

# ASSEMBLY, No. 4142

## STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED JUNE 22, 2009

**Sponsored by:**

**Assemblyman JOSEPH CRYAN**

**District 20 (Union)**

**Co-Sponsored by:**

**Assemblyman DeAngelo and Assemblywoman Vainieri Huttle**

**SYNOPSIS**

Concerns certain disciplinary procedures, collective bargaining, and binding arbitration in public employment.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 11/24/2009)**

1 AN ACT concerning certain disciplinary procedures, collective  
2 bargaining, and binding arbitration, and amending P.L.1968,  
3 c.303 and P.L.1989, c.269.

4  
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
6 *of New Jersey:*

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

10 1. Except as hereinafter provided, public employees shall have,  
11 and shall be protected in the exercise of, the right, freely and  
12 without fear of penalty or reprisal, to form, join and assist any  
13 employee organization or to refrain from any such activity;  
14 provided, however, that this right shall not extend to elected  
15 officials, members of boards and commissions, managerial  
16 executives, or confidential employees, except in a school district the  
17 term managerial executive shall mean the superintendent of schools  
18 or his equivalent, nor, except where established practice, prior  
19 agreement or special circumstances dictate the contrary, shall any  
20 supervisor having the power to hire, discharge, discipline, or to  
21 effectively recommend the same, have the right to be represented in  
22 collective negotiations by an employee organization that admits  
23 nonsupervisory personnel to membership, and the fact that any  
24 organization has such supervisory employees as members shall not  
25 deny the right of that organization to represent the appropriate unit  
26 in collective negotiations; and provided further, that, except where  
27 established practice, prior agreement, or special circumstances  
28 dictate the contrary, no policeman shall have the right to join an  
29 employee organization that admits employees other than policemen  
30 to membership. The negotiating unit shall be defined with due  
31 regard for the community of interest among the employees  
32 concerned, but the commission shall not intervene in matters of  
33 recognition and unit definition except in the event of a dispute.

34 Representatives designated or selected by public employees for  
35 the purposes of collective negotiation by the majority of the  
36 employees in a unit appropriate for such purposes, by the majority  
37 of the employees voting in an election conducted by the  
38 commission as authorized by this act or, at the option of the  
39 representative in a case in which the commission finds that only one  
40 representative is seeking to be the majority representative, by a  
41 majority of the employees in the unit signing authorization cards  
42 indicating their preference for that representative, shall be the  
43 exclusive representatives for collective negotiation concerning the  
44 terms and conditions of employment of the employees in such unit.  
45 An authorization card indicating preference shall not be valid unless

**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 underlined thus is new matter.

1 it is printed in a language understood by the employees who signs  
2 it.

3 Nothing herein shall be construed to prevent any official from  
4 meeting with an employee organization for the purpose of hearing  
5 the views and requests of its members in such unit so long as (a) the  
6 majority representative is informed of the meeting; (b) any changes  
7 or modifications in terms and conditions of employment are made  
8 only through negotiation with the majority representative; and (c) a  
9 minority organization shall not present or process grievances.  
10 Nothing herein shall be construed to deny to any individual  
11 employee his rights under Civil Service laws or regulations. When  
12 no majority representative has been selected as the bargaining agent  
13 for the unit of which an individual employee is a part, he may  
14 present his own grievance either personally or through an  
15 appropriate representative or an organization of which he is a  
16 member and have such grievance adjusted.

17 A majority representative of public employees in an appropriate  
18 unit shall be entitled to act for and to negotiate agreements covering  
19 all employees in the unit and shall be responsible for representing  
20 the interest of all such employees without discrimination and  
21 without regard to employee organization membership. Proposed  
22 new rules or modifications of existing rules governing working  
23 conditions shall be negotiated with the majority representative  
24 before they are established. In addition, the majority representative  
25 and designated representatives of the public employer shall meet at  
26 reasonable times and negotiate in good faith with respect to  
27 grievances, disciplinary disputes, and other terms and conditions of  
28 employment. Nothing herein shall be construed as permitting  
29 negotiation of the standards or criteria for employee performance.

30 When an agreement is reached on the terms and conditions of  
31 employment, it shall be embodied in writing and signed by the  
32 authorized representatives of the public employer and the majority  
33 representative. In all cases, the terms of a collectively negotiated  
34 agreement shall supersede the terms of any individual contract  
35 between a public employer and an individual public employee  
36 whose position is within the bargaining unit covered by the  
37 collective agreement. No term or provision in such an individual  
38 contract may be applied or interpreted in a manner which limits,  
39 restricts, or circumscribes, or has the effect of limiting, restricting,  
40 or circumscribing a provision or right contained within the  
41 collective agreement.

