


THE UNION GETS ITS KICKS
...FROM CHAPTER 66

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Chapter 66 – June 15, 2020

The new law provides **NON-TEACHING** employees the right to submit disciplinary actions to binding arbitration.

It seems simple enough on its face, but there are questions.

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N.J.S.A. 34:13A-29(a) – Existing Law

Grievance procedures shall be deemed to require **BINDING ARBITRATION** as the terminal step with respect to disputes concerning imposition of **REPRIMANDS** and **DISCIPLINE**.

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N.J.S.A. 34:13A-29(b) – Existing Law

The **BURDEN OF PROOF** shall be on the **EMPLOYER** seeking to impose **DISCIPLINE**.

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N.J.S.A. 34:13A-29(c) – Chapter 66

An employee who is **NOT** a Teaching Staff Member shall have the right to submit to **BINDING ARBITRATION** any dispute regarding whether there is **JUST CAUSE** for a **DISCIPLINARY ACTION**...

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N.J.S.A. 34:13A-29(c) – Chapter 66 (cont.)

...including, but not limited to:

- **REPRIMANDS,**
- **INCREMENT WITHHOLDINGS,**
- **TERMINATIONS OR NON-RENEWALS,**
- **EXPIRATION OF THE TERM OF AN EMPLOYMENT CONTRACT, and**
- **LACK OF CONTINUATION OF EMPLOYMENT...**

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N.J.S.A. 34:13A-29(c) – Chapter 66 (cont.)

**...IRRESPECTIVE OF THE REASON for the Employer's action or failure to act, and
IRRESPECTIVE OF ANY CONTRACTUAL OR NEGOTIATED PROVISION OR LACK THEREOF.**

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Chapter 66 Questions

- Is “JUST CAUSE” required for all discipline?
- Is “BINDING” ARBITRATION required?
- Does the law apply only to DISCIPLINARY as opposed to PERFORMANCE based actions?

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Chapter 66 Questions

- Is “JUST CAUSE” required for ALL discipline?
- Is “BINDING” arbitration required?
- Does the law apply only to DISCIPLINARY as opposed to PERFORMANCE/EVALUATIVE actions?

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Chapter 66 Questions (cont.)

- Sometimes it's not clear
- Better to be safe than sorry
- Be Prepared
- Create a PAPER TRAIL

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Important Factors in Arbitration

- JUST CAUSE
- PROGRESSIVE DISCIPLINE

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The Seven Tests for JUST CAUSE

1) ADVANCE NOTICE

Did the employer give the employee forewarning or foreknowledge of the possible or probable disciplinary consequences of the employee's conduct?

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The Seven Tests for JUST CAUSE (cont.)

2) REASONABLE EXPECTATIONS

Did the employer's policy, rule or order reasonably relate to the orderly, efficient, and safe operation of the district?

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The Seven Tests for JUST CAUSE (cont.)

3) SUFFICIENT INVESTIGATION

Did the employer, before administering discipline to the employee, try to discover whether the employee did in fact violate or disobey a policy, rule or order of the Board/Administration?

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The Seven Tests for JUST CAUSE (cont.)

4) FAIR INVESTIGATION

Was the employer's investigation conducted fairly and objectively?

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The Seven Tests for JUST CAUSE (cont.)

5) SUBSTANTIAL EVIDENCE

Did the investigation reveal substantial evidence or proof that the employee was guilty as charged?

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The Seven Tests for JUST CAUSE (cont.)

6) CONSISTENT APPLICATION

Has the district applied it's rules, orders, and penalties evenhandedly and without discrimination to all employees?

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The Seven Tests for JUST CAUSE (cont.)

7) REASONABLE AND PROPORTIONATE

Was the degree of discipline administered by the employer in a particular case reasonably related to a) the seriousness of the employee's proven offense and b) the record of the employee in his service with the employer?

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PROGRESSIVE DISCIPLINE

In progressive discipline, the consequences become more severe if misconduct is repeated or poor performance continues.

Progressive discipline serves the twin goals of providing notice of unacceptable conduct and an opportunity to change.

It also helps to ensure that employees who engage in similar conduct are disciplined in a similar manner.

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GOOD DOCUMENTATION

Documents should record all important facts and the bases for any decision in a manner that will be understandable and persuasive to an arbitrator.

A good document records a decision-making process that demonstrates three critical facts:

- The district made a well-thought-out decision;
- The decision was fair; and
- The district is a good employer.

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GOOD DOCUMENTATION (cont.)

The PAPER TRAIL should set the table for meeting the 7 tests for good cause.

EVALUATIONS, OBSERVATIONS and REPRIMANDS

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GOOD DOCUMENTATION (cont.)

WHAT SHOULD YOU DOCUMENT?

- Performance Issues
- Misconduct or Policy Violations
- Absenteeism and Tardiness

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DOCUMENTATION DOs

- Be SPECIFIC.
- IDENTIFY policies or expectations that are not being met.
- Indicate why the violation HARMS the District.
- Provide specific DIRECTION on how the employee can improve.
- Indicate CONSEQUENCES for disciplinary issues. Describe what will happen if there is no improvement. Be careful listing consequences for performance issues (could be treated as discipline).
- Be CONSISTENT. Everyone should be held to the same standard.
- FOLLOW UP – build the trail.

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DOCUMENTATION DON'Ts

- DON'T BE VAGUE. It is important for the employee to understand what he/she did wrong, what needs to improve, and how he/she will improve it.
- DON'T NITPICK. Don't be so detailed as to appear unfair (i.e.: employee was 2.5 minutes late) If such details are included, it will likely come under scrutiny whether all employees were equally penalized for such an infraction.
- Don't issue a reprimand without a WITNESS. The presence of another will help minimize questions over what occurred.
- Don't forget to file it in the PERSONNEL FILE. If the documentation is lost, it may as well have never occurred.
- Don't forget the employee SIGNATURE line. It's OK to say that the employee is acknowledging receipt – it doesn't have to say that the employee agrees with it. If the employee refuses to sign, NOTE this instead.

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QUESTIONS?

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