

P.E.R.C. NO. 2015-56

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NORTH HALEDON BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2015-002

NORTH HALEDON EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the North Haledon Board of Education for a restraint of binding arbitration of a grievance filed by the North Haledon Education Association seeking the removal of comments from a teacher's annual evaluation. Finding that the disputed comments constitute a disciplinary reprimand rather than merely an evaluation, the Commission declines to restrain arbitration.

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, Wilentz, Goldman & Spitzer, P.A.,
attorneys (Christine D. Petruzzell, of counsel)

For the Respondent, NJEA UniServ Office 27 (Sasha A.
Wolf, UniServ Field Representative)

DECISION

On July 2, 2014 the North Haledon Board of Education petitioned for a scope of negotiations determination. The Board seeks to restrain arbitration of a grievance filed by the North Haledon Education Association seeking the removal of comments on a Kindergarten teacher's annual evaluation that are alleged to be disciplinary, and not evaluative.

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

The Association represents the Board's full-time teaching staff members, secretaries and custodians. The Board and the Association are parties to a collective negotiations agreement (CNA) in effect from July 1, 2012 to June 30, 2015. The

grievance procedure ends in binding arbitration. Part One, Article 4(b) provides:

No employee shall be disciplined (including suspension and/or dismissal), reprimanded, reduced in rank or deprived of any advantage without just cause. Any such action by the Board or any representative thereof shall be subject to the grievance procedure as specified in this Agreement and applicable law. Just cause shall be deemed, for purposes of this Article, to include progressive discipline.

The Board uses five ratings to evaluate teacher performance: Excellent (E); Commendable (C); Satisfactory (S); Needs Improvement (N); and Unsatisfactory (U). For the 2012 to 2013 school year, the evaluation, issued April 30, 2013, by the teacher's principal, rated the teacher: Excellent in 30 categories; Commendable in 19 categories; Satisfactory in 5 categories.^{1/} In the categories "The teacher complied with system wide policies," and "The teacher practiced ethical behavior in professional duties," she was rated "Needs Improvement." A notation below the two "Needs Improvement" ratings refers to a reprimand dated December 10, 2012 issued by the principal to the teacher that reads in part:

^{1/} The evaluation also includes a six paragraph narrative by the principal describing in more detail the teacher's positive performance both inside and outside the classroom, including communications with parents. The narrative includes statements that the teacher "is hard-working and dedicated to her own growth as a professional" and recites that "I fully expect her to become a leader in my building. I look forward to working with her."

On Wednesday December 5, 2012, at approximately 9:00 a.m., Mrs. Pezzuti sent an e-mail to those teachers who had not signed-in as required by the Agreement. Mrs. Pezzuti then highlighted the names of teachers in the sign-in book who had failed to sign in on the morning of December 5. Mrs. Pezzuti did not send the described e-mail to you because you had signed-in on December 5. The affected teachers then proceeded to sign the book during their free periods. At about 1:00 p.m. on December 5, 2012, you entered the [office] and began making comments about colors that you might use to highlight the sign-in book, noting that you would use yellow, orange and/or blue. You then proceeded to use different color markers to mark over your name on the sign-in sheets for the weeks of December 3 - 7, 2012, December 10 - 14, 2012, December 17 - 21, 2012, January 2 - 4, 2013 and January 7 - 11, 2013. Your actions as aforementioned were observed and reported by me. I reviewed the sign-in book and informed Mr. Petrelli of your actions as described above. Mr. Petrelli reviewed the sign-in book and left [the school] with copies of the pages of the sign-in book you had marked up. The originals have been forwarded to Mr. Petrelli.

