

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

STATE-OPERATED SCHOOL DISTRICT  
OF THE CITY OF NEWARK,

Petitioner,

-and-

Docket No. SN-96-126

CITY ASSOCIATION OF SUPERVISORS  
AND ADMINISTRATORS,

Respondent.

SYNOPSIS

The Public Employment Relations Commission denies the request of the State-Operated School District of the City of Newark for a restraint of binding arbitration of a grievance filed by the City Association of Supervisors and Administrators. The grievance contests an alleged change in evaluation procedures whereby administrators could not, while being evaluated by an assessor, visit the class of any teacher who had not consented to be observed. The Commission holds that such a claim is not preempted by any statute or regulation and that the claim, if sustained by an arbitrator, would not impede the employer's statutory duty to scrutinize the performance of principals and vice-principals.

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. 97-118

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Appearances:

For the Petitioner, Sills, Cummmis, Zuckerman, Radin  
Tischman, Epstein & Gross, attorneys (Derlys Maria  
Guitierrez, of counsel)

For the Respondent, Anthony P. Sciarrillo, attorney

DECISION AND ORDER

On May 8, 1996, the State-Operated School District of the City of Newark petitioned for a scope of negotiations determination. The District seeks a restraint of binding arbitration of a grievance filed by the City Association of Supervisors and Administrators. The grievance contests an alleged change in evaluation procedures.

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

CASA represents the District's principals and vice-principals. The parties' grievance procedure ends in binding arbitration.

N.J.S.A. 18A:7A-45 requires the assessment of principals and vice-principals in a State-operated school district. The Commissioner of Education is responsible for adopting criteria for evaluating principals and vice-principals and the evaluations are to be conducted by an evaluation unit of outside assessors established by the superintendent of the State-operated district.

On December 19, 1995, Dr. Beverly Hall, the State district superintendent, issued a three-page memorandum to principals and vice-principals regarding the evaluations to be performed by the outside assessors. The memorandum stated that an assessor would be present when a principal or vice-principal conducted an observation of a classroom teacher. It also stated that such observations would be performed only with a "consenting teacher volunteer" and that the teacher could decide whether to place the administrator's report in his or her personnel file as a formal observation. The District characterizes these observations as "mock observations" permitting the outside assessor to evaluate the principal's skills in conducting teacher observations. It thus permits teachers not to include the observation reports in their files and wants only teachers who volunteer to participate.

On January 30, 1996, CASA filed a Step 2 grievance asserting that the part of the directive specifying that principals and vice-principals could observe only volunteer teachers violated the parties' agreement and past practices. The grievance sought the rescission of that part of Hall's memorandum and the issuance of a

notice that the requirement had been rescinded. The grievance was denied and CASA demanded arbitration. This petition ensued.

Our jurisdiction is narrow. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 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.

Thus, we cannot consider the merits of the grievance or any of the District's contractual defenses.

Local 195, IFPTE v. State, 88 N.J. 393 (1982), articulates the standards for determining whether a subject is mandatorily negotiable:

[A] subject is negotiable between public employers and employees when (1) the item intimately and directly affects the work and welfare of public employees; (2) the subject has not been fully or partially preempted by statute or regulation; and (3) a negotiated agreement would not significantly interfere with the determination of governmental policy. To decide whether a negotiated agreement would significantly interfere with the determination of governmental policy, it is necessary to balance the interests of the public employees and the public employer. When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions. [Id. at 404-405]

In general, the criteria to be used in evaluating school district personnel are not mandatorily negotiable while evaluation procedures which are not expressly, specifically or comprehensively preempted by education statutes or regulations are mandatorily negotiable. See Bethlehem Tp. Bd. of Ed., 92 N.J. 38 (1982); Ocean Tp. Bd. of Ed. and Ocean Tp. Ed. Ass'n, P.E.R.C. No. 85-123, 11 NJPER 378 (¶16137 1985), aff'd NJPER Supp.2d 164 (¶144 App. Div. 1986), certif. den. 105 N.J. 547 (1986).

The parties' dispute is narrow and specific. The only objection made to Hall's memorandum is its directive that administrators could not, while being evaluated by an assessor, visit the class of any teacher who had not consented to be observed.

No statute or regulation preempts this dispute from arbitration. CASA and the employer have respectively cited N.J.S.A. 18A:7A-40 and N.J.S.A. 18A:7A-45. They provide:

18A:7A-40

- a. When the board of education is removed and a State-operated district is established, pursuant to section 1 of this amendatory and supplementary act, or when local control is reestablished, pursuant to section 16 of this amendatory and supplementary act, collective bargaining agreements entered into by the school district shall remain in force, except where otherwise expressly provided in this amendatory and supplementary act.
- b. Except where otherwise expressly provided in this amendatory and supplementary act, all teaching staff members and other employees of a State-operated district shall retain

and continue to acquire all rights and privileges acquired pursuant to Title 18A of the New Jersey Statutes. After the reestablishment of local control in the district, the board shall preserve and recognize all rights and privileges acquired prior to and during the State operation of the district.

