

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

P.B.A. LOCAL #130,

Petitioner,

-and-

Docket No. CO-77-16

TOWNSHIP OF WEST WINDSOR,

Respondent.

SYNOPSIS

In a scope of negotiations proceeding initiated by the P.B.A., the Commission rules on the negotiability of a contractual grievance procedure more expansive than that contained in the present collective negotiations agreement between the parties. The P.B.A. had proposed, during the course of negotiations for a successor agreement, that the existing contractual grievance procedure be expanded to include appeals of the interpretation, application or violation of policies, agreements and administrative decisions affecting unit members. The Township contended that a collectively negotiated grievance procedure may only encompass the interpretation of terms and conditions of employment included in the body of a negotiations agreement. The Commission notes that the instant negotiability dispute is controlled by the clear and unambiguous language of N.J.S.A. 34:13A-5.3 and determines that the Township and the P.B.A. must negotiate and include in any agreement entered into between the parties written policies setting forth a grievance procedure by means of which employees represented by the P.B.A. or their representatives may appeal the interpretation, application or violation of policies, agreements and administrative decisions affecting them. Furthermore, the Township was ordered to negotiate, upon the demand of the P.B.A., those procedural aspects of the grievance procedure such as, but not limited to, the number of steps in the grievance procedures and the time limits associated with such steps, as well as the terminal step of such procedures.

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TOWNSHIP OF WEST WINDSOR,

Respondent.

Appearances:

For the Petitioner, Lefkowitz, O'Hara & Wallack, Esqs.
(Mr. Howard G. Golden, of Counsel)

For the Respondent, Schragger, Schragger & Lavine, Esqs.
(Mr. Frederick J. Schragger, of Counsel)

DECISION AND ORDER

On December 30, 1976, P.B.A. Local #130 (hereinafter the "P.B.A.") filed a Petition for Scope of Negotiations Determination with the Public Employment Relations Commission (hereinafter the "Commission") seeking a determination as to whether certain matters in dispute between the Petitioner and the Township of West Windsor (hereinafter the "Township") are within the scope of collective negotiations.^{1/}

1/ The Commission's authority to render such determinations is set forth in N.J.S.A. 34:13A-5.4(d), which states: "The commission shall at all times have the power and duty, upon the request of any public employer or majority representative, to make a determination as to whether a matter in dispute is within the scope of collective negotiations. The commission shall serve the parties with its findings of fact and conclusions of law. Any determination made by the commission pursuant to this subsection may be appealed to the Appellate Division of the Superior Court." To implement the cited legislation the Commission has established administrative "scope of negotiations proceedings", and has promulgated rules of practice and procedure governing such proceedings. (See N.J.A.C. 19:13-1.1 et seq.)

The dispute initially arose during the course of collective negotiations and concerns the negotiability of a contractual grievance procedure more expansive than that contained in the present collective negotiations agreement between the parties. More specifically, the P.B.A. has proposed that the contractual grievance procedure be expanded to include appeals of the interpretation, application or violation of policies, agreements and administrative decisions affecting unit members, while the Township contends that a collectively negotiated grievance procedure may only encompass the interpretation of terms and conditions of employment included in the body of the agreement.

Based upon the Township's position in this matter, the P.B.A. filed an unfair practice charge with the Commission, Docket No. CO-77-96, on October 16, 1976, alleging that the Township was refusing to negotiate in good faith concerning a term and condition of employment, in violation of N.J.S.A. 34:13A-5.4(a)(5). The P.B.A. subsequently withdrew the aforementioned unfair practice charge and filed the instant petition. Letter briefs were filed by both parties and the Township requested oral argument before the Commission, which request was granted. On March 16, 1977, the parties argued orally before the Commission in the presence of a certified shorthand reporter who provided a stenographic recording of the entire proceeding.

In its petition and letter brief, as well as at oral argument before the Commission, the P.B.A. maintained that the

instant dispute is controlled by the clear and unambiguous language of N.J.S.A. 34:13A-5.3, which provides in pertinent part:

Public employers shall negotiate written policies setting forth grievance procedures by means of which their employees or representatives of employees may appeal the interpretation, application or violation of policies, agreements, and administrative decisions affecting them, provided that such grievance procedures shall be included in any agreement entered into between the public employer and the representative organization. Such grievance procedures may provide for binding arbitration as a means of resolving disputes.

The P.B.A. contends that the language quoted above is mandatory in nature, and that it requires that grievance procedures negotiated between public employers and employee representatives provide a forum by which employees or their representatives "...may appeal the interpretation, application or violation of policies, agreements, and administrative decisions affecting them..."^{2/}

The Township urges that the Courts of this State have interpreted the statutory mandate, cited above, as requiring that an item must be a mandatory subject of negotiations in order for it to be the subject of a contractual grievance procedure. Particular reliance is placed on that line of decisions commonly known as the Dunellen Trilogy and other decisions of the New Jersey

^{2/} N.J.S.A. 34:13A-5.3.

Supreme Court.^{3/} Also cited is the language added to N.J.S.A. 34:13A-5.3 by the 1974 amendments to the New Jersey Employer-Employee Relations Act (hereinafter the "Act"), Chapter 123, P.L. 1974, which adds the following sentence immediately after the previously cited portion of the Act:

Notwithstanding any procedures for the resolution of disputes, controversies or grievances established by any other statute, grievance procedures established by agreement between the public employer and representative organization shall be utilized for any dispute covered by the terms of such agreement.

In accordance with the aforementioned statutory language and judicial decisions, the Township contends that the parties' present contractual grievance procedure, which provides for binding arbitration of grievances resulting from "...problems which may arise effecting the terms and conditions of this Agreement", satisfies in all respects the aforementioned requirements of N.J.S.A. 34:13A-5.3.

