

34:13A-5.3

LEGISLATIVE HISTORY CHECKLIST

(Public employee collective bargaining agreements--discipline may be covered)

NJSA 34:13A-5.3

LAWS 1982

CHAPTER 103

Bill No. A706

Sponsor(s) Paterno and others

Date Introduced Feb. 1, 1982

Committee: Assembly Labor

Senate State Govt., Federal & Interstate Relations and Veterans Affairs

Amended during passage Yes ~~No~~ Amendments denoted by asterisks

according to Governor's recommendations  
Date of Passage: Assembly Feb. 8, 1982

Re-enacted 5-24-82

Senate March 15, 1982

Re-enacted 7-22-82

Date of approval July 30, 1982

Following statements are attached if available:

Sponsor statement	Yes	<del>No</del>
Committee Statement: Assembly	<del>Yes</del>	No
Senate	Yes	<del>No</del>
Fiscal Note	Yes	No
Veto Message	Yes	<del>No</del>
Message on signing	<del>Yes</del>	No
Following were printed:		
Reports	<del>Yes</del>	No
Hearings	Yes	No

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6/22/81 JUL 1981

CHAPTER 103 LAWS OF N. J. 1982  
APPROVED 7-30-82

[OFFICIAL COPY REPRINT]  
ASSEMBLY, No. 706

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 1, 1982

By Assemblymen PATERO, BOCCHINI, T. GALLO, COWAN,  
PELLECCHIA, ZANGARI and KARCHER

Referred to Committee on Labor

AN ACT concerning disciplinary matters and amending P. L. 1968,  
c. 303.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. Section 7 of P. L. 1968, c. 303 (C. 34:13A-5.3) is amended  
2 to read as follows:

3 7. Except as hereinafter provided, public employees shall have,  
4 and shall be protected in the exercise of, the right, freely and with-  
5 out fear of penalty or reprisal, to form, join and assist any employee  
6 organization or to refrain from any such activity; provided, how-  
7 ever, that *this* right shall not extend to elected officials, members  
8 of boards and commissions, managerial executives, or confidential  
9 employees, except in a school district the term managerial execu-  
10 tive shall mean the superintendent of schools or his equivalent, nor,  
11 except where established practice, prior agreement or special cir-  
12 cumstances, dictate the contrary, shall any supervisor having the  
13 power to hire, discharge, discipline, or to effectively recommend  
14 the same, have the right to be represented in collective negotiations  
15 by an employee organization that admits nonsupervisory personnel  
16 to membership, and the fact that any organization has such super-  
17 visory employees as members shall not deny the right of that  
18 organization to represent the appropriate unit in collective negotia-  
19 tions; and provided further, that, except where established practice,  
20 prior agreement, or special circumstances dictate the contrary, no  
21 policeman shall have the right to join an employee organization

**EXPLANATION**—Matter enclosed in bold-faced brackets [thus] in the above bill  
is not enacted and is intended to be omitted in the law.

Matter printed in italics *this* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

\*—Assembly amendments adopted in accordance with Governor's recom-  
mendations May 8, 1982.

22 that admits employees other than policemen to membership. The  
23 negotiating unit shall be defined with due regard for the community  
24 of interest among the employees concerned, but the commission  
25 shall not intervene in matters of recognition and unit definition  
26 except in the event of a dispute.

27 Representatives designated or selected by public employees for  
28 the purposes of collective negotiation by the majority of the em-  
29 ployees in a unit appropriate for such purposes or by the majority  
30 of the employees voting in an election conducted by the commis-  
31 sion as authorized by this act shall be the exclusive representa-  
32 tives for collective negotiation concerning the terms and conditions  
33 of employment of the employees in such unit. Nothing herein shall  
34 be construed to prevent any official from meeting with an employee  
35 organization for the purpose of hearing the views and requests  
36 of its members in such unit so long as (a) the majority representa-  
37 tive is informed of the meeting; (b) any changes or modifications  
38 in terms and conditions of employment are made only through  
39 negotiation with the majority representative; and (c) a minority  
40 organization shall not present or process grievances. Nothing  
41 herein shall be construed to deny to any individual employee his  
42 rights under Civil Service laws or regulations. When no majority  
43 representative has been selected as the bargaining agent for the  
44 unit of which an individual employee is a part, he may present his  
45 own grievance either personally or through an appropriate repre-  
46 sentative or an organization of which he is a member and have such  
47 grievance adjusted.