18A:7A-45

- a. The Commissioner of Education shall adopt criteria for the evaluation of building principals in a State-operated school district.
- b. Upon appointment, the State district superintendent shall establish an assessment unit which shall conduct on-site evaluations of each building principal in accordance with the criteria established by the commissioner and render evaluation reports to the State district superintendent. No less than three evaluations shall be performed for each building principal within six months following the reorganization of the central administrative and supervisory staff required by section 11 of this act. All personnel records for building principals prepared before the establishment of the State-operated district shall be sealed upon issuance of the State Board of Education order establishing the State-operated school district.
- c. Notwithstanding any other provisions of law or contract, the State district superintendent, after completion of an assessment cycle of not less than 12 months, may dismiss any tenured building principal for inefficiency, incapacity, unbecoming conduct or other just cause as defined by the criteria for principal performance in State-operated districts established by the commissioner pursuant to subsection a. of this section. Nothing herein shall preclude the dismissal of a tenured building principal prior to the completion of an assessment cycle of not less than 12 months if the basis for the dismissal is incapacity or unbecoming conduct. All dismissals of tenured building principals shall be

conducted in accordance with the procedures set forth in sections 10, 11, 13, 14, 16 and 17 of chapter 6 of Title 18A of the New Jersey Statutes, except that the State district superintendent shall act as the board of education in all respects.

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- e. Evaluations of building principals conducted by district personnel prior to the establishment of the State-operated school district shall not be admissible in a tenure hearing for any building principal except in the following circumstances:
  - 1. Evaluations of building principals performed by members of the State-operated school district's central administrative and supervisory staff who are hired by the State district superintendent to fill one of the positions in the reorganized central office of the State-operated district shall be admissible;
  - 2. Evaluations of building principals made by individuals who were no longer employed by the school district as of the date it became a State-operated school district shall be admissible only if the evaluation was performed more than five years preceding the date of the establishment of the State-operated district.

N.J.S.A. 18A:7A-40 preserves the rights of employees of state-operated school districts under collective bargaining agreements and education laws except where specifically superseded. While N.J.S.A. 18A:7A-45 addresses the evaluation of principals and vice-principals of such districts in some detailed and specific

ways, none of its provisions addresses the narrow issue presented by this grievance.<sup>1/</sup>

Applying the balancing test set forth in Local 195 to the facts and arguments presented in this case, we find that the interests of the members of CASA's unit predominate. In addition to mandating evaluations of school building administrators following a State takeover, N.J.S.A. 18A:7A-45 makes it clear that such evaluations may have a direct and immediate impact on the continued employment of principals regardless of their past employment history and tenure. The Supreme Court in State v. State Supervisory Employees Ass'n, 78 N.J. 54, 84 (1978), observed that "nothing more intimately and directly affects an employee than whether he or she has a job." The evaluation process mandated by the State takeover statute bears on that employee interest. The requirement that only volunteer teachers be observed could affect a principal's ability to demonstrate his or her skill in evaluating teaching staff if few or no teachers in the administrator's building consented to the observations.

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<sup>1/</sup> The District argues that some of the contract articles cited in CASA's grievance specify which district employees should evaluate the performance of administrators in CASA's unit and that such articles conflict with and are preempted by the provisions of N.J.S.A. 18A:7A-45 which direct that evaluations be performed by the State's assessment team. We need not address that issue because CASA's grievance focuses on a single issue and does not challenge the District's assignment of assessors to the principals and vice-principals being observed.



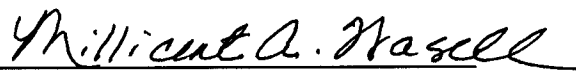
The District superintendent's memorandum does not specify that assessment teams must view principals as they observe and evaluate teachers at particular grade levels or in particular subject areas. The only precondition listed is that the teachers observed be volunteers. Thus, the only interest which has been articulated by the District is in not having teachers adversely affected by an evaluation process which is focusing upon their principals and vice-principals and not on them. While that issue is a legitimate concern to the teachers, it is not a matter of significant educational policy. Moreover, this concern is eliminated by giving teachers the option of not including the arbitrators' reports in their personnel files as formal observations. Absent any other articulated basis for the requirement, we cannot find that the District's interest in imposing the requirement outweighs the employee's interest in negotiating over that requirement.

A decision allowing this grievance to proceed to arbitration does not represent a determination that the principals and vice-principals represented by CASA have a contractual right to observe classes of non-consenting teachers when their performance as evaluators of teaching staff is being assessed. We hold only that such a claim, if sustained by an arbitrator, would not impede the employer's statutory duty to scrutinize the performance of principals and vice-principals.

ORDER

The request of the State-Operated School District of Newark for a restraint of binding arbitration is denied.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan and Finn voted in favor of this decision. Commissioners Klagholz and Ricci voted against this decision. Commissioner Boose abstained from consideration. Commissioner Wenzler was not present.

DATED: March 26, 1997  
Trenton, New Jersey  
ISSUED: March 26, 1997