As you may or may not know, the . . . sign-in book is a legal document that is necessary for the school district's use in preparing various Department of Education reports. Additionally, the sign-in book is an instrument necessary to facilitate the fulfillment of teachers' obligation to indicate their daily presence for duty and for use by the Business office for payroll, sick, personal and professional day documentation. Moreover, the recording of the arrival times of teachers in the sign-in book, on a daily basis, is necessary to advise the administration to the presence of teachers for the day, the coverage of classes and in the event of emergencies in the building. Your defacing of the sign-in book

is behavior that, minimally, is inappropriate. Your aforementioned conduct is improper and unbecoming a certificated staff member in the North Haledon School District. You hereby are reprimanded for your conduct described above and admonished to conduct yourself appropriately on a going forward basis. Any further misconduct on your part may result in further disciplinary action. A copy of this letter will be placed in your personnel file.^{2/}

The teacher did not respond to or grieve the issuance of the reprimand. However, in response to her annual evaluation, the teacher addressed the two "Needs Improvement" ratings and the references to the previously issued letter of reprimand:

I have fulfilled my duties (under the two areas cited) with the utmost professionalism. I have carried out willingly and effectively all responsibilities assigned to me. I continue to study through advanced courses and participation in conferences and workshops. I have worked harmoniously with staff members and parents throughout the school system.

On June 6, 2013, the Association filed a written grievance with the principal seeking removal of the references to the December 10, 2012 reprimand from the teacher's evaluation. The grievance was denied by the principal and in the succeeding steps of the grievance procedure. On August 2, 2013, the Association demanded arbitration, this petition ensued.

^{2/} As reflected by its text, the December 10 letter refers to alleged conduct that occurred both before and after that date.

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.

A school board has a managerial prerogative to observe and evaluate employees. Bethlehem Tp. Ed. Ass'n v. Bethlehem Tp. Bd. of Ed., 91 N.J. 38 (1982). Disciplinary reprimands, however, may be contested through binding arbitration. N.J.S.A. 34:13A-29; N.J.S.A. 34:13A-5.3. In Holland Tp. Bd. of Ed., P.E.R.C. No. 87-43, 12 NJPER 824, 826 (¶17316 1986), aff'd NJPER Supp.2d 183 (¶161 App. Div. 1987), we distinguished between evaluations of teaching performance and disciplinary reprimands and set forth the following approach:

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 nonnegotiable. 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.

The Board asserts that the grievance is non arbitrable because it seeks removal of comments on a performance evaluation. It also maintains that comments about employee attendance relate to performance and cannot be challenged.

The Association counters that placing a reference in an evaluation to a previously issued disciplinary reprimand, does not shield those comments from a grievance seeking to excise them from the evaluation. It further notes that nothing in the letter of reprimand or the evaluation alleges that the teacher's attendance record was deficient. The December 10, 2012 letter acknowledges that, unlike some other faculty, the teacher

complied with the requirement to sign in without having been reminded of the need to do so.

The December 10, 2012 letter has the earmarks of a disciplinary reprimand as it:

- Recites alleged misconduct that is unconnected with teaching performance;
- Is described by its author as a reprimand of the teacher;
- Admonishes the teacher not to engage in the offending behavior;
- Warns that further misconduct may result in disciplinary action;
- Advises that the document will be retained in the teacher's personnel file.

In Bloomfield Board of Education, P.E.R.C. No. 92-68, 18 NJPER 56, 58 (¶23024 1991), we allowed arbitration of a reprimand issued to a teacher that was included in a formal observation report. We noted:

The report is cast in terms of a rebuke rather than constructive criticism. While it does not expressly warn of disciplinary consequences for future infractions, it does demand "total compliance" with all practices, procedures, and policies. The documentation will be part of her permanent record and can be used to support future discipline if [the teacher] repeats the alleged misconduct investigated and recorded. Under all these circumstances, we conclude, on balance, that the principal's criticism of [the teacher's] alleged misconduct was not predominantly an evaluation of her teaching performance.

See also Washington Tp. Bd. of Ed., P.E.R.C. No. 90-109, 16 NJPER 326 (¶21134 1990) and Burlington Tp. Bd. of Ed., P.E.R.C. No. 94-77, 20 NJPER 71 (¶25031 1994), where we allowed grievances seeking to excise references on formal evaluations to previously issued disciplinary reprimands to be submitted to binding arbitration. This dispute arises in the same circumstances and arbitration of the grievance will have no impact on the Board's ability to evaluate the teacher's performance.

ORDER

The request of the North Haledon Board of Education for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Bonanni, Boudreau, Eskilson, Jones and Wall voted in favor of this decision. None opposed. Commissioner Voos was not present.

ISSUED: February 26, 2015

Trenton, New Jersey