshops" in the second paragraph.

During August 1995, Brone and Association officials corresponded about Brone's recommendation to Cramer to read and summarize articles on motivational techniques and classroom management. After the school year started, Brone prepared an addendum to her year-end evaluation listing other options Cramer could pursue.

Cramer prepared a rebuttal stating that his low rating in presentation methods was unsupported by the classroom observation reports. Cramer noted that the two reports commended his teaching techniques. The rebuttal also stated that Cramer's Professional Improvement Plan for the next school year did not mention any methods to correct deficiencies in teaching techniques. He also disputed that there were deficiencies in his non-instructional duties, including record-keeping and classroom management, and noted that he often intervened to maintain order in school hallways.

The principal reviewed Brone's revised evaluation and Cramer's rebuttal. On November 8, 1995, he issued his own evaluation of Cramer for the 1994-95 school year. He wrote:

Mr. Cramer should work with his supervisor to improve his performance in those areas specifically cited. Mrs. Brone has suggested numerous and alternative strategies that could assist in this regard. Mr. Cramer is also encouraged to seek out faculty colleagues who may also assist him in improving in those areas cited by Mrs. Brone. I am hopeful that Mr. Cramer will improve in these areas and continue to fulfill his other assigned professional responsibilities.

Cramer wrote this response:

As was stated to both the supervisor and the principal in the various conferences, I will continue to do the exceptional job that I have done in the past. I will continue the strong effort to give my students the best opportunities to learn.

I also made it clear that my contention is that the suggestions by the supervisor were unwarranted, unsubstantiated, and undocumented. I must reiterate that if there was a need for improvement noted, then the various methods provided for in the Evaluation Process should not have been ignored by the supervisor. I should have been made aware in a timely manner and in the appropriate venue.

As earlier stated, the PIP was the most appropriate venue in which the concerns of the supervisor could be addressed. This is especially true since the conference for my PIP did not take place until the last day of school, on June 12, 1995.

The suggestions made by Mrs. Brone are activities in which I already engage; I am insulted that she should make suggestions without first becoming knowledgeable about what I do. Therefore, it is extremely discouraging to me that the principal would add similar recommendations.



On December 15, 1995, the Association filed a grievance asserting that Cramer's year-end evaluation constituted discipline without just cause. The grievance sought these remedies:

1. The Job Tasks in Mr. Cramer's Evaluation Report for 1994-95 cited as in need of improvement be deleted.
2. The recommendation stated in the above evaluation report that the teacher "read at least one article per month (and summarize each in writing) on the subject of student motivation" be deleted.
3. Language in the Evaluation Report for the 1994-95 school year relative to the recommendation that "Significant improvement should be noted in the above two areas in order for an increment not to be withheld for the 1996-97 school year" be deleted.
4. Statements in the Evaluation Report for the 1994-95 school year suggesting that Mr. Cramer does not "follow district and school policies and procedures" be deleted.
5. The recommendation in the above-referenced evaluation report that "under no circumstances should a student's textbook be taken away because that student is not doing any work" be deleted.
6. Mrs. Brone refrain from attempting reprisals against Mr. Cramer because of his initiation of the Grievance Procedure.
7. Mrs. Brone adhere to consistent and fair practices regarding the evaluation of all professional staff members.

The Board denied the grievance and the Association demanded arbitration. This petition ensued.

Our jurisdiction is narrow. 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.

Holland Tp. Bd. of Ed., P.E.R.C. No. 87-43, 12 NJPER 824 (¶17316 1986), aff'd NJPER Supp.2d 183 (¶161 App. Div. 1987), distinguishes between disciplinary reprimands, which may be contested through binding arbitration, and evaluations of teaching performance, which may not be. Holland stated:

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.

[Id. at 826]

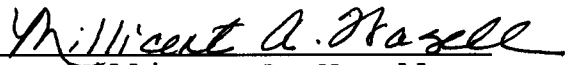
Under all the circumstances, we conclude that the challenged comments predominantly pertain to the Board's prerogative to observe and evaluate its teachers. The comments appear in Cramer's annual evaluation reviewing his teaching performance. The comments explaining the "needs improvement" rating in category B-3 concern the question of how to motivate students to learn and are directed at improving Cramer's teaching performance. The comments explaining the "needs improvement" rating in category D-5 concern the questions of reporting students who cut classes and taking away textbooks and are directed at the teacher's responsibility to educate his or her students. The evaluation itself does not state that Cramer is being reprimanded and instead recommends that he follow district policies and procedures in the future; establish a more comprehensive method of recording student attendance; refrain from taking away textbooks, and exhaust efforts to obtain textbooks for his students. While the evaluation states that an increment may be withheld if Cramer does not improve in the two noted areas, that fact appears to reflect the seriousness of the Board's concerns and desire to see them remedied. The focus is thus on meeting the Board's educational concerns for the future rather than on punishing Cramer for the past. We finally recognize that Brone invited

Cramer to bring an Association representative to the conference about the year-end evaluation because he might view the conference as disciplinary, but that fact alone does not establish that Brone saw the conference as a disciplinary interview or that the year-end evaluation was in fact disciplinary rather than evaluative. On balance, then, this dispute predominantly involves the Board's right to evaluate Cramer's teaching performance. We thus restrain arbitration.

ORDER

The request of the Greater Egg Harbor Regional Board of Education for a restraint of arbitration is granted.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioner Boose abstained from consideration.

DATED: February 27, 1997  
Trenton, New Jersey  
ISSUED: February 28, 1997