48 A majority representative of public employees in an appropriate  
49 unit shall be entitled to act for and to negotiate agreements cover-  
50 ing all employees in the unit and shall be responsible for repre-  
51 senting the interest of all such employees without discrimination  
52 and without regard to employee organization membership. Pro-  
53 posed new rules or modifications of existing rules governing work-  
54 ing conditions shall be negotiated with the majority representative  
55 before they are established. In addition, the majority representa-  
56 tive and designated representatives of the public employer shall  
57 meet at reasonable times and negotiate in good faith with respect  
58 to grievances, *disciplinary disputes*, and *other* terms and conditions  
59 of employment. *\*Nothing herein shall be construed as permitting*  
59A *negotiation of the standards or criteria for employee performance.\**

60 When an agreement is reached on the terms and conditions of  
61 employment, it shall be embodied in writing and signed by the  
62 authorized representatives of the public employer and the majority  
63 representative.

64 Public employers shall negotiate written policies setting forth  
65 grievance *and disciplinary review* procedures by means of which  
66 their employees or representatives of employees may appeal the  
67 interpretation, application or violation of policies, agreements, and  
68 administrative decisions, *including disciplinary determinations*,  
69 affecting them, that such grievance *and disciplinary review* pro-  
70 cedures shall be included in any agreement entered into between  
71 the public employer and the representative organization. Such  
72 grievance *and disciplinary review* procedures may provide for  
73 binding arbitration as a means for resolving disputes. *\*The proce-*  
74 *dures agreed to by the parties may not replace or be inconsistent*  
75 *with any alternate statutory appeal procedure nor may they provide*  
76 *for binding arbitration of disputes involving the discipline of*  
77 *employees with statutory protection under tenure or civil service*  
78 *laws.\** **【**Notwithstanding any procedures for the resolution of  
79 disputes, controversies or grievances established by any other  
80 statute, grievance**】** *Grievance and disciplinary review* procedures  
81 established by agreement between the public employer and the  
82 representative organization shall be utilized for any dispute covered  
83 by the terms of such agreement *\*【except where an employee elects*  
84 *to utilize an alternative statutory appeal procedure. The election*  
85 *of one procedure, however, shall preclude the utilization of any*  
86 *alternative procedure】\**.

1 2. This act shall take effect immediately.

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ASSEMBLY, No. 706

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 1, 1982

By Assemblymen PATERO, BOCCHINI, T. GALLO, COWAN,  
PELLECCHIA, ZANGARI and KARCHER

Referred to Committee on Labor

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2 *of New Jersey:*

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2 to read as follows:

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4 and shall be protected in the exercise of, the right, freely and with-  
5 out fear of penalty or reprisal, to form, join and assist any employee  
6 organization or to refrain from any such activity; provided, how-  
7 ever, that this right shall not extend to elected officials, members  
8 of boards and commissions, managerial executives, or confidential  
9 employees, except in a school district the term managerial execu-  
10 tive shall mean the superintendent of schools or his equivalent, nor,  
11 except where established practice, prior agreement or special cir-  
12 cumstances, dictate the contrary, shall any supervisor having the  
13 power to hire, discharge, discipline, or to effectively recommend  
14 the same, have the right to be represented in collective negotiations  
15 by an employee organization that admits nonsupervisory personnel  
16 to membership, and the fact that any organization has such super-  
17 visory employees as members shall not deny the right of that  
18 organization to represent the appropriate unit in collective negotia-  
19 tions; and provided further, that, except where established practice,  
20 prior agreement, or special circumstances dictate the contrary, no  
21 policeman shall have the right to join an employee organization  
22 that admits employees other than policemen to membership. The  
23 negotiating unit shall be defined with due regard for the community  
24 of interest among the employees concerned, but the commission  
25 shall not intervene in matters of recognition and unit definition  
26 except in the event of a dispute.

**EXPLANATION**—Matter enclosed in bold-faced brackets [thus] in the above bill  
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27 Representatives designated or selected by public employees for  
28 the purposes of collective negotiation by the majority of the em-  
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38 in terms and conditions of employment are made only through  
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40 organization shall not present or process grievances. Nothing  
41 herein shall be construed to deny to any individual employee his  
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43 representative has been selected as the bargaining agent for the  
44 unit of which an individual employee is a part, he may present his  
45 own grievance either personally or through an appropriate repre-  
46 sentative or an organization of which he is a member and have such  
47 grievance adjusted.

