

P.E.R.C. NO. 94-74

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

TINTON FALLS BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-94-37

TINTON FALLS EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Tinton Falls Education Association against the Tinton Falls Board of Education. The grievance asserts that a principal violated the parties' collective negotiations agreement when she included unsubstantiated false statements in a teacher's "non-instructional duties form." The Commission declines to restrain arbitration to the extent the grievance alleges a violation of evaluation procedures, such as lack of notice of parental complaints or denial of an opportunity to respond.

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Appearances:

For the Petitioner, Reussille, Mausner, Carotenuto, Bruno & Barger, attorneys (Martin M. Barger, of counsel)

For the Respondent, Chamlin, Rosen, Cavanagh & Uliano, attorneys (Thomas W. Cavanagh, Jr., of counsel)

DECISION AND ORDER

On October 8, 1993, the Tinton Falls Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Tinton Falls Education Association. The grievance asserts that the principal of the Swimming River School violated the parties' collective negotiations agreement when she included unsubstantiated and false statements in a teacher's "Non-instructional Duties Form."

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

The Association represents the Board's teaching personnel, secretaries, and instructional aides. The parties entered into a collective negotiations agreement effective from July 1, 1990 through June 30, 1993. Section C of Article 4 provides:

No employee shall be disciplined, reprimanded, reduced in rank or deprived of any professional advantage, or given an adverse evaluation of professional services except for inefficiency or other good cause. Reduction in rank or being deprived of a professional advantage or given an adverse evaluation shall no longer be subject to the grievance procedure of the contract.

Article 19 provides:

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

The grievance procedure ends in binding arbitration of reprimands.

See N.J.S.A. 34:13A-29.

Claire Garland teaches fourth grade at the Swimming River School. On June 14, 1992, her principal, Patricia Schleig, issued Garland's annual performance report and her non-instructional duties form for the 1992-1993 school year. Under "Areas Needing Improvement and Suggestions," the annual performance report stated:

Becoming more positive and enthusiastic in your approach to teaching students would be a wonderful modeling for children to learn from. Use of cooperative learning groups and continual circulation and monitoring of students during lesson would assist greatly and be a proactive measure.

The report does not appear to be otherwise critical of Garland. The non-instructional duties form, however, contains several

criticisms. Under "Lesson Plans," the form states that Garland was late with her lesson plans twice and failed to have a plan once. Under "Student Health and Welfare," the form states that Garland did not allow students to eat lunch on time or receive medication from the nurse. Under "Student Conduct," the form states that Garland does not continually attend to her students outside the classroom setting. Under "Student Supervision," the form states that Garland has sent students into the hall during class and has lined up students in the hall and left them unattended before dismissal. Under "Operations, Policies/Regulations," the form states that Garland did not sign in by 8:40 every day. Under "Operations-Absence," the form states that Garland often called in at 8:00 a.m. on the day of an absence, often too late to get a substitute. Under "Public Relations," the form states "[c]alls received from parents (and shared w/teacher throughout year) who were unhappy with classroom actions and attitudes." Under "General Comments," the form states:

Mrs. Garland has had a strained relationship with fellow professionals, administrators, and parents. The concept of team player needs to be addressed with a cooperative attitude displayed. Attentiveness to the needs of children, both physical and mental, and parents needs to become more positive.

Schleig and Garland discussed these documents at a conference. Garland then filed a rebuttal to the non-instructional duties form and attached several documents. Garland did not contest the comments on the annual performance report. In response to the

non-instructional duties form, Garland wrote, among other things, that other teachers were not team players, but only she was accused of that; another teacher had refused to allow a student to get her medication, but only she was accused of that; she had taped the school nurse and students saying she had not refused to allow students to get their medication; the children of the parents who complained should have been in special education classes, not her classroom, were removed from class too often for other subjects and were new to the district and not ready for its academic challenges; she had not refused to allow students to eat lunch "in a timely fashion," although she had kept students for a few minutes before lunch so that they could complete or make up assignments; she would have had to be a governmental agency to be attentive to the needs of her students' parents; the principal could cite only herself and one teacher to support her assertion that Garland had a strained relationship with others and that the other teacher had failed to cooperate with Garland and had stabbed her in the back; the principal had spent too many years teaching kindergarten and was out of touch with reality; her class had good CAT scores; and the form was "another example of the constant harassment, unrelenting criticism and fraudulent denunciation" Garland had been subjected to by the principal.