42 Public employers shall negotiate written policies setting forth  
43 grievance and disciplinary review procedures by means of which  
44 their employees or representatives of employees may appeal the  
45 interpretation, application or violation of policies, agreements, and  
46 administrative decisions, including disciplinary determinations,  
47 affecting them, provided that such grievance and disciplinary  
48 review procedures shall be included in any agreement entered into

1 between the public employer and the representative organization.  
2 Such grievance and disciplinary review procedures may provide for  
3 binding arbitration as a means for resolving disputes, except that  
4 binding arbitration shall be the statutorily required terminal step for  
5 all disciplinary review procedures in all collective agreements  
6 between employers and employees subject to the provisions of  
7 P.L.1989, c.269 (C.34:13A-22 et seq.). Except as otherwise  
8 provided herein, and except as provided in P.L.1989, c.269  
9 (C.34:13A-22 et seq.), the procedures agreed to by the parties may  
10 not replace or be inconsistent with any alternate statutory appeal  
11 procedure nor may they provide for binding arbitration of disputes  
12 involving the **[discipline]** termination or discharge of employees  
13 **[with]** who have achieved statutory tenure or who have statutory  
14 protection under **[tenure or]** the civil service laws**[, except that]**.  
15 Except as otherwise required by P.L.1989, c.269 (C.34:13A-22 et  
16 seq.), such procedures may provide for binding arbitration of  
17 disputes involving the minor discipline of any public employees  
18 protected under the provisions of section 7 of P.L.1968, c.303  
19 (C.34:13A-5.3), other than public employees subject to discipline  
20 pursuant to R.S.53:1-10. Grievance and disciplinary review  
21 procedures established by agreement between the public employer  
22 and the representative organization shall be utilized for any dispute  
23 covered by the terms of such agreement. **[For the purposes of this**  
24 **section]** Except as otherwise required by P.L.1989, c.269  
25 (C.34:13A-22 et seq.), minor discipline shall mean a suspension or  
26 fine of less than five days unless the employee has been suspended  
27 or fined an aggregate of 15 or more days or received more than  
28 three suspensions or fines of five days or less in one calendar year.

29 Where the State of New Jersey and the majority representative  
30 have agreed to a disciplinary review procedure that provides for  
31 binding arbitration of disputes involving the major discipline of any  
32 public employee protected under the provisions of this section,  
33 other than public employees subject to discipline pursuant to  
34 R.S.53:1-10, the grievance and disciplinary review procedures  
35 established by agreement between the State of New Jersey and the  
36 majority representative shall be utilized for any dispute covered by  
37 the terms of such agreement. For the purposes of this section, major  
38 discipline shall mean a removal, disciplinary demotion, suspension  
39 or fine of more than five days, or less where the aggregate number  
40 of days suspended or fined in any one calendar year is 15 or more  
41 days or unless the employee received more than three suspensions  
42 or fines of five days or less in one calendar year.

43 In interpreting the meaning and extent of a provision of a  
44 collective negotiation agreement providing for grievance  
45 arbitration, a court or agency shall be bound by a presumption in  
46 favor of arbitration. Doubts as to the scope of an arbitration clause

1 shall be resolved in favor of requiring arbitration.

2 (cf: P.L.2005, c.380)

3

4 2. Section 1 of P.L.1989, c.269 (C.34:13A-22) is amended to  
5 read as follows:

6 1. As used in **[this act]** P.L.1989, c.269 (C.34:13A-22 et seq.):

7 "Commission" means the New Jersey Public Employment  
8 Relations Commission.

9 "Commissioner" means the Commissioner of Education.

10 "Discipline" includes all forms of discipline**[,]** including, but not  
11 limited to: all forms of discharge, termination and contract  
12 nonrenewal, whether effective during or at the end of an individual  
13 employment contract or under any other circumstances, affecting  
14 any and all employees who have not yet obtained statutory tenure or  
15 permanent civil service status, or who are in positions which are not  
16 eligible for statutory tenure or permanent civil service status; the  
17 withholding for any reason of salary increments pursuant to  
18 N.J.S.18A:29-14; and any and all forms of reprimands, fines and  
19 suspensions; except that "discipline" does not include: tenure  
20 charges filed pursuant to the provisions of subsubarticle 2 of  
21 subarticle B of Article 2 of chapter 6 of Subtitle 3 of Title 18A of  
22 the New Jersey Statutes, N.J.S.18A:6-10 et seq.[, or the  
23 withholding of increments pursuant to N.J.S.18A:29-14];  
24 reductions in force implemented pursuant to N.J.S.18A:28-9; or  
25 suspensions with pay pursuant to section 1 of P.L.1971, c.435  
26 (C.18A:6-8.3) or N.J.S.18A:25-6.

