

P.E.R.C. NO. 96-18

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

SUSSEX COUNTY COMMUNITY COLLEGE,

Petitioner,

-and-

Docket No. SN-95-78

SUSSEX COUNTY COLLEGE FACULTY
FEDERATION, A.F.T. (AFL-CIO),

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Sussex County College Faculty Federation, A.F.T. (AFL-CIO) against Sussex County Community College. The grievance asserts that the college violated the parties' collective negotiations agreement when it required each evaluator on faculty tenure committees to fill out an evaluative checklist rating each candidate for tenure. The Commission finds that an educational institution has non-negotiable rights to determine who will evaluate employees; what criteria the evaluators will use; and how internal evaluative concerns will be communicated.

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, Jackson, Lewis, Schnitzler & Krupman,
attorneys (Jeffrey J. Corradino and William J. Anthony, of
counsel)

For the Respondent, Dwyer & Canellis, attorneys (Brian
Miller Adams, of counsel)

DECISION AND ORDER

On March 14, 1995, Sussex County Community College petitioned for a scope of negotiations determination. The College seeks a restraint of binding arbitration of a grievance filed by the Sussex County College Faculty Federation, A.F.T. (AFL-CIO), the majority representative of the College's full-time faculty members. The grievance asserts that the College violated the parties' collective negotiations agreement when it required each evaluator on faculty tenure committees to fill out an evaluative checklist rating each candidate for tenure.

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

On June 15, 1993, the College's Board of Trustees adopted a policy setting forth the criteria for granting tenure. An accompanying checklist required each evaluator on faculty tenure committees to rate the degree to which candidate met each criterion; recommend granting or denying tenure; and write a statement supporting the recommendation. Committees meeting in 1993 used this checklist.

On November 9, 1993, the parties signed a memorandum of agreement. The memorandum provided that members of faculty tenure committees shall:

- a. Evaluate application materials and pass upon the eligibility of the applicants for tenure
- b. Conduct a classroom observation
- c. Interview the candidates
- d. Further evaluate all materials and may request additional items from the candidate, and
- e. Vote by secret ballot, affirmatively or negatively, to recommend tenure. Abstentions will not be permitted. The votes will remain confidential among the Faculty Tenure Committee.

The memorandum also provided:

Notwithstanding any provisions of this Article, all decisions regarding the granting or denial of tenure, including but not limited to, selection criteria (whether herein stated), weight given to such criteria, and individuals chosen to review such criteria, are within the sole prerogative of the College and shall not be subject to any grievance or arbitration procedure of this Agreement.

The memorandum did not mention the checklist. The parties have not yet signed a final, integrated collective negotiations agreement.^{1/}

Before the most recent tenure review process began, the College's Dean of Academic Affairs directed that each committee member fill out the evaluative checklist for each candidate. On November 15, 1994, the Federation filed a grievance asserting that this directive violated the parties' agreement. The grievance alleged that the mandated use of the checklist raised a procedural and negotiable issue. In its brief, the Federation contends that the checklist violates the provision in the memorandum of agreement requiring a secret ballot vote.

The College's president denied the grievance. He asserted that the checklist was an integral part of the College's policy setting evaluative criteria and that the College had a prerogative to require the use of that checklist.

The Federation demanded arbitration. The demand repeated the Federation's objection to the mandatory use of the evaluative checklist. 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

^{1/} During the negotiations leading to the memorandum of agreement, the College apparently required only one collective checklist from each committee rather than separate checklists from every evaluator on a committee.

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.

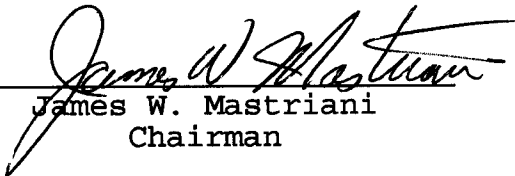
Thus, we do not consider the contractual merits of the grievance or any contractual defenses the Board may have.

An educational institution has non-negotiable rights to determine who will evaluate employees; what criteria the evaluators will use; and how internal evaluative concerns will be communicated. Bethlehem Tp. Bd. of Ed. v. Bethlehem Tp. Ed. Ass'n, 91 N.J. 38 (1982); Rutgers v. Rutgers Council of AAUP Chapters, 256 N.J. Super. 104, 123 (App. Div. 1992), aff'd per curiam, 131 N.J. 118 (1992). The right to determine how internal evaluative concerns will be communicated entails a right to receive the evaluative information needed from the evaluators chosen. See Rutgers at 121-123; Burlington Cty. College, P.E.R.C. No. 90-13, 13 NJPER 509 (¶20213 1989). Even if requiring each evaluator to fill out the evaluative checklist could be viewed as a procedure, that label does not govern, Rutgers at 120, or permit negotiations over this form of communication between the evaluators and the ultimate decisionmakers. Accordingly arbitration must be restrained.

ORDER

The request of Sussex County Community College for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Boose, Buchanan, Finn, Klagholz, Ricci and Wenzler voted in favor of this decision. None opposed.

DATED: September 21, 1995
Trenton, New Jersey
ISSUED: September 22, 1995