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56 tive and designated representatives of the public employer shall  
57 meet at reasonable times and negotiate in good faith with respect  
58 to grievances, *disciplinary disputes*, and *other* terms and conditions  
59 of employment.

60 When an agreement is reached on the terms and conditions of  
61 employment, it shall be embodied in writing and signed by the  
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63 representative.

64 Public employers shall negotiate written policies setting forth  
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66 their employees or representatives of employees may appeal the  
67 interpretation, application or violation of policies, agreements, and  
68 administrative decisions, *including disciplinary determinations*,  
69 affecting them, that such grievance and *disciplinary review* pro-

70 cedures shall be included in any agreement entered into between  
 71 the public employer and the representative organization. Such  
 72 grievance *and disciplinary review* procedures may provide for  
 73 binding arbitration as a means for resolving disputes. [Notwith-  
 74 standing any procedures for the resolution of disputes, controver-  
 75 sies or grievances established by any other statute, grievance]  
 76 *Grievance and disciplinary review* procedures established by agree-  
 77 ment between the public employer and the representative organi-  
 78 zation shall be utilized for any dispute covered by the terms of such  
 79 agreement *except where an employee elects to utilize an alternative*  
 80 *statutory appeal procedure. The election of one procedure, how-*  
 81 *ever, shall preclude the utilization of any alternative procedure.*

1 2. This act shall take effect immediately.

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SPONSOR'S STATEMENT

In June of 1981 the Appellate Division of the State Superior Court, in *State of New Jersey v. Local 195 IFPTE and Local 518, SEIU*, 179 N. J. Super. 146, ruled that disciplinary determinations did not fall within the scope of mandatory negotiations and that collective agreements could not, therefore, provide for the submission to binding arbitration of contested disciplinary actions.

This bill would overturn that court ruling so as to give meaning to the State Constitution's guarantee of the right of public employees to "present . . . their grievances and proposals through representatives of their own choosing" (Article I, paragraph 19). The proposed legislation merely provides that administrative decisions affecting public employees— already clearly recognized by the court as negotiable—will be understood to encompass "disciplinary determinations" and that disciplinary review procedures as well as disciplinary disputes in general, will be a required subject of negotiations as a term and condition of employment. Disciplinary actions have an unquestionably intimate and direct effect on the work and welfare of public employees and should be viewed as only indirectly related to the right of public officials to determine substantive governmental or educational policy. The above amendments also empower public employers to negotiate binding arbitration procedures for disciplinary disputes. Under this bill, contractual provisions concerning disciplinary disputes could cover such basic issues as a review of the guilt or innocence of an employee with respect to both major and minor disciplinary infractions, and the standards for, and reasonableness of, any penalty imposed,

A706 (1982)

The proposed legislation does not challenge the exclusive power of the employer to initiate discipline or discharge a public employee for misconduct, incompetency or inefficiency so as to maintain an adequate and effective work force. It merely assures organized public employees that procedures to review such important considerations as the fairness of disciplinary actions can be available to them through negotiations, and may be examined by an independent third party, if the parties so agree in their contract.

This bill is not intended to deny any individual employee the right to elect to pursue a complaint over allegedly unjust discipline or discharge through procedures available under existing legislation, such as those procedures through which classified civil service employees may appeal disciplinary actions, denial of increments, etc. Nor is this bill intended to alter the existing procedures through which discharges or reductions in salary are sought against tenured personnel under N. J. S. 18A:6-10 et seq. or through which tenured or nontenured employees may appeal a denial of increments. It is intended to authorize the negotiation of binding arbitration merely as an alternative forum for the resolution of such disputes. Under the bill, an election of one forum will, however, preclude the employee from relitigating the grievance or disciplinary appeal through an alternative procedure.

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SENATE STATE GOVERNMENT, FEDERAL AND  
INTERSTATE RELATIONS AND VETERANS AFFAIRS  
COMMITTEE

STATEMENT TO  
ASSEMBLY, No. 706

STATE OF NEW JERSEY

DATED: MARCH 8, 1982

This bill amends the "New Jersey Employer-Employee Relations Act" (P. L. 1968, c. 303) with respect to the negotiability of disciplinary disputes and disciplinary review procedures.

