

P.E.R.C. NO. 2008-28

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PEQUANNOCK TOWNSHIP BOARD  
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2008-006

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 a letter from the superintendent to a teacher inappropriately chastised her for speaking at a Board meeting. The Commission concludes that the letter does not address or evaluate teaching performance, nor is it simply informational. The Commission holds that the letter passes judgment on the teacher's conduct and that an arbitrator can legally determine whether the teacher's comments violated any negotiated procedures or school policies and whether there was sufficient cause to send the letter.

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, McCormick, Estabrook & Cooper, P.C., attorneys (Anthony P. Sciarrillo, on the brief)

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

DECISION

On August 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 a letter from the superintendent to a teacher inappropriately chastised her for speaking at a Board meeting. We decline to restrain binding arbitration.

The parties have filed briefs and exhibits. The Board has submitted the superintendent's certification. 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.

Jerye-Ann Asaro is a teacher employed by the Board. She is also a parent and lives in the school district. Asaro spoke at a February 2007 Board meeting. On February 13, the superintendent wrote the following letter to Asaro:

I am writing to inform you that your response at last Monday's meeting of the board was in violation of the board's long standing policy 1100. This policy requires that employees, faculty, and staff follow a specific chain of command if they have an issue or problem that they wish to report. In this case, it seems you were attempting to correct something I had previously said in the meeting to a parent.

The policy directs that you "faithfully" observe the chain of communications established by the district's organizational plan. Your correction of my comments came as a complete surprise. I plan to meet with you to further discuss the points you made and to explain my comments. In the meantime, I would appreciate it if you would please follow the appropriate chain of command to seek an audience with the school board.

Thanks for your help!

Board policy 1100 is entitled District Organization. It provides:

The Board of Education directs the establishment and implementation of an organizational plan for the management and control of school district operations. The

plan will require the identification and resolution of problems at appropriate organizational levels. All references to school district administrators in policies or regulations shall be construed to mean that administrator or his or her designee.

All members and employees of this Board are directed to observe faithfully the chain of communications established by the district organizational plan. In general, a problem should be identified and its resolution attempted at the level most immediate to the problem's origin. When a resolution cannot be found at that level, remedy may be sought through appropriate resolution and remediation procedures.

The Board expressly disapproves of any attempt to expedite the resolution of a problem by disregard of the organizational plan and the appropriate processes. A staff member's persistent disregard for the established management organization of this district in violation of this policy will be considered an act of insubordination subject to discipline.

N.J.S.A. 18A:11-1; 18A:27-4.

On February 27, 2007, the Association filed a level two grievance. It states:

On February 20, 2007, Ms. Asaro received a letter from the Superintendent that chastised her for addressing the board in public session. The Association asserts that such a letter was unwarranted and based on a misinterpretation of the Board's own policy 1100. Furthermore, the Association contends that the Superintendent violated Ms. Asaro's rights as an employee as defined in Article 5, Sections A, B and C of the current agreement between the Association and the

Board of Education<sup>1/</sup> by attempting to prevent Ms. Asaro from exercising her constitutional right to free speech through a process of intimidation, as well as any other articles, policies, regulation, past practice or existing law relevant to the instant matter.

The grievance asks that the letter be removed from Asaro's personnel file, the superintendent refrain from "his practice of intimidation by sending such letters of reprisal," and the Board of Education "stick to the literal interpretation of Policy 1100."

The superintendent denied the grievance. He wrote, in part:

Procedurally, the grievance fails to set forth a claim upon which relief can be provided and alleges violations of specific articles of the Agreement between the Board and the Association and other articles, policies and regulations which upon review by the Superintendent are found to be without violation and/or without application to the instant matter.

Substantively, the grievance is denied as the factual basis complained of is not a misinterpretation of Board Policy #1100. . . . The memo complained of dated February 13, 2007 addresses the manner in which the comments were made, i.e. the failure to follow the chain of command as required by Board Policy #1100, not the substance of the comments.

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1/ Article 5 is entitled Employee Rights. Section A protects the employees' private and personal lives; Section B protects their right to engage in union activity; and Section C protects their right to representation in potential discipline meetings.

The Association moved the grievance to the next level and Asaro wrote the following to the superintendent:

My grievance asked for three resolutions based on Policy 1100. You and I have already discussed my first resolution request, and you assured me that the letter you sent to me is not in my personnel file. It is the other two resolutions I would like to discuss with the Board.

As a taxpayer and a parent in this town, I think it is important that teachers have the opportunity to speak at Board of Education meetings if they do it correctly. I understand completely the language of Board Policy 1100, and the need for its usage at the Board of Education meetings. Yet, our teachers spend their days with our children; their comments are valuable.

Our Board of Education members need to make educated decisions about the important issues affecting our students, and they are not in our schools every day. Although you have been here since July, it is not even a year. I am certain that you are learning new things every day about how things are done in our schools. Everyone needs a whole picture, all the facts. I stand firm in my belief that speaking at a board meeting to offer clarification is not breaking Board Policy 1100.

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 (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.

The Board argues that this grievance involves its managerial prerogative to issue an evaluative, non-disciplinary letter to an employee. The Board claims that the letter does not discipline Asaro for an error or warn her of future discipline, but merely asks her to comply with the proper chain of command in Board Policy 1100.

The Association argues that the letter is disciplinary as it concerns actions Asaro took outside the classroom and outside the "scope of the school day," rather than teaching performance. The Association argues that the letter finds Asaro in violation of the policy and reprimands her for her conduct.

This letter 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 the teacher's comments violated any negotiated grievance procedures or school policies and whether the superintendent had sufficient cause to send the letter. Compare Pequanock Tp. Bd. of Ed., P.E.R.C. No. 2008-17, \_\_\_ NJPER \_\_\_ (¶\_\_\_\_\_ 2007) (permitting arbitration of grievance challenging memorandum that passed judgment on teacher's email to staff).

ORDER

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

BY ORDER OF THE COMMISSION

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

ISSUED: November 20, 2007

Trenton, New Jersey