

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MIDDLESEX BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-80-46

MIDDLESEX EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Board of Education filed a Motion for Reconsideration of a decision rendered by the Chairman in this matter, P.E.R.C. No. 80-98, 6 NJPER 82 (¶11042 1980). That request is granted. The Chairman had determined that this dispute was governed by In re Hazlet Board of Education, P.E.R.C. No. 79-57, 5 NJPER 113 (¶10066 1979), which held that the application of evaluation criteria is arbitrable, although the criteria themselves are not negotiable nor arbitrable. However, subsequent to his decision, the Appellate Division reversed the Commission's decision in Hazlet so the Commission granted the motion for reconsideration and provided the parties an opportunity to submit supplemental briefs regarding the applicability of Hazlet to the facts of this case.

P.E.R.C. NO. 80-120

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MIDDLESEX BOARD OF EDUCATION,

Petitioner,

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Docket No. SN-80-46

MIDDLESEX EDUCATION ASSOCIATION,

Respondent.

Appearances:

For the Petitioner, Metzler Associates
(Dr. Stanley C. Gerrard)

For the Respondent, Stephen E. Klausner, Esq.

DECISION ON MOTION FOR RECONSIDERATION

The Middlesex Board of Education (the "Board"), by timely motion dated February 14, 1980, seeks reconsideration of the scope of negotiations determination issued by the Chairman in In re Middlesex Board of Education, P.E.R.C. No. 80-98, 6 NJPER 82 (¶11042 1980), on February 8, 1980.

The grievance which the Association seeks to submit to arbitration concerns two memoranda placed in the personnel file of a faculty member which were criticisms of his performance by the principal of his school. The Chairman concluded, in accordance with the Commission's decision in In re Hazlet Board of Education, P.E.R.C. No. 79-57, 5 NJPER 113 (¶10066 1979),^{1/} that although evaluation criteria are not arbitrable, the application of those criteria

^{1/} This matter was pending appeal in the Appellate Division at the time of this decision, App. Div. Docket No. A-2875-78.

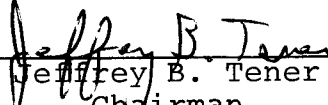
in a manner affecting terms and conditions of employment is arbitrable if subject to the contractual grievance/arbitration procedure. The Chairman concluded that the instant negative reports might have a negative effect on terms and conditions of employment and that it may be arbitrated to that extent if the parties' contract so provides. The Board's request for restraint of arbitration was, therefore, denied.

In its Motion for Reconsideration, the Board asserts that the affected employee has resigned his position for personal reasons unrelated to his employment by the Board, thus eliminating a chance of disciplinary action being taken by the Board against the employee, and that the Commission's decision in Hazlet, supra, is distinguishable from the instant matter because Hazlet involved discipline whereas this case involves criticism. The Board also contends that evaluation is a non-negotiable managerial prerogative. Finally, the Board argues that this decision should be delayed pending the Appellate Division's decision in Hazlet, supra.

We shall grant the Board's motion for reconsideration. The Appellate Division very recently issued its decision, in which it reversed our decision, in In re Hazlet Board of Education, supra. Hazlet Twp. Board of Education v. Hazlet Twp. Teachers Association, PERC revd. App. Div. Docket No. A-2875-78 (3/27/80). The Chairman's decision was wholly based upon our decision in Hazlet. In view of the Appellate Division's decision, it is appropriate to reconsider our decision herein. A copy of the Appellate Division

decision is attached hereto. The parties are invited to brief the relevance of that decision to this matter. All briefs will be due on April 18, 1980.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Hartnett and Parcels voted for this decision. Commissioner Graves voted against this decision. Commissioners Hipp and Newbaker abstained.

DATED: Trenton, New Jersey
April 3, 1980
ISSUED: April 7, 1980

PER CURIAM

This is an appeal from a decision of the Public Employment Relations Commission (PERC) denying the request of the Hazlet Township Board of Education for an order permanently restraining arbitration of grievances filed by the Hazlet Township Teachers Association.

