

P.E.R.C. NO. 92-66

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

RIDGEFIELD PARK BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-91-33

RIDGEFIELD PARK EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission restrains binding arbitration of a grievance filed by the Ridgefield Park Education Association against the Ridgefield Park Board of Education. The grievance seeks the removal of comments from an annual performance review about a teacher's absences and tardiness. The Commission reaffirms that the placement of non-punitive comments about attendance in an evaluation is not mandatorily negotiable.

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Appearances:

For the Petitioner, Sills, Cummis, Zuckerman, Radin,
Tischman, Epstein & Gross
(James L. Plosia, Jr., attorney)

For the Respondent, Klausner & Hunter, attorneys
(Stephen B. Hunter, attorney)

DECISION AND ORDER

On November 14, 1990, the Ridgefield Park Board of Education petitioned for a scope of negotiations determination. The Board seeks a restraint of binding arbitration of a grievance filed by the Ridgefield Park Education Association. The grievance seeks the removal of comments about a teacher's absences and tardiness from an annual performance review.

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

The Association represents teachers and other Board employees. The parties entered into a collective negotiations agreement effective from July 1, 1988 to June 30, 1991. The grievance procedure ends in binding arbitration.

Eileen Barber is a tenured elementary school teacher. During the 1989-90 school year, she taught first grade and was a unit leader at the Roosevelt school.

On June 1, 1990, Barber received her annual performance review from her principal. The review stated in part:

One significant concern is with Mrs. Barber's sense of time and timeliness. Some examples include:

1. Between September 1, 1989 and May 15, 1990, a period of just eight months, Mrs. Barber was absent twelve (12) times and late twenty-six (26) times. While it is noted and appreciated that the instructor often stays at school well past her contractual obligation, this does not negate the extremely deleterious effect her absenteeism and tardiness has on the school. These items are critical, for example, when planning for each day in terms of coverages and substitutes.

The review recommended that "Mrs. Barber should do everything possible to improve her attendance and punctuality. This will go far in enhancing her professional effectiveness."^{1/}

On June 29, 1990, the Association grieved the references to absences and tardiness. It asserted that they were "mechanistic" because the reasons for the absences had not been considered. The principal denied the grievance, noting that the reasons were never in question and that the references were meant to emphasize the deleterious effect of the absences.

^{1/} The review also noted other concerns, such as using numeric grades, a sporadic schedule of unit meetings, and the poor performance of her class on the Stanford achievement test. Barber's strengths included creating an environment that motivated her students, planning lessons and activities, and heading her unit's project of revising report cards.

On July 3, 1990, the Association presented the grievance to the Superintendent and asked that the disputed references be deleted from the annual performance review. It asserted that Barber had not been warned about tardiness.

On September 11, 1990, the Superintendent denied the grievance. He deferred to the principal's assessment of the effect of the absences and tardiness on planning class coverage.

On September 17, 1990, the Association presented its grievance to the Board. On October 9, 1990, the Board denied it.

On October 16, 1990, the Association demanded arbitration. The demand describes the grievance to be arbitrated as: "Disciplinary reprimand (Eileen Barber - June 1, 1990 Evaluation)." This petition ensued.^{2/}

The Board contends that it had a prerogative to evaluate Barber by commenting about her absences and tardiness in her annual performance review. The Association contends that the dispute centers on negotiated sick leave benefits and that the references constituted a reprimand which may be submitted to binding arbitration under N.J.S.A. 34:13A-5.3.

^{2/} Another petition (SN-91-28) seeks a restraint of arbitration of another grievance involving Barber. On the day Barber received her annual performance review, she was notified that she would teach the fourth grade at the Roosevelt school the next year. The grievance noted that Barber lost her unit leader position and stipend and asserted that the transfer was disciplinary.

The boundaries of our jurisdiction are narrow. Ridgefield Park Bd. of Ed. v. Ridgefield Park Ed. Ass'n, 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 grievance's merits.

The placement of non-punitive comments about attendance in an evaluation is not mandatorily negotiable. In Old Bridge Tp. Bd. of Ed., P.E.R.C. No. 88-129, 14 NJPER 413 (¶19165 1988), we restrained binding arbitration of a grievance contesting an attendance rating of "D" on a year-end evaluation. We stated:

The rating was made on an annual performance evaluation. The evaluation does not formally reprimand Wiget or warn her of more severe discipline if there is no improvement. The custodian was not subjected to any loss of earnings. There is no apparent punitive purpose in the attendance rating. Accordingly, we hold that the rating is evaluative and not arbitrable [Id. at 414]

Old Bridge applies to these evaluative opinions. See also N. Plainfield Bd. of Ed., P.E.R.C. No. 89-94, 15 NJPER 252 (¶20102 1989); Neptune Tp. Bd. of Ed., P.E.R.C. No. 88-114, 14 NJPER 349 (¶19134 1988); Holland Tp. Bd. of Ed., P.E.R.C. No. 87-43, 12 NJPER

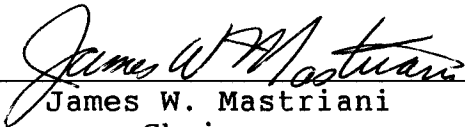
824 (¶17316 1986), aff'd App. Div. Dkt. No. A-2053-86T8 (10/23/87).

We accordingly restrain binding arbitration.

ORDER

The Board's request for a restraint of binding arbitration is granted.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Goetting, Grandrimo and Wenzler voted in favor of this decision. Commissioner Smith voted against this decision. Commissioners Bertolino and Regan abstained from consideration.

DATED: Trenton, New Jersey
December 19, 1991
ISSUED: December 20, 1991