

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

BERGENFIELD BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-99-71

BERGENFIELD EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants, in part, the request of the Bergenfield Board of Education for a restraint of binding arbitration of a grievance filed by the Bergenfield Education Association. The grievance contests comments in a memorandum and an annual evaluation concerning an elementary school teacher's duty to contribute a summary of classroom activities for a monthly school newsletter. The Commission concludes that the comments on the annual evaluation are not a reprimand but rather a reiteration of the employer's policy and expectation and an evaluative description of how the employer believes the teacher did not meet that expectation. The Commission, however, concludes that the memorandum issued to the teacher concerning the monthly newsletter is a disciplinary reprimand which may be considered by an arbitrator. The Commission emphasizes that the arbitrator may not second-guess the Board's right to have teachers contribute brief articles to the school newsletter.

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.

P.E.R.C. NO. 99-112

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Respondent.

Appearances:

For the Petitioner, Wilentz, Goldman & Spitzer, P.C.,  
attorneys (Christine D. Petruzzell, of counsel and on the  
brief; Donna A. Sisco, on the brief)

For the Respondent, Springstead & Maurice, attorneys  
(Alfred F. Maurice, on the brief)

DECISION

On March 18, 1999, the Bergenfield Board of Education petitioned for a scope of negotiations determination. The Borough seeks a restraint of binding arbitration of a grievance filed by the Bergenfield Education Association. The grievance contests comments in a memorandum and an annual evaluation concerning an elementary school teacher's duty to contribute a summary of classroom activities for a monthly school newsletter.

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

The Association represents teaching staff members employed by the Board. The parties' current collective

negotiations agreement is effective from July 1, 1997 through June 30, 2000. The grievance procedure ends in binding arbitration.

The Board has two policies promoting better communications with parents and the public. Policy 1000/1010 is entitled "Concepts and Roles in Community Relations: Goals and Objectives" and Policy 1100 is entitled "Communicating with the Public." Each policy seeks to inform the community of what is going on in the schools. The teacher job description includes as a duty fostering good relationships with students, parents, fellow teachers, the administration and non-teaching personnel.

Consistent with the Board's policies on communications, the Jefferson School publishes a monthly newsletter which is distributed to parents, community members attending Board meetings, Board members and administrators. Each issue contains summaries submitted by teachers describing activities in their classes. Each summary consists of one or two paragraphs.

Joan Gunther is a first grade teacher in the Jefferson School. On November 21, 1997, Gunther, as president of the Association, wrote to the Jefferson School principal, Joseph Miceli, protesting the duty to submit articles. Her letter stated:

Submission of newsletter articles is a voluntary not mandatory activity.

Ordering the staff to submit to your wishes is a violation of the terms and conditions of employment.

What release time are you giving the staff to write these articles?

If no release time is granted, vouchers for extra pay will be submitted to the Board for requiring the staff to perform extra duties.

Do you expect the staff to write newsletter articles in lieu of parent conferences?

This order to submit articles by the end of parent conferences is unreasonable, arbitrary and capricious.

Your interference in the activities of the Association to withhold all voluntary services will be met with proper legal action.

Miceli denied the grievance. He wrote:

The newsletter has been a method of communication for many years. I find no compelling reasons to discontinue this past practice.

Regarding the other issues you raise in your letter, release time has never been provided for this activity. The newsletter is not in lieu of any conference and conferences should not be considered part of this issue. Furthermore, the newsletters were originally due prior to the beginning of conferences. Had they been submitted in a timely manner, they would not conflict with time to conduct conferences.

Finally, since I find the writing of newsletter articles to be a well established practice at Jefferson School, and an activity documented to be expected of the faculty, I find no grounds for your threat of legal action for interfering with the BEA.

For the next newsletter, to be published in December 1997, Gunther's submitted a generic form that did not specify any activities. Miceli advised Gunther that her submission was unacceptable. He wrote:

A form letter with your name inserted in a blank does not meet the need to communicate with the community.

Your class is unique, as you are a unique teacher. Your newsletter should reflect that uniqueness and be a positive reflection of yourself to the community. Positive community interactions cannot be maintained without our demonstration of the positive things that happen in Jefferson School.

Your article, as in the past, should include a description of at least one of the classroom activities that you have undertaken during the past month. You should include, but not be limited to, discussion of:

What the children did during the activity,  
how the parents were involved in the activity,  
how the activity was helpful in developing a connection between school and the outside world of the children,  
how the activity was useful in developing specific skills,  
how the activity promoted the mission of Jefferson School.

You may also wish to include information about a significant upcoming event you have planned for your class.

I expect to receive a new newsletter submission prior to your departure from the building today.

Gunther presumably revised her submission for the December newsletter since no further directive was issued.

Gunther, however, did not submit an article for the January 1998 newsletter. On January 5, 1998, Miceli wrote her a memorandum stating:

A School Newsletter article was due on December 16. While I am aware that you were absent on that date, you still failed to provide an article since your return to school.

You have been made aware of my expectation for the completion of newsletter articles in your 1996-97 Annual Evaluation and in subsequent memos to the staff, including those on November

19, 21 and December 17. This issue has also been addressed through the grievance process. Your failure to complete a newsletter article can only be interpreted as some form of challenge to the legitimacy of the need to communicate with the community.

