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By the EdLaw Group at Lindabury

July 15, 2010

## NJ Supreme Court Upholds Primacy of Arbitrator's Decision in Settlement of Labor Disputes

By Dennis McKeever

The EDUCATION LAW GROUP at Lindabury has extensive experience in the area of school law. We serve as general counsel, special education counsel, and labor counsel for boards of education throughout the State.

ANTHONY P. SCIARRILLO  
ATHINA LEKAS CORNELL  
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DENNIS MCKEEVER  
LISA M. GINGELESKIE  
JENNIFER A. OSBORNE  
PAUL E. GRIGGS  
JOSHUA S. SKLARIN

[edlawgroup@lindabury.com](mailto:edlawgroup@lindabury.com)

### Westfield Office

P. O. Box 2369  
53 Cardinal Drive  
Westfield, NJ 07091  
(TEL) 908-233-6800  
(FAX) 908-518-2967

### Summit Office

480 Morris Avenue  
Summit, NJ 07901  
(TEL) 908-273-1212  
(FAX) 908-273-8922

### Rumson Office

20 Bingham Avenue  
Rumson, NJ 07760  
(TEL) 732-741-7777  
(FAX) 732-758-1879

[www.lindabury.com](http://www.lindabury.com)

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In *Linden Board of Education v. Linden Education Association on behalf of John Mizichko*, the New Jersey Supreme Court reinstated an arbitrator's decision to discipline, rather than terminate, a school custodian. The Court held that because New Jersey law favors the resolution of labor disputes through arbitration, and the language of the collective bargaining agreement at issue did not define "just cause" for termination, the arbitrator's decision to discipline should be upheld.

On May 5, 2005, John Mizichko, a custodian, worked the night shift at Linden High School, where a dance recital was taking place. The recital required students to change outfits in several classrooms. Prior to the recital, the head custodian posted signs informing Mizichko that certain rooms would be used for changing, and he informed Mizichko of the need to announce himself before entering any potential changing room. Mizichko admitted that he knew rooms would be used for students to change and that he entered a room with female students in it unannounced. He said that he entered the room to clean the glass panes on the door and that he was unaware the female students were changing in that room.

The incident was later reported to the Board of Education ("Board"). Mizichko was placed on paid suspension. On November 16, 2005, the Board, following its investigation, voted to terminate Mizichko's employment. The Linden Education Association ("Association") filed a grievance on Mizichko's behalf. The Collective Negotiating Agreement between the parties provided that grievances with tenured employees, like Mizichko, would be subject to binding arbitration. The parties submitted two questions to the arbitrator: "Did the Board of Education have just cause to terminate the employment of John Mizichko? And, if not, what shall be the remedy?" The arbitrator decided that there was just cause for discipline, but that just cause for termination "requires that the penalty fit the infraction and not be disproportionate given the totality of the circumstances." Because this was Mizichko's first offense, and the arbitrator found no evidence that his misconduct was egregious, the arbitrator imposed a ten-day suspension without pay rather than termination.

The Board sought to vacate the award by filing a complaint in the Superior Court. The trial court affirmed the arbitrator's disciplinary sanction, finding that "the arbitrator was within his authority to impose a lesser penalty than termination." The Board appealed the Superior (cont'd ▶)

Court's ruling, and the Appellate Division reversed, with one member of the panel dissenting. The Association then appealed.

In its decision, the New Jersey Supreme Court first emphasized the importance of arbitration in resolving labor disputes and then explained that the arbitrator is tasked with "fill[ing] in the gaps" of the collective bargaining agreement while being careful not to "contradict the express language of the contract." Highlighting the importance of finality in arbitration awards, the Court stated that "an arbitrator's award will be confirmed so long as the award is reasonably debatable." (citations and internal quotation marks omitted).

Applying this legal standard to the facts before it, the Court held that once the arbitrator found that there was no just cause to terminate, the arbitrator imposed a fair sanction on Mizichko. Because neither the Collective Negotiating Agreement nor the questions submitted to the arbitrator limited the arbitrator's power to define "just cause," the arbitrator "needed to fill in the gap and give meaning to the words." The Court concluded that "the arbitrator's determination . . . satisfied the reasonably debatable standard" because the arbitrator found that the totality of the circumstances indicated just cause for discipline but not termination. In the absence of contractual language to the contrary, the Court found this determination to be reasonable and ultimately reversed the Appellate Division and remanded for a reinstatement of the arbitration award.

This case demonstrates the Court's desire to remain uninvolved in the contractual negotiations occurring between two parties as well as in the decisions reached by arbitrators. Furthermore, this decision indicates that even if the parties in this case had defined in their contract the meaning of the term "just cause," the decision to submit to binding arbitration would still vest a large amount of discretion in the hands of the arbitrator.

The Court in *Linden* cited to its decision in *County College of Morris Staff Ass'n v. County College of Morris*, 100 N.J. 383 (1985), which stated that "[e]ven after finding the employee guilty of the specified charges of misconduct, the arbitrator was free to apply his special expertise and determine that these offenses do not rise to a

level of misconduct that constitutes just cause for discharge." This statement indicates that even in cases in which "just cause" is contractually defined, the arbitrator is still free to find that the circumstances of the particular case do not reach the level of "just cause for termination." Moreover, the Court is less likely to alter an arbitration award because of its expressed interest in the finality of arbitration decisions. For this reason, parties to collective bargaining agreements should pause to consider whether binding arbitration is the right path for dispute resolution; even with the terms defined by the parties, the arbitrator will still have the discretion to make a determination the parties may not be happy with.

The parties, however, should still empower themselves to negotiate the terms of their contracts, including what constitutes "just cause," themselves, rather than rely on an arbitrator's uncertain determination. The more limitations the parties impose, the less discretion the arbitrator will have to fashion a remedy. As the *Linden* decision indicates, parties should also be particular about what questions are posed to the arbitrator, if the parties are bound by arbitration. In *Linden*, the Court noted that the parties' questions also placed no limitation on the arbitrator "to fill in the gap and give meaning to" the just cause provision in the Collective Negotiation Agreement. The Court indicated that the parties had several opportunities to limit the arbitrator's decision-making power, but did not; therefore, the Court opted not to disturb the arbitrator's decision.

In future cases, parties should be wary of how an arbitrator will approach a situation, and should be sure to limit the arbitrator's discretion if the potential exists for an unwelcome arbitration decision. For this reason, collective bargaining agreements like the one at issue in *Linden* should, at a minimum, have some outline of what the parties contemplate by the term "just cause."



*Seton Hall law student Brigitte M. Radigan provided assistance in writing this Alert. The information provided here is necessarily general and is not intended as legal advice or a substitute for legal advice. If you have any questions regarding this Alert, please contact Anthony P. Sciarillo or Dennis McKeever of the EdLaw Group at [edlawgroup@lindabury.com](mailto:edlawgroup@lindabury.com).*