

P.E.R.C. NO. 92-119

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CHERRY HILL BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-92-87

CHERRY HILL EDUCATION ASSOCIATION,

Respondent,

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Cherry Hill Education Association against the Cherry Hill Board of Education to the extent, if any, the grievance claims that the Board's evaluative judgments were without just cause. The Commission declines to restrain arbitration to the extent the grievance alleges that the Board violated contractual evaluation procedures.

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Appearances:

For the Petitioner, Davis, Reberkenny & Abramowitz, P.C.,
attorneys (Howard S. Mendelson, of counsel)

For the Respondent, Selikoff & Cohen, P.A., attorneys
(Steven R. Cohen, of counsel)

DECISION AND ORDER

On March 10, 1992, the Cherry Hill Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance which the Cherry Hill Education Association has filed. The Association seeks to arbitrate a claim that the Board failed to comply with contractual evaluation procedures.

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

The Association represents the Board's teachers and certain other employees. The parties have entered into a collective negotiations agreement covering the 1990-1991 and 1991-1992 school years. The grievance procedure ends in binding arbitration of contractual disputes.

Ruby Dorough teaches second grade at A. Russell Knight school. She is a tenured teacher.

On May 22, 1991, Dorough's principal issued her Annual Performance Report for the 1990-1991 school year. The report had five categories -- Instruction, Classroom Management, Professional Responsibility, Summary Statement--Pupil Progress and Professional Improvement Plan. The rating scale is Satisfactory, Needs Improvement, and Not Applicable. Dorough received all satisfactory ratings.

On July 11, 1991, Dorough's principal wrote an addendum to her report. The Board's teacher evaluation policies permit an addendum to an annual report at any time. The addendum gave Dorough a "Needs Improvement" rating in Instruction and Classroom Management. In the subcategory of planning and implementing the instructional program, the addendum stated that Dorough had not read or graded reports; it recommended that she write directions for long-term assignments, that she make every effort to return the correct report to the correct child, and that returned reports contain positive comments as well as grades. In the subcategory of communicating with parents, the addendum stated that parents had indicated that what they and Dorough had often agreed upon had not been carried out to the degree expected and that as a result several parents had met with Dorough regularly to monitor the progress of their children; it recommended that Dorough prepare for conferences by knowing as much as possible about the child's background and that

she have follow-up contacts with parents on any commitments. In the subcategory of developing rules and procedures for student behavior, the addendum stated that parents had complained that Dorough has used phrases and comments detrimental to the self-esteem of their children and that four families had transferred their children to other schools because they felt their child's self-esteem was not being reinforced; it recommended that Dorough make positive reinforcement a part of her daily routine.

On September 3, 1991, Dorough received a memorandum entitled Performance Expectations. The memorandum made several recommendations concerning instructional planning and implementation, communication, and classroom management. A checklist for each category was attached. The parties refer to this memorandum as a "supervisory plan."

On October 23, 1991, the Association filed a grievance concerning the addendum to the annual report and the supervisory plan. It also asserted that certain letters had been improperly used in the addendum. The grievance alleged that Section B of Article IV and Sections A, C, D, F and H of Article X had been violated. These sections provide:

Article IV, Section B - No employee shall be disciplined, reduced in rank or compensation or deprived of any professional advantage without just cause. Any such action asserted by the Board, or any agent or representative thereof, shall be subject to the grievance procedure and the limitations as set forth in Article III, paragraph A.

Article X, Section A - All evaluation of the work performance of teacher personnel shall be conducted openly and with full knowledge of the teacher involved. Electronic devices and voice taping as part of classroom projects may be used so long as the results of same are not used in the evaluation process.

C. The Board of Education and the Administration subscribe to the principle that a teacher has the right to full knowledge regarding the judgment of his/her superiors respecting the effectiveness of his/her performance and that, further, the teacher is entitled to receive such recommendations that will assist him/her in increasing the effectiveness of his/her performance. The Board and the Association further agree that special attention and the supportive help and guidance in classroom techniques shall be provided the new teacher.

D. Therefore, the Administration shall establish supervisory procedures that will guarantee a minimum of three (3) written evaluations per year for each non-tenure teacher, and one (1) for each tenure teacher, provided that only two (2) written evaluations need be made for each non-tenure teacher hired after January 1st of the school year.

