

P.E.R.C. NO. 2000-96

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MANASQUAN BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2000-75

MANASQUAN EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies, in part, the request of the Manasquan Board of Education for a restraint of binding arbitration of a grievance filed by the Manasquan Education Association. The grievance contests statements included in the annual performance reports issued to three fourth grade teachers. The Commission restrains arbitration over any contention that a portion of the statements constitutes a reprimand or discipline without just cause. The Commission concludes, however, that an arbitrator may consider the contention that contractual procedures were violated.

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, Wayne J. Oppito, attorney

For the Respondent, Klausner, Hunter & Rosenberg,  
attorneys (Stephen B. Hunter, on the brief)

DECISION

On January 18, 2000, the Manasquan Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Manasquan Education Association. The grievance contests statements included in the annual performance reports issued to three fourth grade teachers.

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

The Association represents teachers and certain other employees. The Board and the Association were parties to a collective negotiations agreement effective from July 1, 1996 to June 30, 1999 and have recently ratified a new agreement. Their grievance procedure ends in binding arbitration.

Article 21 is entitled Employee Evaluation. Section B.3 states:

Any complaints regarding a teacher, made to any member of the administration by any parent, student, or other person, which are used in the evaluation of the teacher in any manner, shall promptly be brought to the teacher's attention. The teacher shall have the right to respond to and/or rebut such complaint and shall have the right to be represented by the association at any meetings or conferences regarding such complaint. Complaints based on hearsay or received from anonymous sources shall summarily be disregarded.

It appears that certain unnamed parents raised concerns about the fourth grade at a Board meeting. In March 1999, the elementary school principal and the assistant principal met with three fourth grade teachers to discuss these concerns. According to the Board, this was an informal meeting and none of the teachers was reprimanded or threatened. According to the Association, the teachers were not told in advance of the topic to be discussed and were not told at the meeting of the specifics of the allegations. The Association also asserts that the principal and assistant principal expressed disbelief concerning what had happened at the Board meeting and stated that they were not aware of any problems.

On June 21, 1999, the principal met with the three teachers to discuss their Annual Performance Reports. While complimentary in general, each report contained the following statement in paragraph 5 under Recommendations:

As previously discussed at your March 1999 meeting with Mr. Kirk and me, work diligently

to bring a more positive image to your grade level. Keep communication open with parents as much as possible, including positive reports of student achievement and classroom events. A greater appreciation for parental concerns regarding students, along with your understanding and assistance with these concerns, can also be a valuable asset. Furthermore, please remember that your enthusiasm for the job is contagious and is reflected in the students' interest and productive involvement in instructional activities.

The principal apparently asked that the reports be signed and returned by the next morning.

Each teacher submitted a rebuttal. They objected to the paragraph as based totally on hearsay in violation of Article 21 and asserted that the concerns cited had not been mentioned during meetings in May with the principal to discuss their annual performance reports. They also asserted that they were asked to sign and return the reports without being given the time permitted by Article 21 to consider them and respond.

On June 22, 1999, the Association filed a class action grievance asserting that the paragraph was based on unsubstantiated hearsay reports and thus violated Article 21. The grievance requested that the recommendation be deleted from the reports.

The superintendent denied the grievance. She wrote that an administrator has the right to recommend concerns that need to

be addressed and that the comments represented the principal's observation of grade-level needs.

The Association appealed to the Board. It asserted that the statements cited in the grievance were "in violation of the contract and constitute a reprimand without just cause."

The Board denied the grievance. It stated that the statements were evaluative and not disciplinary.

The Association then demanded arbitration, alleging that the statements were a reprimand based on hearsay and constituted discipline without just cause. 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 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.

In its brief, the Board argues that the paragraph in question contains evaluative comments rather than disciplinary ones under the standards in 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). The Association does not contest that assertion and we accept it. We note the Board's assurance that the paragraph will not be viewed as a prior act of discipline in the event of a future disciplinary proceeding. West Windsor-Plainsboro Reg. Bd. of Ed., P.E.R.C. No. 97-99, 23 NJPER 168 (¶28084 1997). We will therefore restrain arbitration over any contention that paragraph 5 constitutes a reprimand or discipline without just cause.

In its brief, the Association argues that Article 21's procedural assurances that teachers will be informed of the specifics of complaints and have the opportunity to respond are mandatorily negotiable under East Brunswick Bd. of Ed., P.E.R.C. No. 98-150, 24 NJPER 319 (¶29152 1998), aff'd 25 NJPER 306 (¶30128 App. Div. 1999). The Board did not file a reply brief contesting that assertion and we accept it. An arbitrator may consider the contention that Article 21's procedures have been violated. We will not speculate about what remedies might or might not be appropriate if a violation is found. Deptford Bd. of Ed., P.E.R.C. No. 81-84, 7 NJPER 88 (¶12034 1981).

#### ORDER

The request of the Manasquan Board of Education for a restraint of binding arbitration is granted to the extent the grievance asserts that paragraph 5 of the Recommendations in the

teachers' annual performance reports constituted a reprimand or discipline without just cause. The request is otherwise denied.

BY ORDER OF THE COMMISSION



Millicent A. Wasell  
Chair

Chair Wasell, Commisioners Buchanan, Madonna, McGlynn, Muscato, Ricci and Sandman voted in favor of this decision. None opposed.

DATED: May 25, 2000  
Trenton, New Jersey  
ISSUED: May 26, 2000