

P.E.R.C. NO. 80-109

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEPTUNE TOWNSHIP BOARD OF  
EDUCATION,

Petitioner,

Docket No. SN-80-25

-and-

NEPTUNE TOWNSHIP EDUCATION  
ASSOCIATION,

Respondent.

SYNOPSIS

In a scope of negotiations proceeding, the Commission, under the decision in Ridgefield Park Board of Ed. v. Ridgefield Park Ed. Assn., 78 N.J. 144 (1978), finds that the decision to transfer a school secretary is a nonnegotiable managerial prerogative. Accordingly, the Commission grants the Board's request to permanently restrain arbitration of this grievance under the contractual "just cause" provision. However, the Commission, citing previous decisions, further finds that, while evaluation criteria are a management prerogative, the reasonableness of the application of such criteria and the factual accuracy of the evaluation are arbitrable issues under a "just cause" provision. Similarly, the Commission finds that the factual accuracy and the reasonableness of a letter of reprimand are also arbitrable issues under a "just cause" provision. Accordingly, to this extent, the Commission denies the Board's request for a permanent restraint against arbitrating these latter two grievances.

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Appearances:

For the Petitioner, Laird, Wilson & MacDonald, Esqs.  
(Mr. Andrew J. Wilson, of Counsel)

For the Respondent, Greenberg & Mellk, Esqs.  
(Mr. John B. Prior, Jr., of Counsel)

DECISION AND ORDER

On October 5, 1979, a Petition for Scope of Negotiations Determination was filed with the Public Employment Relations Commission by the Neptune Township Board of Education (the "Board") which sought to restrain the Neptune Township Education Association (the "Association") from submitting three grievances to arbitration, on the basis that they all involved nonnegotiable and nonarbitrable managerial prerogatives. Specifically, under the "just cause" provision of the contract, <sup>1/</sup> the Association seeks to arbitrate: 1) the Board's decision to transfer a secretary from the main office to the library; 2) a negative year-end evaluation of the secretary; and 3)

1/ Article IV of the contract states that: "No employee shall be discharged or reprimanded without just cause. Any such action asserted by the Board of (sic) (or) representatives thereof shall be subject to the Grievance Procedure herein set forth."

a letter of reprimand from the principal.

Briefs were submitted by the Board and the Association on November 5, 1979 and November 15, 1979, respectively. Both parties declined to file reply briefs.<sup>2/</sup>

With regard to the first grievance, the Commission finds, under the decision in Ridgefield Park Board of Ed. v. Ridgefield Park Ed. Assn., 78 N.J. 144 (1978), that the decision to transfer a school secretary is a nonnegotiable managerial prerogative.<sup>3/</sup> Since a contractual "just cause" provision can only relate to terms and conditions of employment, the Commission grants the Board's request to permanently restrain the arbitration of this dispute. In re Jefferson Twp. Bd. of Ed., P.E.R.C. No. 80-21, 5 NJPER 386 (¶10196 1979).

Concerning the negative year-end evaluation, the Commission has consistently distinguished between evaluation criteria and the application of those criteria to the terms and conditions of employment of unit members. While evaluation criteria are a non-negotiable managerial prerogative, the application of those criteria in a year-end evaluation may be utilized by the Board as the basis for some action affecting an employee's terms and conditions of employment. As a result, the Commission has held that, under a "just cause" contractual provision, the factual accuracy of the evaluation and the reasonableness of the application of the Board's

<sup>2/</sup> The issuance of this decision was held up because it appeared that changed circumstances would result in the withdrawal of the grievances. We have been advised recently that the grievances will not be withdrawn.

<sup>3/</sup> The Commission notes, however, that a transfer cannot be made for reasons prohibited by N.J.S.A. 34:13A-5.4(a)(3).

criteria may be submitted to arbitration. In re Hazlet Twp. Bd. of Ed., P.E.R.C. No. 79-57, 5 NJPER 113 (¶10066 1979); In re Delaware Valley Regional High School District Board of Ed., P.E.R.C. No. 79-69, 5 NJPER 183 (¶10100 1979). Accordingly, the Commission, to this extent, denies the Board's request for a permanent restraint of arbitration.

Finally, with regard to the letter of reprimand, the Commission similarly finds that the factual accuracy of the letter and the reasonableness of the reprimand in this instance are matters which may be submitted to arbitration under the "just cause" provision. In re City of Passaic, P.E.R.C. No. 80-84, 5 NJPER \_\_\_\_ (¶\_\_\_\_ 1980); In re Borough of Glassboro Bd. of Ed., P.E.R.C. No. 77-12, 2 NJPER 355 (1976). Accordingly, in this regard the Board's request for a restraint of arbitration is similarly denied.<sup>4/</sup>

#### ORDER

For the foregoing reasons, it is HEREBY ORDERED that the Board's request for a stay of arbitration of its decision to transfer a school secretary is granted. However, the Board's request for

<sup>4/</sup> The Commission notes that the recent Supreme Court decision in Bd. of Ed. Woodstown-Pilesgrove v. Woodstown-Pilesgrove Ed. Assn., 164 N.J. Super. 106, affm'd \_\_\_\_ N.J. \_\_\_\_ (1980) does not affect the viability of any decision cited as controlling in this matter, since none of these decisions is based on a decision/impact analysis.

a stay of arbitration of the secretary's year-end evaluation and the letter of reprimand is denied.

BY ORDER OF THE COMMISSION

  
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Jeffrey B. Tener  
Chairman

Chairman Tener and Commissioner Parcels voted for this decision. Commissioners Hipp and Newbaker abstained. None opposed. Commissioner Graves was not present at the time of the vote. Commissioner Hartnett was not present.

DATED: Trenton, New Jersey  
February 19, 1980  
ISSUED: February 21, 1980