

P.E.R.C. NO. 92-62

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MONTCLAIR BOARD OF EDUCATION,

Respondent,

-and-

Docket No. SN-92-29

MONTCLAIR EDUCATION ASSOCIATION,

Petitioner.

SYNOPSIS

The Public Employment Relations Commission finds that a provision in a contract between the Montclair Education Association and the Montclair Board of Education entitled "Non-certificated, Non-tenured Dismissal Procedure" must be read to provide that the Board has the burden of proof when it seeks to impose discipline.

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Appearances:

For the Respondent, McCarter & English, attorneys (Brenda C. Liss, of counsel)

For the Petitioner, Klausner & Hunter, attorneys (Stephen B. Hunter, of counsel)

DECISION AND ORDER

On August 28, 1991, the Montclair Education Association petitioned for a scope of negotiations determination. The Association seeks a declaration that N.J.S.A. 34:13A-29 preempts a portion of the discipline provision of its collective negotiations agreement with the Montclair Board of Education.

The parties have submitted briefs and documents. These facts appear.

The Association represents the Board's custodians and maintenance personnel. The parties entered into a collective negotiations agreement effective July 1, 1988 through June 30, 1991. The agreement contains this provision entitled:

Non-certificated, Non-tenured Dismissal Procedure.

In the case of the dismissal or discharge of any Employee holding a non-certificated position (not currently covered by tenure) and who has completed three consecutive calendar years of employment by the Board, said Employee upon request will be given a statement of reasons in writing for such dismissal or discharge. Upon receipt of the written reasons provided upon request, the Employee shall be entitled to a Stage III Grievance hearing. Such Employee shall have the right to appeal an adverse decision at Stage III to Stage IV, provided, however, that any arbitrator considering the grievance shall not reverse or modify the action of the Board in dismissing or discharging such employee unless such arbitrator shall find that the action of the Board was arbitrary, capricious, in bad faith, without reason and in violation of the law. The decision of the arbitrator, if made within the scope of his authority as set forth in this Agreement, shall be binding.

N.J.S.A. 34:13A-29(a) provides that binding arbitration shall be the terminal step in grievance procedures with respect to disputes concerning reprimands and discipline as defined in N.J.S.A. 34:13A-22.<sup>1/</sup> N.J.S.A. 34:13A-29(b) provides that the burden of proof shall be on the employer seeking to impose discipline as defined in N.J.S.A. 34:13A-22.

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<sup>1/</sup> N.J.S.A. 34:13A-22 provides that discipline:

includes all forms of discipline, except tenure charges filed pursuant to the provisions of subsubarticle 2 of subarticle B of Article 2 of chapter 6 of Subtitle 3 of Title 18A of the New Jersey Statutes, N.J.S. 18A:6-10 et seq., or the withholding of increments pursuant to N.J.S. 18A:29-14.

Albert Greene, a custodian/boiler operator, was discharged by the Board. On August 6, 1991, the Association demanded binding arbitration of the grievance contesting his discharge. On August 28, the Association filed this petition.

The Association claims that the provision entitled "Non-certificated, Non-tenured Dismissal Procedure" provides that the grievant bear the burden of proof of establishing that the relevant personnel action was "arbitrary, capricious, in bad faith, without reason and in violation of the law." It argues that the provision cannot be read consistently with the Board's burden of proof obligations under N.J.S.A. 34:13A-29. It further argues that it is a maxim of arbitration practice that an employer cannot discipline an employee without just cause. It concludes that the Board, as a matter of law, bears the burden of proof pursuant to a just cause standard.

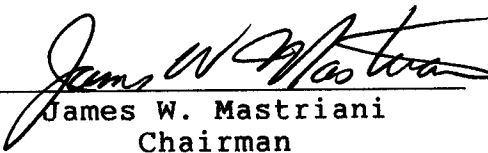
The Board claims that N.J.S.A. 34:13A-29(b) does not apply because the termination was for unsatisfactory work performance, not for disciplinary measures. Nevertheless, the Board believes that we should exercise our jurisdiction under N.J.A.C. 19:13-2.2(a)(4)(iii) to resolve this dispute. The Board contends that the Association confuses the concepts of burden of proof and standard of review. It argues that the standard of review contained in the contract is not altered by N.J.S.A. 34:13A-29(b) which says nothing about the applicable standard of review. It concludes that the Board has the burden of proving its action was not arbitrary, capricious, in bad faith, without reason or in violation of the law.

N.J.S.A. 34:13A-29(b) requires that in any grievance procedure, the burden of proof shall be on the employer seeking to impose discipline as defined in N.J.S.A. 34:13A-22. The disputed contract provision does not address which party has the burden of proof. Regardless of how that burden may have been assigned in the past, it is now statutorily assigned to the Board. State v. State Supervisory Employees Ass'n, 78 N.J. 54 (1978)(terms and conditions of employment set by statute cannot be contravened by negotiated agreement). Whether the contractual standard of review requires the Board to prove that it had just cause for its action is a question of contract interpretation that is outside our jurisdiction. Ridgefield Park Ed. Ass'n v. Ridgefield Park Bd. of Ed., 78 N.J. 144, 154 (1978).

ORDER

The parties' contract provision entitled "Non-certificated, Non-tenured Dismissal Procedure" must be read to provide that the Board has the burden of proof.

BY ORDER OF THE COMMISSION

  
James W. Mastriani  
Chairman

Chairman Mastriani, Commissioners Goetting, Grandrimo, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Bertolino and Regan abstained from consideration.

DATED: November 25, 1991  
Trenton, New Jersey  
ISSUED: November 26, 1991