The expectation for the completion of a newsletter article from each teacher still exists and will exist for future issues of the newsletter. You are expected to comply with this simple and longstanding practice.

Miceli and Gunther signed this memorandum; Gunther's signature indicated only that she had received a copy and knew it and any response would be placed in her personnel file. Gunther handwrote a response on the document stating: "This matter is subject to pending legal action and both parties will abide by the outcome."

In April, Gunther received her annual evaluation. That evaluation stated, in part:

There is a need for consistent communication through the school newsletter. An article for the January edition, as noted in my memo dated December 18, 1997 was not provided. This followed memos dated November 19, 1997 and November 21, 1997, regarding the need for newsletter submissions. It is necessary to have an article each month. Other articles have been satisfactory in providing information that promotes a positive relationship with the community and provides information about specific class activities. Articles should be written with greater detail to enhance this aspect of parent communication. This is the second year that completion of newsletters is noted as a need. It is expected that this will not be a problem in the future. Should completion of newsletters in a timely manner or with acceptable content continue to be a problem for a third year in a row, the district will proceed with appropriate disciplinary action which could include, but would not be limited to, withholding of increment.

The evaluator recommended that Gunther receive her regular increment for the next school year.

On April 24, 1998, the Association demanded arbitration. The demand for arbitration describes the grievance to be arbitrated as "Improper Letter of Reprimand (Joan Gunther)." This petition ensued.

In its brief, the Board asserts that the Association seeks to arbitrate the January 5 memorandum as a disciplinary reprimand. In its brief, however, the Association contests the annual evaluation as an alleged "letter of reprimand." In her certification, Gunther appears to challenge both documents and adds an assertion that other staff members have not contributed to the newsletter, but have not been reprimanded.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144 (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. [Id. at 154]

Thus, we do not consider the contractual arbitrability or merits of this grievance nor do we consider any contractual defenses the Board may have.

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), we distinguished between annual evaluations of teaching performance and disciplinary reprimands. We stated:

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 non-negotiable. 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.

A school board has a managerial prerogative to adopt and implement policies ensuring that parents and the public know about activities in the classroom. That prerogative encompasses publishing a monthly newsletter and requiring each teacher to submit a one or two paragraph summary of what is being taught and done. The Board's educational interest in having an informative newsletter



outweighs the minor impact on each teacher of being required to submit a summary. We further note that requiring a teacher to summarize classroom activities is more in the nature of a co-curricular than an extracurricular duty. Majority representatives are free to seek negotiations over any impact on terms and conditions of employment, but they cannot seek to block the prerogative to have a newsletter and to have teachers contribute to it.

The genesis of this dispute appears to be Gunther's erroneous belief that teachers could not be required to contribute summaries to the newsletter. Applying the Holland distinction between an employer's managerial prerogative to evaluate teachers and an employer's right to issue a disciplinary reprimand, subject to arbitral review, we are satisfied that the comments on the annual evaluation are not a reprimand but rather a reiteration of the employer's policy and expectation and an evaluative description of how the employer believes Gunther did not meet that expectation. See, e.g., Parsippany-Troy Hills Bd. of Ed., P.E.R.C. No. 98-106, 24 NJPER 160 (¶29078 1998). We therefore restrain arbitration over the comments in Gunther's annual evaluation.

We treat the January 5 memorandum separately. In her capacity as Association president, Gunther wrote to the principal protesting the assignment of newsletter articles. The principal responded to the "grievance" by affirming the administration's belief that submission of newsletter articles was a well-established

practice that would not be discontinued. The next month, Gunther submitted a generic form in lieu of a specific article. The principal responded that the submission was unacceptable and that he expected a new submission by the end of the day. Gunther did not submit an article the next month. The principal responded with the memorandum that the Association seeks to contest through the parties' disciplinary review procedures.


Considering all the circumstances, we believe that the January 5 memorandum is predominately a disciplinary reprimand. We note that the last paragraph of the memorandum reaffirms the Board's expectation that Gunther would submit monthly articles. The Board had a right to reaffirm that expectation and a memorandum limited to that reaffirmation is not inherently disciplinary. But the other aspects of this memorandum are disciplinary and they predominate. The memorandum was issued outside the regular evaluation process and is focused more on Gunther's alleged insubordination than, for instance, the quality of the newsletter articles she submitted. It accuses her of challenging the legitimacy of the need to communicate with the community and makes that implicit accusation of insubordination part of her personnel record. Gunther contends that other staff members did not participate in the newsletter but were not reprimanded as she was. An arbitrator may consider that contention in determining the justness of the Board's response to Gunther's alleged insubordination. But we emphasize that the arbitrator may not second-guess the Board's right to have

teachers contribute brief articles to the school newsletter or to express the expectation that they will do so. Given these limits, we decline to restrain arbitration over the January 5 reprimand.

ORDER

The request of the Bergenfield Board of Education for a restraint of binding arbitration over the April evaluation is granted. The request for a restraint of binding arbitration over the January reprimand is denied.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, Finn and Ricci voted in favor of this decision. None opposed. Commissioner Boose was not present.

DATED: June 22, 1999  
Trenton, New Jersey  
ISSUED: June 23, 1999