



New Jersey School Boards Association

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Position Statement
OPPOSING
A-3664 (Caputo/Jasey/Dancer)

Concerns arbitration for certain non-teaching school staff.

The New Jersey School Boards Association (NJSBA), a federation of local boards of education and associate charter school associate members, appreciates the opportunity to provide feedback on Assembly Bill No. 3664, which would allow non-teaching staff members to submit to binding arbitration any dispute regarding whether there is just cause for a disciplinary action. Requiring binding arbitration for disciplinary actions against non-teaching staff is bad public policy that will provide no benefit to students, taxpayers, or the community as a whole. The NJSBA, therefore, respectfully opposes A-3664. The Association's concerns are summarized below.

Undermines public employers' responsibility. The provisions of this bill would tie the hands of local boards of education and prevent them from effectively and efficiently managing employee conduct and performance. Extending binding arbitration to disciplinary matters involving non-teaching staff employees will likely have an adverse impact on local school budgets at a time when districts are under constant pressure to do more with less.

The NJSBA certainly believes in the right of public employees to collectively negotiate over the terms and conditions of employment that intimately affect them, which may include procedures regarding grievances and disciplinary actions. However, public employers (including boards of education) should be protected in their rights and responsibilities regarding the establishment and implementation of public policy, including educational policy and operational methods.

A-3664 would allow non-teaching staff members "to submit to binding arbitration any dispute regarding whether there is just cause for a disciplinary action." In general, the NJSBA does not believe that binding arbitration is a preferred course of action as it compromises districts' ability to manage effectively and requires the expenditure of critical time and resources. Binding arbitration is also problematic as arbitrators do not live within school districts on behalf of which they are making crucial decisions, do not pay for the consequences of their decisions, and are not accountable to the taxpayers of the community. School districts' ability to retain the discretion to respond to unacceptable employee performance or conduct, without being second-guessed by an arbitrator, is an important aspect of good school management.

Ignores economic rationale for employer action. A-3664 also provides for binding arbitration "irrespective of the reason for the employer's action or failure to act." This provision would inhibit a school district's ability to make sound management decisions regarding personnel. For example, a local school district may be facing a budgetary shortfall or a decline in student enrollment. Should the board decide to eliminate a non-teaching staff member (e.g., a custodian) due to such circumstances, such an action should not be subject to binding arbitration. Boards must maintain the ability to reduce staff or not renew employment contracts when such an action is based on sound economic needs or principles.

Arbitration of non-renewals creates tenure-like protections. The NJSBA strongly believes that the decisions concerning hiring, renewal and nonrenewal of noncertificated school employees should not be the subject of negotiations and should not be permitted to be submitted to binding arbitration. Under N.J.S.A. 18A:27-4.1, renewals of employment contracts may only be granted upon the recommendation of a superintendent and approval of the board of education. New Jersey courts have upheld the notion that local boards of education have a right to decide whether or not to renew the employment contracts of noncertificated staff that are not protected by tenure rights and are hired on fixed-term contracts. Courts have also held that the decision to not renew a fixed-term contract of such staff does not constitute discipline. Unless specifically clear through contract language, non-renewals of employee contracts cannot – and should not – be reviewed by an arbitrator. It is also highly inappropriate to include “non-renewals” in the definition of disciplinary action as this would essentially grant tenure-like protection to employees who are not eligible for tenure. Boards of education currently have, and should maintain, the right to renew or not renew the fixed-term contract of an employee.

Should be determined through negotiations. Whether or not certain disciplinary actions may proceed to binding arbitration should be the subject of negotiations rather than a statutory requirement. The decision to accept or reject a bargaining unit’s proposal for binding arbitration is a philosophical issue that should be addressed by each board of education on an individual basis. This bill would provide an unfair advantage to employees and their representatives by essentially taking disciplinary action procedures off the bargaining table. The consequence of this will likely be either higher costs to local school districts or a greater willingness to tolerate ineffective employees in order to avoid the costly binding arbitration process. Neither of these outcomes will benefit students or taxpayers.

Defines ‘disciplinary action’ too broadly. What constitutes disciplinary action under A-3664 is another concern of the NJSBA. The bill defines “disciplinary action” to include, but not be limited to, reprimands, withholding of increments, termination or non-renewal of an employment contract, expiration or lapse of an employment contract or term, or lack of continuation of employment.” This definition of “disciplinary action” is far too broad and would essentially allow a staff member to submit to binding arbitration virtually any action a local board of education might take against such employee.

Runs counter to collective bargaining process. The bill also provides that an employee may submit to binding arbitration “irrespective of any contractual or negotiated provision.” This provision runs counter to the collective bargaining process whereby both sides – employees and employers – reach a mutually agreed upon arrangement regarding disciplinary procedures and other matters. This legislation undermines the collective bargaining process and would unfairly negate contractual provisions that have been negotiated in good faith and agreed to by all parties.

Imposes burdensome administrative procedure. The “just cause” standard established by A-3664 is also problematic. The NJSBA understands that just cause clauses are intended to protect employees from arbitrary and unreasonable personnel decisions. However, the just cause threshold substantially undermines the authority and flexibility of school districts to monitor staff conduct. The just cause standard imposes a burdensome, time-consuming administrative procedure that can limit management’s ability to react swiftly and effectively to employee misconduct or unsatisfactory performance.

For all of the reasons illustrated above, the NJSBA respectfully opposes A-3664 and trusts that you will give each of these concerns due consideration. Any questions may be directed to Jonathan Pushman, NJSBA Legislative Advocate, at (609) 529-5154 or jpushman@njsba.org.