

P.E.R.C. NO. 2002-34

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

UNION TOWNSHIP BOARD
OF EDUCATION,

Petitioner,

-and-

Docket No. SN-2002-2

UNION TOWNSHIP EDUCATION
ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission grants the request of the Union Township Board of Education for a restraint of binding arbitration of a grievance filed by the Union Township Education Association. The grievance alleges that the Board violated the parties' collective negotiations agreement when the superintendent changed a student's grade. The Commission holds that the employer's educational policy interest in determining student grading policy outweighs any employee interest in negotiating over final grade authority.

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, Apruzzese, McDermott, Mastro &
Murphy, P.C., attorneys
(Robert J. Merryman, on the brief)

For the Respondent, Oxfeld Cohen, attorneys
(Sanford R. Oxfeld, of counsel)

DECISION

On July 30, 2001, the Union Township Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Union Township Education Association. The grievance alleges that the Board violated the parties' collective negotiations agreement when the superintendent changed a student's grade.^{1/}

^{1/} The Board filed an Order to Show Cause seeking a restraint of the arbitration hearing scheduled for September 25, 2001. On August 24, 2001, a Commission designee granted the Board's request.

The Board has filed a brief, exhibits and a certification of the superintendent. The Association did not file a brief. These facts appear.

The Association represents teachers and certain other employees. The Board and the Association are parties to a collective negotiations agreement effective from September 1, 1999 through August 31, 2002. The grievance procedure ends in binding arbitration.

Article 4 is entitled Employee Rights and Responsibilities. Section 4.05 states:

The teacher shall maintain the exclusive right and responsibility to determine marks within the marking policy of the Board based upon a professional judgment of all available criteria pertinent to a given subject area or activity for which the teacher is responsible. Marks converted to the symbolic language of Board policy, i.e., 4,3,2,1,F and communicated to parents and students may not be reconverted, altered or otherwise changed in the process of averaging or other clerical operation by any party to this Agreement. Further, a teacher is responsible for proper student evaluation and must have sufficient evidence to warrant the marks given. Supportive data and information for all marks must be available to the Administration upon reasonable request. All marking books of each teacher shall be turned into the Administration at the end of the school year, or at such times as may be reasonably requested. Delivery of such books to the building Principal shall be sufficient.

Lorraine Hoyle is a social studies teacher in the high school. At the end of the 1999-2000 school year, the parents of a freshman student raised concerns about their son's final grade in

social studies. After attempting to resolve the matter with the high school principal and the social studies department supervisor, the superintendent conducted a review. He concluded that the grade had been miscalculated and he recommended to Hoyle that the grade be changed from a 2 to a 3. He explained to Hoyle that he had some concerns about the student's grade including: determining the student's grade differently than other students; computation errors; and averaging grades lower than 50%. He explained that by using two different calculation methods, he arrived at a final grade of 3 rather than 2. He asked Hoyle to review his computation and respond by December 22. Absent a response, he would have the guidance department change the final second semester grade from 2 to 3.

On the same date, Hoyle responded that she felt that the student received the grade that he had earned. Since Hoyle did not challenge the superintendent's calculations, the superintendent had the grade changed to a 3.

On January 17, 2001, the Association filed a grievance. It alleged that the grade change violated Article 4, section 4.05 and sought restoration of the grade assigned by the teacher. The superintendent responded that the contract encourages the checks and balances needed to ensure an accurate and fair grading policy and had not been violated. He also stated that Hoyle had not refuted his calculations. The Association demanded arbitration. 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.

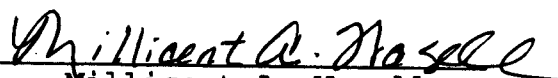
We do not consider the contractual merits of the grievance or any contractual defenses the parties may have.

The Board asserts that the establishment of a grading system is a managerial prerogative not subject to binding arbitration. We agree. See, e.g., Middletown Tp. Bd. of Ed., P.E.R.C. No. 98-74, 24 NJPER 19 (¶29013 1997); Garfield Bd. of Ed., P.E.R.C. No. 90-48, 16 NJPER 6 (¶21004 1989); Delaware Tp. Bd. of Ed., P.E.R.C. No. 87-50, 12 NJPER 840 (¶17323 1986); Union City Bd. of Ed., P.E.R.C. No. 84-79, 10 NJPER 46 (¶15026 1983); Ridgefield Park Bd. of Ed., P.E.R.C. No. 84-50, 9 NJPER 670 (¶14292 1983). The employer's educational policy interest in determining student grading policy outweighs any employee interest in negotiating over final grade authority.

ORDER

The request of the Union Township Board of Education is granted.

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Chair

Chair Wasell, Commissioners Madonna, McGlynn, Muscato and Ricci voted in favor of this decision. Commissioner Buchanan voted against this decision. Commissioner Sandman abstained.

DATED: December 20, 2001
Trenton, New Jersey
ISSUED: December 21, 2001