27 "Employees" means employees of an employer as defined by this  
28 act.

29 "Employer" means any county college, local or regional school  
30 district, educational services commission, jointure commission,  
31 county special services school district, county vocational school  
32 district, charter school or board or commission under the authority  
33 of the commissioner or the State Board of Education.

34 "Extracurricular activities" include those activities or  
35 assignments not specified as part of the teaching and duty  
36 assignments scheduled in the regular work day, work week, or work  
37 year.

38 **["Minor discipline" includes, but is not limited to, various forms**  
39 **of fines and suspensions, but does not include tenure charges filed**  
40 **pursuant to the provisions of subsubarticle 2 of subarticle B of**  
41 **Article 2 of chapter 6 of Subtitle 3 of Title 18A of the New Jersey**  
42 **Statutes, N.J.S.18A:6-10 et seq., or the withholding of increments**  
43 **pursuant to N.J.S.18A:29-14, letters of reprimand, or suspensions**  
44 **with pay pursuant to section 1 of P.L. 1971, c. 435 (C.18A:6-8.3)**  
45 **and N.J.S. 18A:25-6.]**

1 "Regular work day, work week, or work year" means that period  
2 of time that all members of the bargaining unit are required to be  
3 present and at work.

4 "Teaching staff member" means a member of the professional  
5 staff of any employer holding office, position or employment of  
6 such character that the qualifications, for the office, position or  
7 employment, require him to hold a valid and effective standard,  
8 provisional or emergency certificate, appropriate to that office,  
9 position or employment, issued by the State Board of Examiners.  
10 "Teaching staff member" includes a school nurse.

11 (cf: P.L.1989, c.269, s.1)

12

13 3. Section 3 of P.L.1989, c.269 (C.34:13A-24) is amended to  
14 read as follows:

15 3. a. Notwithstanding any other law to the contrary, and if  
16 negotiated with the majority representative of the employees in the  
17 appropriate collective bargaining unit, an employer shall have the  
18 authority to impose **[minor]** discipline on employees. Nothing  
19 contained herein shall limit the authority of the employer to impose,  
20 in the absence of a negotiated agreement regarding **[minor]**  
21 discipline, any disciplinary sanction which is authorized and not  
22 prohibited by law. Any imposition of discipline upon an employee  
23 covered by P.L.1989, c.269 (C.34:13A-22 et seq.), shall be subject  
24 to review pursuant to the applicable collectively negotiated  
25 grievance procedure, including mandatory binding arbitration  
26 pursuant to section 8 of P.L.1989, c.269 (C.34:13A-29).

27 b. The scope of **[such]** negotiations shall include a schedule  
28 setting forth the acts and omissions for which **[minor]** discipline  
29 may be imposed, and also the penalty to be imposed for any act or  
30 omission warranting imposition of **[minor]** discipline.

31 c. Fines and suspensions for **[minor]** discipline which are  
32 specified in a negotiated agreement or result from an arbitrator's  
33 award shall not constitute a reduction in compensation pursuant to  
34 the provisions of N.J.S.18A:6-10.

35 (cf: P.L.1989, c.269, s.3)

36

37 4. Section 5 of P.L.1989, c.269 (C.34:13A-26) is amended to  
38 read as follows:

39 5. Disputes involving the withholding of an employee's  
40 increment by an employer **[for predominately disciplinary reasons]**  
41 for any reason shall be subject to the contractual grievance  
42 procedures established pursuant to law and shall be subject to  
43 binding arbitration as required by the provisions of section 8 of this  
44 act.

45 (cf: P.L.1989, c.269, s.5)

1       5. Section 6 of P.L.1989, c.269 (C.34:13A-27) is amended to  
2 read as follows:

3       6. a. If there is a dispute as to whether a transfer of an  
4 employee between work sites **【or withholding of an increment of a**  
5 **teaching staff member】** is disciplinary, the commission shall  
6 determine whether the basis for the transfer **【or withholding】** is  
7 predominately disciplinary.

8       b. If the commission determines that the basis for a transfer is  
9 predominately disciplinary, the commission shall have the authority  
10 to take reasonable action to effectuate the purposes of this act.

11       c. **【If the commission determines that the basis for an**  
12 **increment withholding is predominately disciplinary, the dispute**  
13 **shall be resolved through the grievance procedures established**  
14 **pursuant to law and shall be subject to the provisions of section 8 of**  
15 **this act.】** (Deleted by amendment, P.L. \_\_\_\_\_, c. \_\_\_\_\_)(now pending  
16 before the Legislature as this bill)

17       d. If a dispute involving **【the reason for】** the withholding of **【a**  
18 **teaching staff member's increment is submitted to the commission**  
19 **pursuant to subsection a. of this section, and the commission**  
20 **determines that the reason for the increment withholding relates**  
21 **predominately to the evaluation of a teaching staff member's**  
22 **teaching performance, the teaching staff member】** the salary  
23 increment of an employee who is not represented by a majority  
24 representative arises, the employee may file a petition of appeal  
25 with the Commissioner of Education pursuant to N.J.S.18A:6-9 and  
26 N.J.S.18A:29-14【, and the petition shall be deemed to be timely if  
27 filed within 90 days of notice of the commission's decision, or of  
28 the final judicial decision in any appeal from the decision of the  
29 commission, whichever date is later】.

