

P.E.R.C. NO. 95-106

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ORADELL BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-95-68

ORADELL EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employee Relations Commission restrains binding arbitration of a grievance filed by the Oradell Education Association against the Oradell Board of Education. The grievance asserts that the Board reprimanded a teacher without just cause by including a critical paragraph in an observation report. The Commission concludes that the disputed paragraph of the observation report contains non-disciplinary comments intended to improve teaching performance.

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.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

ORADELL BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-95-68

ORADELL EDUCATION ASSOCIATION,

Respondent.

Appearances:

For the Petitioner, Sills Cummis Zuckerman Radin Tischman
Epstein & Gross, attorneys
(Derlys Maria Gutierrez, of counsel)

For the Respondent, Springstead & Maurice, attorneys
(Alfred F. Maurice, of counsel)

DECISION AND ORDER

On January 24, 1994, the Oradell Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Oradell Education Association. The grievance asserts that the Board reprimanded a teacher without just cause by including a critical paragraph in an observation report.

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

The Association represents the Board's teachers, custodians, secretaries and clerks under contract. The parties entered into a collective negotiations agreement with a grievance procedure ending in binding arbitration of disciplinary reprimands. See N.J.S.A. 34:13A-29.

Ellen Heine is an art teacher employed by the Board. On January 31, 1994, the Superintendent observed Heine as she taught a first grade art class. On February 15, the Superintendent held a conference with Heine and discussed her observation report for the January 31 class. One paragraph of the report stated:

It is a violation of all affirmative action laws and also represents poor practice to separate boys and girls during instruction. It was also noted that the boys and girls were treated differently during the clean up period. These practices must cease immediately, since they represent violations of the spirit of the law.

The Association filed a grievance on Heine's behalf. The grievance asked that the quoted paragraph be removed from the observation report. The grievance stated that the children had chosen their own seats and that the cleanup was done by rotation, without regard to the sex of the children.

The Superintendent initially denied the grievance as untimely. She later denied the grievance on the merits, but noted Heine's right to file a response to the report. After a grievance hearing, the disputed paragraph was revised to read:

It is a violation of the spirit of affirmative action laws and also represents poor practice to allow the separation of boys and girls during instruction. It was also noted that the boys and girls were treated differently during the clean up period. These practices must cease immediately, since they represent a violation of the spirit of the law.

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 the grievance or any contractual defenses the Board may have.

In 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), we distinguished between a school board's prerogative to evaluate its employees and its power to agree to arbitral review of disciplinary reprimands. We 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

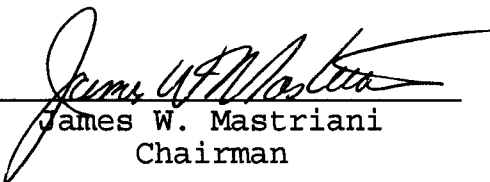
the case merely involves an evaluation, observation or other benign form of constructive criticism intended to improve teaching performance. While we will not be bound by the label placed on the action taken, the context is relevant. Therefore, we will presume the substantive comments of an evaluation 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.]

Applying this test, we conclude that the disputed paragraph of the observation report contains non-disciplinary comments intended to improve teaching performance.

ORDER

The request of the Oradell Board of Education for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Buchanan, Finn, Ricci and Wenzler voted in favor of this decision. None opposed. Commissioner Boose abstained from consideration. Commissioner Klagholz was not present.

DATED: May 23, 1995
Trenton, New Jersey
ISSUED: May 24, 1995