

P.E.R.C. NO. 89-94

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NORTH PLAINFIELD
BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-89-42

NORTH PLAINFIELD
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the North Plainfield Education Association against the North Plainfield Board of Education. The grievance seeks the removal of certain comments from a teacher's evaluation. The Commission determines that the comments are predominantly informational and evaluative. See, Holland Tp. Bd. of Ed., P.E.R.C. No. 87-43, 12 NJPER 824 (¶17316 1986).

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Appearances:

For the Petitioner, Casseta, Taylor & Whelan
(Bruce Taylor, Consultant)

For the Respondent, John A. Thornton, Jr., NJEA Uniserv
Representative

DECISION AND ORDER

On December 21, 1988, the North Plainfield Board of Education ("Board") filed a Petition for Scope of Negotiations Determination. The Board seeks a restraint of binding arbitration of a grievance filed by the North Plainfield Education Association ("Association"). The grievance seeks the removal of certain comments from a teacher's evaluation.

Both parties have filed briefs and documents. These facts appear.

The Association is the majority representative of the Board's teachers. The Board and Association are parties to a collective negotiations agreement effective July 1, 1987 through June 30, 1989. The agreement's grievance procedure ends in binding arbitration.

Eloise Johnson teaches seventh and eighth grade math classes at North Plainfield High School. On March 29, 1988, she received an evaluation report. One sentence in a section entitled "Overview"^{1/} reads: "As of this date, Mrs. Johnson has been absent five times, of which four are due to a death in the family." This was the report's only reference to absences.

On May 26, 1988, the Association filed a grievance, on behalf of Johnson and similarly situated employees, alleging that the reference to Johnson's number of days of absence violated several provisions of the agreement. The grievance was denied and the Association demanded arbitration stating that the comments were "discriminatory." This petition ensued.

The Board contends that an employee's attendance record is a valid aspect of any evaluation. See, e.g., Old Bridge Tp. Bd. of Ed., P.E.R.C. No. 88-129, 14 NJPER 413 (¶19165 1988). It also contends that the grievance is not arbitrable pursuant to Holland Tp. Bd. of Ed., P.E.R.C. No. 87-43, 12 NJPER 824 (¶17316 1986), aff'd App. Div. Dkt. No. A-2053-86T8 (10/23/87) because the reference to the absences is not disciplinary.

The Association asserts that the grievance is arbitrable because a particular administrator "chose to place attendance information on a subgroup of employees within the Association therefore creating disparate treatment."

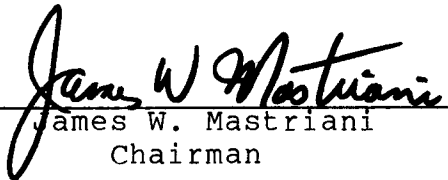
^{1/} Other sections of the report are labeled "Performance Areas of Strength, Performance Areas Requiring Improvement, Professional Improvement Plan" and "Indicators of Pupil Progress."

We find that the comments on Johnson's evaluation are predominantly informational. They are neutral in tone, not pejorative. In fact the comments explain that four out of five days of absence were due to a death in the family. The evaluation does not reprimand Johnson or even state that her attendance needs to improve. There is no allegation that any adverse action was taken based on her attendance record. Under these circumstances, these evaluative comments are not arbitrable. Holland; Old Bridge.

ORDER

The Board's request for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Johnson, Ruggiero and Smith voted in favor of this decision. None opposed. Commissioner Reid abstained. Commissioners Bertolino and Wenzler were not present.

DATED: Trenton, New Jersey
March 9, 1989
ISSUED: March 10, 1989