The Association filed a grievance on Garland's behalf. The grievance asserted that the non-instructional duties form and the annual performance report contain statements that were

"unsubstantiated, but false" and violated the provisions of the collective negotiations agreement quoted earlier, including a provision on complaint procedures.

The principal denied the grievance. After the superintendent discussed the evaluation with her, the principal agreed to change two notes on the first page of the non-instructional duties form to state that: (1) "Garland did not permit some students to eat lunch in a timely fashion nor to receive medication from the School Nurse in a timely fashion" and (2) "Garland refused, initially, remediation for a student and did not request remediation until after a parental request."

The Association demanded binding arbitration over the alleged "reprimand." This petition ensued.^{1/}

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.

^{1/} The Association filed a second grievance on Garland's behalf contesting her room assignment for the 1993-1994 school year. The record does not disclose whether this grievance was denied or whether the Association has demanded arbitration.

Thus, we do not consider the contractual merits of the grievance or any contractual defenses the Board may have. Nor do we consider the accuracy or fairness of any comments in the non-instructional duties form, the annual performance report, or Garland's responses.

N.J.S.A. 34:13A-29 requires that negotiated grievance procedures covering school board employees culminate in binding arbitration of disputes concerning reprimands. But neither this statute nor N.J.S.A. 34:13A-5.3 overrules caselaw prohibiting binding arbitration of evaluations of teaching performance. 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). In Holland, we articulated this approach for distinguishing between reprimands and evaluations:

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. [Id. at 826]

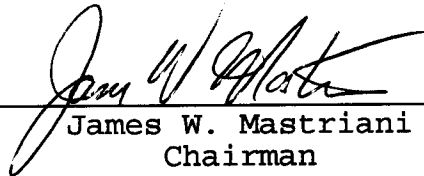
Under all the circumstances, we hold that the dispute over the substantive comments on the forms predominately involves an evaluation of Garland's teaching performance rather than a disciplinary reprimand. The comments were made on forms recording the principal's evaluation of Garland's performance in carrying out instructional and non-instructional duties. The comments do not state that Garland is being formally reprimanded or warned of any future discipline. They simply record the principal's perception of what Garland has accomplished, where she fell short of expectations, and where she needs to improve. Compare Ridgefield Park Bd. of Ed., P.E.R.C. No. 92-66, 18 NJPER 54 (¶23022 1991) (criticism of teacher's absences in annual evaluation was not disciplinary); Englewood Bd. of Ed., P.E.R.C. No. 91-118, 17 NJPER 341 (¶22153 1991), aff'd App. Div. Dkt. No. A-6030-90T2 (4/3/92) (comments in annual performance evaluation were not disciplinary); Perth Amboy Bd. of Ed., P.E.R.C. No. 88-140, 14 NJPER 460 (¶19191 1988) (criticism of classroom management and discipline in annual evaluation was not disciplinary). Contrast Englewood (formal reprimands issued outside of evaluation process and accusing employees of misconduct were disciplinary). We therefore restrain binding arbitration over the substantive comments on the

non-instructional duties form and the annual performance report. However, we do not restrain arbitration to the extent the grievance alleges a violation of evaluation procedures, such as lack of notice of parental complaints or denial of an opportunity to respond. Cherry Hill Bd. of Ed., P.E.R.C. No. 92-119, 18 NJPER 308 (123131 1992).

ORDER

The request of the Tinton Falls Board of Education for a restraint of binding arbitration over the substantive comments on the non-instructional duties form and the annual performance report is granted.

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: January 24, 1994
Trenton, New Jersey
ISSUED: January 25, 1994