The Township's reliance on the Dunellen Trilogy, the additional Court decision cited and the amended statutory language, argued in support of its thesis, is misplaced. The decisions in the Dunellen Trilogy concerned the negotiability and, inter alia,

^{3/} Board of Education of Englewood v. Englewood Teachers Assn., 64 N.J. 1 (1973); Dunellen Board of Education v. Dunellen Education Association, 64 N.J. 17 (1973); and Burlington County College Faculty Assn. v. Board of Trustees of Burlington County College, 64 N.J. 10 (1973). Respondent also relies upon Association of State College Faculty v. New Jersey Board of Education, 66 N.J. 72 (1974).

the arbitrability of certain management prerogatives regarding educational policy decisions made by boards of education under the authority granted by the Education Law (Title 18A-1 et seq.) These decisions dealt with arbitrability and the appropriate forum for the resolution of disputes. They did not relate to the scope of the grievance procedure.

The Commission, having carefully considered the arguments advanced by the parties in this matter, finds that the dispute as framed by them, i.e., what is the required breadth of the matters which must be subject to the contractual grievance procedure negotiated pursuant to N.J.S.A. 34:13A-5.3, presents it with a question of first impression.

The statutory subsection in dispute, with the exception of the amendatory language regarding the utilization of such procedures, has been contained in the Act since its inception as Chapter 303, P.L. 1968. In Lullo v. International Association of Fire Fighters, 55 N.J. 409 (1970), the Supreme Court of this State reviewed the constitutionality and discussed the interrelationship of the statutory language here in dispute with the other provisions of the subsection and the Act. The Court, speaking through Mr. Justice Francis, noted that Article I, Paragraph 19, of the New Jersey Constitution which says, "Persons in public employment shall have the right to...present and make known to.../the public employers/ their grievances and proposals through representatives of their own choosing", implies that public employees have substantial rights to collective representation

and negotiation,^{4/} and that this constitutional admonition imposed on the employer in the public sector the duty to meet employees or their chosen representative and to consider in good faith any grievance or proposals presented on their behalf.^{5/} Mr. Justice Francis continued:

It was in this connection that we referred to the continuing power of the lawmakers to enact such further statutes as may be compatible with Article I, Paragraph 19, to both substantively and procedurally flesh out the constitutional guarantees. (Citations omitted.)

In 1966 the Legislature, noting Article I, Paragraph 19 of the Constitution...created a commission to study the need for establishing an effective procedure for considering the grievances of public employees...The New Jersey Commission Report...was filed on January 9, 1968...In particular it said that such legislation..."should establish the obligation of public employers***to meet with employees through representatives of their own choosing for the mutual resolution ...of grievances... (55 N.J. at 416, 417)

Chapter 303, L. 1968, was adopted in response to the New Jersey Commission Report and incorporated most of its recommendations... (55 N.J. at 419)

Later in that decision, the Court characterized the mandate of that subsection of the Act, i.e., N.J.S.A. 34:13A-5.3, which is the subject of the instant petition, by saying:

Further the parties are mandated to negotiate written policies setting forth "grievance procedures by means of which their employees or representatives of employees may appeal the interpretation, application or violation of policies, agreements, and administrative

^{4/} 55 N.J. at 439

^{5/} 55 N.J. at 416

decision affecting them," which shall be included in the written collective agreement mentioned above. The paragraph adds that "such grievance procedures may provide for binding arbitration as a means for resolving disputes." 55 N.J. at 437.

We determine, in agreement with the Court's analysis above, that the statutory language is obligatory in nature and must be viewed as imposing an affirmative duty on public employers and majority representatives of public employees, and must provide a forum by means of which public employees or their representatives may appeal the interpretation, application or violation of policies, agreements, and administrative decisions affecting them.

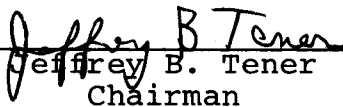
This is not to say, however, that all such negotiated procedures must provide for binding arbitration as a terminal step. The statutory language permits but does not compel such a terminal step. Additionally, the statute does not mandate the various steps to be included in a negotiated grievance procedure or their timing. The parties are also permitted to negotiate alternative procedures which may provide for one class or type of grievance to proceed to a decision by an impartial third party, binding or otherwise, and providing another forum for the disposition of another class of grievances. Matters such as the actual procedure as well as the terminal step thereof are mandatory subjects of negotiations and are to be established by negotiated agreement between the parties. All such agreements must be reduced to writing and included in the collectively negotiated contract.

ORDER

Pursuant to N.J.S.A. 34:13A-5.4(d), N.J.A.C. 19:13-3.7, and the above discussion, the Public Employment Relations Commission determines that the Township of West Windsor and P.B.A. Local #130 must negotiate and include in any agreement entered into between the parties written policies setting forth a grievance procedure by means of which employees represented by P.B.A. Local #130 or their representatives may appeal the interpretation, application or violation of policies, agreements and administrative decisions affecting them.

Furthermore, the Township of West Windsor is ordered to negotiate, upon the demand of P.B.A. Local #130, those procedural aspects of the grievance procedure such as but not limited to the number of steps in the procedure and the time limits associated with such steps as well as the terminal step of such procedures.

BY ORDER OF THE COMMISSION



Jeffrey B. Tener
Chairman

Chairman Tener, Commissioners Forst, Hartnett, Hipp and Parcels
voted for this decision
Commissioner Hurwitz voted against this decision.

DATED: Trenton, New Jersey
April 19, 1977
ISSUED: April 20, 1977