F. Evaluation and/or observation conferences shall be arranged at a time mutually convenient to the evaluator and evaluatee within five (5) school days after receipt of the evaluation by the teacher. At such time, the teacher is entitled to have his/her response to the evaluation heard and noted. A teacher may attach a rebuttal to the evaluation. Evaluations will be conducted within the canons of recognized educational evaluation practice and the Laws and Administrative Code of the State of New Jersey. Any disputes concerning the time of the conference shall be resolved by the Superintendent.

H. Teachers shall be informed of the substance of all complaints acted upon prior to their use in evaluation, and shall have an opportunity to respond thereto.

The grievance asked that the addendum and supervisory plan be removed from Dorrough's personnel file.

On October 30, 1991, the superintendent denied the grievance. He found that the contract had not been violated. He asserted in particular that the concerns identified in the addendum had been brought to Dorough's attention throughout the year and in most cases included in her annual performance report; that Dorough had not been disciplined; that all evaluations were conducted openly and with Dorough's full knowledge; that contractual observation and conference requirements had been met; and that her supervisor had kept her informed of complaints lodged against her. The Board denied the grievance for the same reasons. The Association then demanded binding arbitration. This petition ensued.

Our jurisdiction is narrow. 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. [Id. at 154]

Thus, we do not consider the contractual merits of the grievance or the Board's defenses.

The Association does not dispute that the addendum and the supervisory plan are evaluative rather than disciplinary in nature. Evaluative judgments may not be challenged through binding

arbitration. Holland Tp. Bd. of Ed., P.E.R.C. No. 87-43, 12 NJPER 824 (¶17316 1986), aff'd App. Div. Dkt. No. 8-2053-86T8 (10/23/87). Since the Association grieved, in part, under the contract's just cause provision, we will restrain arbitration to the extent, if any, the grievance claims that the Board's evaluative judgments were without just cause.

Evaluation procedures, however, are mandatorily negotiable and a grievance alleging a violation of evaluation procedures is legally arbitrable. Bethlehem Tp. Bd. of Ed. v. Bethlehem Tp. Ed. Ass'n, 91 N.J. 38 (1982); Matawan-Aberdeen Reg. Sch. Dist. Bd. of Ed., P.E.R.C. No. 90-98, 16 NJPER 300 (¶21123 1990), recon. den. P.E.R.C. No. 91-4, 16 NJPER 434 (¶21185 1990), aff'd App. Div. Dkt. No. A-66-90T1 (6/5/91); Ocean Tp. Bd. of Ed., P.E.R.C. No. 85-123, 11 NJPER 378 (¶16137 1985), aff'd App. Div. Dkt. No. A-4753-84T1 (4/9/86), certif. den. ___ N.J. ___ (1986). The Association has also alleged a violation of several contractual sections concerning evaluation procedures -- including, for example, a failure to inform the teacher of complaints against her and to give her an opportunity to respond. The Board has not contended that any of these provisions are not mandatorily negotiable. We decline to restrain arbitration to the extent the grievance alleges that Board violated contractual evaluation procedures. Ocean Tp.

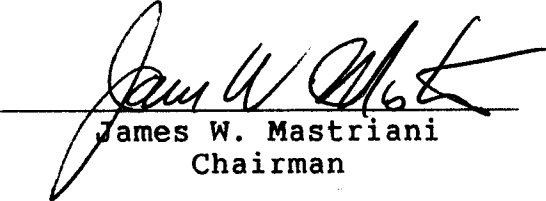
We emphasize that the Association has not disputed the Board's right to make substantive comments pertaining to the evaluation of teaching performance. Nor has it disputed the Board's

right to issue evaluation addendums and supervisory plans. It simply claims that, in issuing the addendum and plan, the Board violated certain procedural protections. That claim is legally arbitrable.

ORDER

Binding arbitration is restrained to the extent, if any, the grievance claims that the Board's evaluative judgments were without just cause.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Goetting, Grandrimo, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Regan abstained from consideration.

DATED: May 15, 1992
Trenton, New Jersey
ISSUED: May 18, 1992