Prior to June, 1981, disciplinary review procedures were provided for in negotiated agreements between the State of New Jersey and representatives of public employee organizations. In a decision issued on June 2, 1981 the Appellate Division of the New Jersey Superior Court ruled that the "State was not obligated to submit disciplinary grievances to binding arbitration since State's disciplinary determinations involved inherent managerial prerogatives with respect to its public charge to maintain an adequate and efficient work force." (*State of New Jersey v. Local 195 IFPTE and Local 518, SEIU*, 179 Super. 146)

The bill accomplishes the following:

1. The amendatory language specifically establishes that disciplinary disputes are in the category of "terms and conditions of employment" and, as such, are subject to negotiations between employers and employees.
2. The amendment requires that public employers are to negotiate with respect to written policies setting forth disciplinary review procedures by means of which employees, or their representatives, may appeal administrative decisions, including disciplinary determinations, which affect them. Negotiations on grievance procedures are already mandated by the law.
3. Disciplinary review procedures are to be provided for in any agreement entered into between public employers and representative organizations.
4. The disciplinary review procedures *may* provide for binding arbitration as a means for resolving disputes.
5. Grievance and disciplinary review procedures established by the agreement shall be utilized for any dispute covered by the terms of the agreement except when an employee elects to utilize an alternate statutory appeal procedure. Tenured teachers could

continue to utilize the appeal procedures available to them pursuant to Title 18A. Employees in the classified service of Civil Service could utilize procedures available to them through Title 11 (Civil Service). Employees who utilized one procedure would be precluded from exercising any other procedure.

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STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

May 3, 1982

ASSEMBLY BILL NO. 706

To the General Assembly:

Pursuant to Article V, Section I, Paragraph 14 of the Constitution, I herewith return Assembly Bill No. 706 with my objections and recommendations for amendment.

This bill would amend the New Jersey Employer-Employee Relations Act to: 1) require public employees to negotiate in good faith with respect to disciplinary issues and written disciplinary review procedures, and 2) permit negotiation for binding arbitration of disciplinary disputes.

I am advised that in the past public employees and employers did negotiate disciplinary procedures which could provide for binding arbitration of disciplinary disputes. Due to a court ruling last year, binding arbitration of disciplinary disputes has come to a halt. I am concerned that, due to this ruling, public employee unions have been unable to negotiate meaningful disciplinary dispute mechanisms for a significant number of public employees.

This bill, however, goes too far in that it would permit, at the option of the employee, the procedures in the collective bargaining agreement to govern employees already protected by existing statutory appeal procedures, such as those under the tenure or civil service statutes. Where a statutory mechanism exists, I believe, in the interest of uniformity, that it should be followed. Employees should not have the option of choosing the contract procedures in place of statutory ones.

The bill also would permit public employees with tenure or civil service protection to negotiate for binding arbitration of those minor disciplinary disputes which are not covered by the tenure or civil service laws. I recommend that changes in the disciplinary procedures involving employees with special statutory protection be done in the context of reviewing those statutes. The concern I would like addressed in this bill is the ability of those public employees who have no special statutory protection to negotiate for meaningful review of disciplinary actions. None of the changes I propose, however, are intended to prevent negotiation of internal disciplinary procedures which do not result in binding arbitration provided those procedures do not replace any existing statutory mechanism.

Accordingly, I recommend that the bill be amended to provide that contract provisions for binding arbitration will not apply to public employees who already

STATE OF NEW JERSEY  
EXECUTIVE DEPARTMENT

-2-

have special statutory protection and to provide that the statutory appeal procedures shall prevail over the contract ones.

In addition, I recommend that language be inserted to clarify that the standards and criteria for employee performance are not subject to negotiation. Rather it is the procedure governing discipline and the resolution of disputes which will be subject to negotiation.

Therefore, I herewith return Assembly Bill No. 706 and recommend that it be amended as follows:

Page 2, Section 1, line 59: After "employment," add "Nothing herein shall be construed as permitting negotiation of the standards or criteria for employee performance."

Page 3, Section 1, line 73: After "disputes." insert "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."

Page 3, Section 1, line 79: After "agreement" insert "." delete "except where an employee elects to utilize an alternative"

Page 3, Section 1, line 80 to 81: Delete.

Respectfully

/s/ Thomas H. Kean

GOVERNOR

[seal]

Attest:

/s/ W. Cary Edwards

CHIEF COUNSEL