

P.E.R.C. NO. 85-31

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HUDSON COUNTY AREA VOCATIONAL-
TECHNICAL SCHOOL BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-84-115

HUDSON COUNTY AREA VOCATIONAL-
TECHNICAL EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission holds that a grievance that the Hudson County Area Vocational-Technical Education Association filed against the Hudson County Area Vocational-Technical School Board of Education may be submitted to binding arbitration. The grievance alleges that the Board violated its collective negotiations agreement with the Association when it discharged its Director of Security, allegedly without just cause.

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Appearances:

For the Petitioner, Schumann, Hession, Kennelly
& Dorment, Esqs. (Francis DeStefano, of Counsel
and on the Brief)

For the Respondent, Philip Feintuch, Esq.

DECISION AND ORDER

On May 24, 1984, the Hudson County Area Vocational-
Technical School Board of Education ("Board") filed a Petition
for Scope of Negotiations Determination with the Public Employ-
ment Relations Commission. The petition seeks a restraint of
binding arbitration of a grievance which the Hudson County Area
Vocational-Technical Education Association ("Association") filed.
The grievance alleges that the Board violated its collective
negotiations agreement with the Association when it discharged
its Director of Security, allegedly without just cause.

Both parties have filed briefs. The following facts
appear.

The Association is the majority representative of the
Board's non-instructional personnel. The Board and the Association
have entered a collective negotiations agreement effective from

July 1, 1983 through June 30, 1984. That agreement contains a grievance procedure culminating in arbitration.^{1/} Article V, Section 3 provides that employees may not be disciplined without just cause and subjects disciplinary disputes to the negotiated grievance procedures.

James Bean was employed as Director of Security for the Hudson County Area Vocational-Technical School. On December 22, 1983, Mr. Bean allegedly assaulted a student at the Jersey City Center of the Hudson County Vocational School. Bean alleged he was acting in self-defense in order to control a tumultuous situation. The Board's Administrative Council, composed of the School Superintendent, the Business Administrator, and the Board Secretary, interviewed witnesses, conducted a hearing, and presented a report to the Board of Education. On April 26, 1984, the Board held a hearing and found Bean guilty of assault and conduct unbecoming an administrator. It then discharged him.

On May 11, 1984, the Association filed a demand for arbitration on Bean's behalf seeking reinstatement with back pay. The instant petition ensued.^{2/}

N.J.S.A. 34:13A-5.3 provides, in pertinent part:

^{1/} The contract actually states: "The determination [of] the arbitrator shall be advisory. However, if the Board fails to agree with an arbitrator's award, then all awards thereafter shall be binding upon the parties."

^{2/} An action in lieu of prerogative writ is also pending against the Board in Superior Court.

In addition, the majority representative and designated representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievances, disciplinary disputes, and other terms and conditions of employment. Nothing herein shall be construed as permitting negotiation of the standards or criteria for employee performance.

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Public employers shall negotiate written policies setting forth grievance and disciplinary review procedures by means of which their employees or representatives of employees may appeal the interpretation, application or violation of policies, agreements, and administrative decisions, including disciplinary determinations, affecting them, that such grievance and disciplinary review procedures shall be included in any agreement entered into between the public employer and the representative organization. Such grievance and disciplinary review procedures may provide for binding arbitration as a means for resolving disputes. The procedures agreed to by the parties may not replace or be inconsistent with any alternate statutory appeal procedure nor may they provide for binding arbitration of disputes involving the discipline of employees with statutory protection under tenure or civil service laws. Grievance and disciplinary review procedures established by agreement between the public employer and the representative organization shall be utilized for any dispute covered by the terms of such agreement. (Emphasis supplied).

Under this statute, as interpreted by the Appellate Division of the Superior Court in Communications Workers of America, AFL-CIO v. City of East Orange, 193 N.J. Super. 658 (App. Div. 1984), pet. for certif. pending ("East Orange"), a disciplinary dispute may be submitted to binding arbitration if the disciplined employee has no statutory protection or statutory appeal procedure concerning that specific type of determination. See also Bergen County Law Enforcement Group v. Bergen Cty Bd. of Chosen Freeholders,

191 N.J. Super. 319 (App. Div. 1983) ("Bergen County").^{3/}

In the instant case, the Board's petition states that Bean is without tenure and thus the Board has not initiated removal proceedings under the Tenure Hearing Act. Further, no other specific statutory protection or appeal procedure exists with regards to this dispute.^{4/} Under these same circumstances, the Court in East Orange held that disciplinary disputes involving the discharge of a board's non-instructional, non-tenured personnel may be submitted to binding arbitration.^{5/} Accordingly, this dispute may be submitted to binding arbitration under N.J.S.A. 34:13A-5.3 and East Orange.^{6/}

ORDER

The request of the Hudson County Area Vocational-Technical School Board of Education for a permanent restraint

- ^{3/} The Board has also alleged that it did not contractually agree with the Association to submit disputes concerning employee discharges to binding arbitration. That argument is for an arbitrator or court to decide, not us. See Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978). Similarly, we do not consider the merits of the grievance. Finally, we note that this dispute may clearly be submitted to advisory arbitration under N.J.S.A. 34:13A-5.3. See In re New Providence Bd. of Ed., P.E.R.C. No. 83-38, 9 NJPER 70 (¶14038 1982). See also Bernards Twp. Bd. of Ed. v. Bernards Twp. Ed. Ass'n, 79 N.J. 311 (1979).
- ^{4/} The Board notes the pendency of Bean's court action in lieu of prerogative writ. In East Orange, the Court held that such an action, which does not permit de novo review of the merits of a disciplinary determination, is not an alternate statutory appeal procedure under N.J.S.A. 34:13A-5.3.
- ^{5/} East Orange involved a consolidation of five scope cases concerning the negotiability of disciplinary review procedures. Two of these cases specifically concerned the rights of non-instructional, non-tenured school board employees to submit disciplinary disputes to binding arbitration. See In re Willingboro Bd. of Ed., P.E.R.C. No. 83-174, 9 NJPER 356 (¶14158 1983) and In re Toms River Bd. of Ed. v. Toms River School Bus Drivers Ass'n, P.E.R.C. No. 83-148, 9 NJPER 360 (¶14159 1983). The Commission found these disputes arbitrable and the Appellate Division agreed in the East Orange decision. A petition for certification has been filed in the Willingboro case.
- ^{6/} We, of course, express no opinion with regards to the merits of the grievance.

of arbitration of the grievance filed by James Bean is denied.

BY ORDER OF THE COMMISSION



James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Wenzler, Butch, Suskin and Graves voted for this decision. None opposed. Commissioners Hipp and Newbaker abstained.

DATED: Trenton, New Jersey
September 19, 1984
ISSUED: September 20, 1984