

CHAPTER 161

AN ACT concerning recognition of representatives for certain employees and amending P.L.1968, c.303.

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

1. Section 5 of P.L.1968, c.303 (C.34:13A-5.1) is amended to read as follows:

C.34:13A-5.1 Establishment of division of public employment relations and division of private employment dispute settlement.

5. There is hereby established a Division of Public Employment Relations and a Division of Private Employment Dispute Settlement.

(a) The Division of Public Employment Relations shall be concerned exclusively with matters of public employment related to determining negotiating units, elections, certifications and settlement of public employee representative and public employer disputes and grievance procedures. For the purpose of complying with the provisions of Article V, Section IV, paragraph 1 of the New Jersey Constitution, the Division of Public Employment Relations is hereby allocated within the Department of Labor and Workforce Development, and located in the city of Trenton, but notwithstanding said allocation, the office shall be independent of any supervision or control by the department or by any board or officer thereof.

(b) The Division of Private Employment Dispute Settlement shall assist the New Jersey State Board of Mediation in the resolution of disputes in private employment. The New Jersey State Board of Mediation, its objectives and the powers and duties granted by this act and the act of which this act is amendatory and supplementary shall be concerned exclusively with matters of private employment and the office shall continue to be located in the city of Newark.

(c) In the case of a private employer not regulated by the National Labor Relations Board pursuant to the National Labor Relations Act (29 U.S.C. s.151 et seq.), the New Jersey State Board of Mediation shall designate a representative for a unit of employees of the private employer for the purposes of collective bargaining when:

(1) In any case in which the board determines that only one employee organization is seeking to be the majority representative, that organization demonstrates that a majority of employees in the unit have shown their preference to have that organization be their representative by signing authorization cards indicating that preference; or

(2) The employees in the unit have selected a representative by an election that conforms with the procedures outlined in section 159 of the National Labor Relations Act (29 U.S.C. s.159).

For the purposes of paragraph (1) of this subsection, an authorization card indicating preference shall not be valid unless it is printed in a language understood by the employee who signs it.

Any employer who refuses to provide information requested by the New Jersey State Board of Mediation or otherwise acts to prevent the board from carrying out its responsibilities pursuant to this subsection (c) shall have violated this subsection and shall be liable to a fine of not more than \$1,000, to be recovered under the "Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.) in the name of the board and to be used by the board for costs of implementing this subsection. In addition, an employee organization seeking to represent the employees of the employer may institute an action in a court of competent jurisdiction to obtain an injunction to restrain any continuation of the violation, to reimburse the employee organization or any affected employee for any damages caused by the violation plus reasonable costs and attorney's fees of the action.

The provisions of this subsection (c) shall not apply to religious or parochial schools or their employees or to any private nonprofit organization exempt from federal taxation under section 501 of the Internal Revenue Code of 1986 (26 U.S.C. s. 501).

(d) In the case of a private employer regulated by the National Labor Relations Board pursuant to the National Labor Relations Act (29 U.S.C. s. 151 et seq.), the New Jersey State Board of Mediation shall, based on the mutual agreement of the private employer and an organization seeking to represent employees of the employer, designate a representative for a unit of employees of the private employer for the purposes of collective bargaining when:

- (1) In any case in which the board determines that only one employee organization is seeking

to be the majority representative, that organization demonstrates, in a manner mutually agreed upon by the representative and the employer, that a majority of employees in the unit have shown their preference to have that organization be their representative by signing authorization cards indicating that preference; or

(2) the employees in the unit have selected the representative by an election that conforms with the procedures outlined in section 159 of the National Labor Relations Act (29 U.S.C. s.159).

(e) For the purposes of subsections (c) and (d) of this section, "employee unit" means an appropriate group of employees for the purposes of collective bargaining as determined, if necessary, by the New Jersey State Board of Mediation.

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

C.34:13A-5.3 Employee organizations; right to form or join; collective negotiations; grievance procedures.

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

Representatives designated or selected by public employees for the purposes of collective negotiation by the majority of the employees in a unit appropriate for such purposes, by the majority of the employees voting in an election conducted by the commission as authorized by this act or, at the option of the representative in a case in which the commission finds that only one representative is seeking to be the majority representative, by a majority of the employees in the unit signing authorization cards indicating their preference for that representative, shall be the exclusive representatives for collective negotiation concerning the terms and conditions of employment of the employees in such unit. An authorization card indicating preference shall not be valid unless it is printed in a language understood by the employee who signs it.

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

A majority representative of public employees in an appropriate unit shall be entitled to act for and to negotiate agreements covering all employees in the unit and shall be responsible for representing the interest of all such employees without discrimination and without regard to employee organization membership. Proposed new rules or modifications of existing rules

governing working conditions shall be negotiated with the majority representative before they are established. In addition, the majority representative and designated representatives of the public employer shall meet at reasonable times and negotiate in good faith with respect to grievances, disciplinary disputes, and other terms and conditions of employment. Nothing herein shall be construed as permitting negotiation of the standards or criteria for employee performance.

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

Public employers shall negotiate written policies setting forth grievance and disciplinary review procedures by means of which their employees or representatives of employees may appeal the interpretation, application or violation of policies, agreements, and administrative decisions, including disciplinary determinations, affecting them, provided that such grievance and disciplinary review procedures shall be included in any agreement entered into between the public employer and the representative organization. Such grievance and disciplinary review procedures may provide for binding arbitration as a means for resolving disputes. Except as otherwise provided herein, 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, except that such procedures may provide for binding arbitration of disputes involving the minor discipline of any public employees protected under the provisions of section 7 of P.L.1968, c.303 (C.34:13A-5.3), other than public employees subject to discipline pursuant to R.S.53:1-10. Grievance and disciplinary review procedures established by agreement between the public employer and the representative organization shall be utilized for any dispute covered by the terms of such agreement. For the purposes of this section, minor discipline shall mean a suspension or fine of less than five days unless the employee has been suspended or fined an aggregate of 15 or more days or received more than three suspensions or fines of five days or less in one calendar year.

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

3. This act shall take effect immediately.

Approved July 19, 2005.