

P.E.R.C. NO. 87-155

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

DELRAN BOARD OF EDUCATION,

Petitioner,

-and-

Docket No. SN-87-50

DELRAN EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission determines the negotiability of several provisions the Delran Education Association seeks to maintain in a successor collective negotiations agreement with the Delran Board of Education. The Commission finds the following provisions to be mandatorily negotiable: grievance definition and discipline without just cause. The Commission finds, however, that a provision requiring 60 days advance notice before the imposition of discipline is not mandatorily negotiable.

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Appearances:

For the Petitioner, Cassetta & Taylor
(Garry M. Whalen)

For the Respondent, Hriar Zakarian, NJEA Uniserv
Representative

DECISION AND ORDER

On February 20, 1987, the Delran Board of Education ("Board") filed a Petition for Scope of Negotiations Determination. The Board seeks a determination that certain provisions the Delran Education Association ("Association") seeks to maintain in a successor collective negotiations agreement are not mandatorily negotiable.

The parties have filed briefs and documents. The following facts appear.

The Association is the majority representative of certain Board employees. The Board and Association entered a collective negotiations agreement effective from July 1, 1985 to June 30,

1987. That agreement contained several articles which the Association wants in the successor agreement.^{1/}

Article IV.A.1 of the predecessor agreement defines a grievance as:

[A] claim by a Negotiations Unit Member or by the Association based upon the interpretation, application, or violation of this agreement, policies or administrative decisions affecting a Negotiations Unit Member or a group of Negotiations Unit Members.

This language is mandatorily negotiable. We do not agree with the Board that the language conflicts with W. Windsor Tp. v. PERC, 78 N.J. 98 (1978). See Weehawken Tp., P.E.R.C. No. 81-104, 7 NJPER 146 (¶12065 1981)

Article IV.C provides:

No member shall be disciplined or reprimanded without just cause.

Article IV.G provides:

No member shall be reduced in rank or compensation or deprived of any professional advantage without just cause and sixty days written notice.

The just cause provisions are mandatorily negotiable. When the Legislature amended section 5.3 to make disciplinary disputes mandatorily negotiable, it necessarily contemplated that parties

^{1/} The Association concedes that these articles, or portions thereof, are not mandatorily negotiable: XI, XVIII.C (Second sentence), XVIII.D, XX and the underlined phrase in Article XXIV.A. This decision will discuss only the articles which remain in dispute.

could agree to include in their contract the traditional just cause standard for reviewing disciplinary disputes. Since the amendment, many cases have found disciplinary disputes arising under just cause clauses to be covered by that amendment. Morris Cty. College Staff Ass'n v. Cty. of Morris, 100 N.J. 383 (1985); CWA v. PERC, 193 N.J. Super. 658 (App. Div. 1984); Bergen Cty. Law Enforcement Group v. Bergen Cty. Bd. of Chosen Freeholders, 191 N.J. Super. 319 (App. Div. 1973); East Brunswick Bd. of Ed., P.E.R.C. No. 84-149, 10 NJPER 426 (¶15192 1984), aff'd App. Div. Dkt. No. A-5596-83T6 (3/19/85), certif. den. 101 N.J. 280 (1985). While disciplinary disputes may not be submitted to binding arbitration if an alternate statutory appeal procedure is available,^{2/} these just cause provisions, standing alone, do not suggest that all disciplinary disputes are arbitrable; and the Association asserts that other contractual clauses already recognize that different disputes may need to be resolved in different forums. Contrast New Providence Bd. of Ed., P.E.R.C. No. 83-38, 9 NJPER 70 (¶14038 1982). See also Piscataway Tp. Bd. of Ed., P.E.R.C. No. 87-151, 13 NJPER ____ (¶____ 1987) (anti-discrimination clause negotiable, although some personnel decisions may not be submitted to binding arbitration). Should the Association seek binding arbitration of a disciplinary dispute which

^{2/} For example, the discharge of a tenured teacher could not be submitted to arbitration under a just cause provision since N.J.S.A. 18A:6-10 provides an alternate statutory appeal procedure.

is preempted by an alternate statutory appeal procedure, the Board may seek a restraint of arbitration. Furthermore, even if a particular grievance under the just cause clauses may not be submitted to binding arbitration, it may be processed through all other levels of the negotiated grievance procedures. Id. In sum, we hold that just cause clauses which stand alone and which do not misstate the legal arbitrability of disciplinary disputes are mandatorily negotiable.^{3/}

However, we agree with the Board that the sixty day written notice requirement restricts its right to take disciplinary action and is not simply a notice requirement. Cf. City of Atlantic City, P.E.R.C. No. 87-63, 13 NJPER 5 (¶18003 1986); Weehawken Tp., P.E.R.C. No. 86-81, 12 NJPER 94 (¶17035 1985); City of Newark, P.E.R.C. No. 86-79, 12 NJPER 91 (¶17033 1985).^{4/}

^{3/} We overrule prior decisions holding that a just cause clause by itself had to specify the disciplinary disputes which were not legally arbitrable. North Hunterdon Bd. of Ed., P.E.R.C. No. 85-100, 11 NJPER 233 (¶16090 1985); Keansburg Bd. of Ed., P.E.R.C. No. 85-55, 10 NJPER 649 (¶15313 1984). Section 5.3's exemptions are incorporated by reference in every contract, State v. State Supervisory Employees Ass'n, 78 N.J. 54 (1978).


^{4/} We have held that an arbitrator is permitted to consider the circumstances surrounding the imposition of discipline in assessing just cause. See Atlantic City.

ORDER

The following provisions of the predecessor agreement are mandatorily negotiable:

Article IV, Sections A.1, C and G except for the phrase "and sixty days written notice."

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Johnson, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Reid abstained.

DATED: Trenton, New Jersey
June 17, 1987
ISSUED: June 18, 1987