

P.E.R.C. NO. 2008-17

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PEQUANNOCK TOWNSHIP BOARD
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2007-066

PEQUANNOCK TOWNSHIP
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the Pequannock Township Board of Education for a restraint of binding arbitration of a grievance filed by the Pequannock Township Education Association. The grievance alleges that the Board violated the parties' collective negotiations agreement by placing a letter of reprimand in a teacher's personnel file without just cause. The Commission concludes that the memorandum does not address or evaluate the teaching staff member's performance nor is it simply informational. The Commission finds that the memorandum passes judgment on the teacher's conduct and that an arbitrator can legally determine whether delivery of an e-mail message through the school's e-mail constituted sufficient cause to send the memorandum.

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, Lindabury, McCormack, Estabrook &
Cooper, attorneys (Anthony P. Sciarrillo, on the brief)

For the Respondent, Oxfeld Cohen, P.C., attorneys
(Gail Oxfeld Kanef, on the brief)

DECISION

On May 10, 2007, the Pequannock Township Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Pequannock Township Education Association. The grievance alleges that the Board violated the parties' collective negotiations agreement by placing a letter of reprimand in a teacher's personnel file without just cause. We decline to restrain arbitration.

The parties have filed briefs and exhibits. The Board has filed a certification of its superintendent of schools. These facts appear.

The Association represents teachers and certain other employees. The parties' collective negotiations agreement is effective from July 1, 2004 through June 30, 2007. The grievance procedure ends in binding arbitration.

On April 13, 2006, a teacher sent the following email to fellow teachers.

Hi everyone,

I wanted you all to know that there is a movement to "write-in" William Bauman for the two year Board of Education seat that Bill Slater is vacating. I do not believe that I can legally use my school email account to endorse a particular candidate, so please consider this merely informative. However, I'd be happy to discuss my recommendation with anyone who is interested. (Mr. Bauman is a retired principal who was formerly a Board member. If you wish to vote for him, you will need to follow the instructions for writing in a candidate.) Have a wonderful end of Spring Break and please do not forget to vote on Tuesday.

On April 27, 2006, an interim superintendent sent a memorandum to the teacher. The memorandum stated:

I am in receipt of your April 13, 2006 e-mail
- Subject: Election News.

Your comment of the legality of your memo using your school e-mail account is being investigated by our attorney.

You obviously are aware of your intentions in this message and you need to be reminded of that fact.

For the record, you sent unsolicited information to other staff members regarding your own personal agenda using a vehicle

provided by the district for professional/ educational interaction. I have received a number of calls from staff objecting to your intentions and presumptuous behavior. How unfortunate.

A copy of the memorandum was sent to the Board and placed in the teacher's personnel file.

On May 19, 2006, the Association filed a Level 2 grievance. On July 6, the Association filed a demand for arbitration. This petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (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.
[Id. at 154]

Accordingly, we do not comment on the procedural or substantive merits of the dispute. We specifically decline to consider the superintendent's assertion that the grievance did not comply with the grievance procedure.

The Association argues that the memorandum is arbitrable as discipline because it admonishes the teacher for her actions,

implies that she misused her district computer, was placed in her personnel file, and does not refer to any need to improve her teaching performance or interaction with pupils. The Board argues that the memorandum is not disciplinary, but is instead evaluative or informational. It maintains that the memorandum does not discipline the teacher for an error she committed, but merely informs her of her error.

This memorandum does not address or evaluate the staff member's teaching performance. 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) (distinguishing between disciplinary reprimands and evaluations of teaching performance). Nor is it simply informational. It passes judgment on the teacher's conduct. Given these circumstances, we decline to restrain binding arbitration. An arbitrator can legally determine whether delivery of the message through the teacher's school e-mail account was or was not an error and whether it constituted sufficient cause for the interim superintendent to send the memorandum.

ORDER

The request of the Pequannock Township Board of Education for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Buchanan, DiNardo, Fuller and Watkins voted in favor of this decision. None opposed.

ISSUED: September 27, 2007

Trenton, New Jersey