30 (cf: P.L.1989, c.269, s.6)

31

32       6. Section 7 of P.L.1989, c.269 (C.34:13A-28) is amended to  
33 read as follows:

34       7. Nothing in **【this act】** P.L.1989, c.269 (C.34:13A-22 et seq.)  
35 shall be deemed to restrict or limit any right established or provided  
36 by section 7 of P.L.1968, c.303 (C.34:13A-5.3); this act shall be  
37 construed as providing additional rights in addition to and  
38 supplementing the rights provided by that section.

39 (cf: P.L.1989, c.269, s.7).

40

41       7. Section 8 of P.L.1989 c.269 (C.34:13A-29) is amended to  
42 read as follows:

43       8. a. The grievance procedures that employers covered by  
44 **【this act】** P.L.1989, c.269 (C.34:13A-22 et seq.) are required to  
45 negotiate pursuant to section 7 of P.L.1968, c.303 (C.34:13A-5.3)  
46 shall be deemed to require, by operation of law, binding arbitration  
47 as the terminal step in all collective agreements with respect to

1 disputes concerning imposition of [reprimands and] discipline as  
2 that term is defined in [this act] section 1 of P.L.1989, c.269  
3 (C.34:13A-22).

4 b. In any grievance procedure negotiated pursuant to [this act]  
5 P.L.1989, c.269 (C.34:13A-22 et seq.), the burden of proof shall be  
6 on the employer covered by this act seeking to impose discipline as  
7 that term is defined in [this act] section 1 of P.L.1989, c.269  
8 (C.34:13A-22). In any arbitration regarding the discharge,  
9 termination or contract nonrenewal of any employee covered by  
10 P.L.1989, c.269 (C.34:13A-22 et seq.), whether effective during or  
11 at the end of an individual employment contract or under any other  
12 circumstances, excluding the termination of employees who have  
13 achieved statutory tenure or permanent civil service status, the  
14 arbitrator shall have the discretion to order a remedy including, but  
15 not limited to, reinstatement of the grievant with back pay and  
16 benefits.

17 c. Notwithstanding any provision of Title 18A of the New  
18 Jersey Statutes, the “New Jersey Employer-Employee Relations  
19 Act,” P.L.1941, c.100 (C.34:13A-1 et seq.), or any other law or  
20 regulation to the contrary, the terms of a collectively negotiated  
21 agreement shall supersede the terms of an individual contract  
22 between a public employer and an individual public employee  
23 whose position is within the bargaining unit covered by the  
24 collective agreement. No term or provision in such an individual  
25 contract may be applied or interpreted in a manner which limits,  
26 restricts or circumscribes, or has the effect of limiting, restricting or  
27 circumscribing a provision or right contained within the collective  
28 agreement.

29 (cf: P.L.1989, c.269, s.8)

30

31 8. This act shall take effect immediately.

32

33

34

#### STATEMENT

35

36 This bill provides that the terms of a collectively negotiated  
37 agreement shall supersede the terms of any individual contract  
38 between any public employer and any individual public employee  
39 whose position is within the bargaining unit covered by the  
40 collective agreement. In addition to this provision, which applies to  
41 individual contracts of both educational and non-educational public  
42 employers and employees, the bill, with respect to only the  
43 educational sector:

44 1. Makes binding arbitration the terminal step for the review of  
45 any imposition of discipline under collective bargaining  
46 agreements, extending that requirement to major, as well as minor,  
47 discipline, and extends the scope of collective bargaining to cover  
48 procedures for major, as well as minor, discipline.



- 1       2. Provides that fines and suspensions for any discipline, major  
2 as well as minor, levied under a contract or an arbitrator's award do  
3 not constitute a reduction in compensation for pension purposes;
- 4       3. Extends binding arbitration and contractual grievance  
5 procedures to cover disputes over the withholding of increments for  
6 any reason, instead of just for predominately disciplinary reasons;
- 7       4. Provides an arbitrator, in cases of discharge, termination or  
8 contract non-renewal, with the authority to order remedies which  
9 include reinstatement with back pay and benefits; and
- 10      5. Amends the definition of "employer" to include county  
11 colleges, county vocational school districts, and charter schools.