The definitive authority in this area is Ridgefield Park Ed. Assn. v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (1978). There a teachers association had filed grievances on behalf of teachers who had been involuntarily reassigned to different schools or classes. PERC concluded that the dispute was permissibly negotiable. The Supreme Court said that the test for determining whether something was mandatorily negotiable:

That test defined negotiable terms and conditions of employment as those matters which intimately and directly affect the work and welfare of public employees and on which negotiated agreement would not significantly interfere with the exercise of inherent management prerogatives pertaining to the determination of governmental policy.
[78 N.J. at 156]

In this case PERC recognized the Ridgefield Park rule and relied upon its definition of mandatorily negotiable terms and conditions of employment. It erred when it held that what occurred here involved evaluative criteria in such a manner as to render them mandatorily negotiable.

PERC sought support in and distinguished In re Teaneck

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APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-2875-78

HAZLET TOWNSHIP BOARD OF
EDUCATION,

Petitioner-Appellant,

v.

HAZLET TOWNSHIP TEACHERS
ASSOCIATION,

Respondent-Respondent,

and

PUBLIC EMPLOYMENT RELATIONS
COMMISSION,

Respondent.

Argued March 18, 1980 -- Decided MAR 27 1980

Before Judges Matthews, Ard and Polow.

On appeal from the Public Employment Relations
Commission.

Robert H. Otten argued the cause for petitioner-
appellant (Crowell & Otten, attorneys).

Joseph F. Defino argued the cause for respondent
Hazlet Township Teachers Association (Morgan &
Falvo, attorneys).

Sidney H. Lehmann argued the cause for respondent
Public Employment Relations Commission (Don
Horowitz, on the brief).

Nothing in Teaneck suggests that there is a distinction between the creation of evaluative criteria and their application. In fact, the involvement of evaluative criteria in that case was precisely the same as that in the present case. There, as here, the administration had attempted to use an allegedly invalid criterion and had placed allegedly improper comments on periodic evaluation forms.

In In re Byram Township Board of Education, 152 N.J. Super. 12 (App.Div. 1977), we ruled on the propriety of allowing negotiations governing the posting of openings for jobs. We held:

It seems to us that such matters as a teacher's area of competence, quality of teaching performance, attendance record and length of service are directly concerned with qualifications for the vacancy and have little, if any, bearing on procedures to be followed in filling the vacancy.

[152 N.J. Super. at 27; emphasis added]

In Bd. of Ed. Tp. N. Bergen v. N. Bergen Fed. Teachers, 141 N.J. Super. 97 (App.Div. 1976), we determined that the ultimate criteria for promotions "must be left to the board as a matter of major educational policy." 141 N.J. Super. at 104.

In Bd. of Education Bernards Tp. v. Bernards Tp.Ed. Assn., 79 N.J. 311 (1979), the Court concluded that insofar as "an evaluation of the quality of the services which the teacher has rendered" is used to determine whether he or she is entitled to an increment, it is not a term and condition of employment and is not mandatorily negotiable. 79 N.J. at 321.

Board of Education, 161 N.J. Super. 75 (App.Div. 1978), which was decided less than three weeks before Ridgefield Park. PERC used Teaneck for the conclusion that the establishment of evaluative criteria was not mandatorily negotiable. Actually, the Teaneck court did not have to reach that issue although it said that PERC had so held in that case. Instead, this court merely decided that evaluation criteria were not permissive subjects of negotiation. That, of course, was before Ridgefield Park had determined there is no such thing as a permissive subject of negotiation.

In Teaneck, teachers were given mid-year evaluations similar to those used here. The Association there filed grievances claiming that the Board had violated the evaluation procedures set out in the contract. There the administration had placed on the evaluation forms negative comments relating to the teachers' nonparticipation in allegedly voluntary after-school activities. The teachers claimed that the administrators had therefore relied on factors that were not contractually includable in evaluation reports. 161 N.J. Super. at 77-78. PERC decided that evaluation criteria were not terms and conditions of employment and therefore were not mandatory subjects of negotiation. We did not treat that question. We held instead that the evaluation criteria were not permissive subjects of negotiation because "negotiation of evaluative criteria is against public policy." 161 N.J. Super. at 84.

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Here, as in Teaneck, above, while we reverse, we note that the Association can still argue before the Commissioner of Education that comments on the use of sick time should not be included in formal evaluations. 161 N.J. Super. at 84. As we stated in Bd. of Ed. Tp. N. Bergen v. N. Bergen Fed. Teachers, above, "Arbitrary action on the part of the board which bears no reasonable relationship to education goals, however, cannot and will not be tolerated." 141 N.J. Super. at 104.

Reversed.

RECEIVED

Director, N.J. State
Education