

Chief Robert A. Verry, M.A., C.P.M.

Educational Instructor / Consultant

Post Office Box 47

South Bound Brook, New Jersey 08880

Tel: 732.302.9520

Fax: 732.377.8710

BobVerry@aol.com

www.BobVerry.com



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Better Read the Not So Fine Print

N.J.S.A. 34:13A-5.2 requires public employers to negotiate written grievance procedures with their employees for any dispute covered by the terms of such agreement. Amazingly, in many cases, the signatory's and Chiefs don't realize the impact a poorly designed grievance procedure can have on the day-to-day operations of a police department.

Despite the fact that there are various components when negotiating a grievance procedure; the habitually overlooked agent's representatives (aka: "mediators") could be the most important. The mediator would serve as the agent's representative to settle a dispute between what the governing body and union agreed upon within the collective bargaining agreement ("CBA"). Frequently the first step authorizes the Chief of Police to serve as the mediator, but more frequently at least one step precedes the Chief. An example of comparable wording as expressed in their CBA's is: "an officer with a grievance, shall within fourteen (14) calendar days from the date of occurrence of the facts which gave rise to the grievance, discuss it with the officer's supervisor either directly or through the officer's representative for the matter of resolving the matter."

Accordingly, this paper focuses on those preceding steps and how authorizing anyone below the rank of Chief from serving as the mediator could be costly and weaken a Chief's authority, but at the same time is also lawful.

Robert is **not** an attorney and nothing contained herein including, but not limited to, material, thoughts, interpretations, and et cetera should be considered a legal opinion or advice.

IF YOU'RE SEEKING A LEGAL OPINION, PLEASE CONSULT WITH AN ATTORNEY

^ - Retired: South Bound Brook Police Department



In its simplest of concepts, when the mediator renders a decision on a grievance, “an employer’s refusing to honor the binding decision of its grievance representative constitutes a refusal to negotiate in good faith, and in particular, an unjustifiable refusal to honor the grievance procedure it negotiated for the resolution of contractual disputes. *Passaic Ctv.* (Preakness Hosp.), P.E.R.C. No. 85-87, 11 NJPER 136 (P. 16060 1985); *see also AFSCME, District Council 90 v. Dauphin Ctv.* 32 PPER 25 (P. 32007 2000). That is, even if the mediator’s decision conflicts with the philosophy of the Chief [if the agent is not the Chief] or governing body [if the agent is the Chief]. An example of this can be found in *City of Newark*, P.E.R.C. 2008-34, 33 NJPER 316 (P. 120 2007), *recon. denied* P.E.R.C. 2008-53 whereby the Police Director settled, through memorandum, a vacation grievance by way of his independent interpretation. A memorandum not supported by the incoming Chief of Police nor sanctioned by the Mayor, Business Administrator or City Council; thus, prompting the Chief to proclaim the Director’s position unenforceable and the Union’s filing of an unfair labor practice complaint.

The Public Employment Relations Committee (“PERC”) in deciding the Union’s unfair labor practice complaint ruled, “an employer will be bound by its negotiated grievance procedure and the decisions of the agents it has authorized to represent it at each step.” *Id.* Defending further the Union’s argument, PERC wrote, “[t]he City cannot unilaterally rescind a grievance settlement reached by its Police Director under the negotiated grievance procedure.” *Id.*

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Practically speaking, thousands of grievances are settled every year without the input, let alone knowledge, of the governing body. Whereas, while every "settlement" has an indirect ripple effect in the organization, it is those times when the Chief's operating budget is directly effected or when the Chief believes the settlement touches on her/his day-to-day operations that an awareness is heightened. This awareness initiates input and sometimes displeasure of those above the mediator, however, while they may be aware, offer input, and be displeased; once the negotiated mediator settles, any attempt to repudiate the grievance procedure may violate N.J.S.A. 34:13A-5.4a(5).

In theory, the solution to this seems straightforward by making the Chief the first step in every contract grievance procedure. Unfortunately, doing so is not so simplistic under the bargaining concept of "negotiation." That is, those Union Executive Board members who truly understand the value behind having the officer's supervisor, a Sergeant or Lieutenant in that specific negotiated step will seek benefits to equally compensate such a valuable benefit.

Lastly, one must cautiously tread on the idea of ordering or attempting to influence a mediator who also is a subordinate for I am unaware of any decision whereby it was resolved that the mediator while acting as the "agent" is doing so as a subordinate. That is, for example, although the Lieutenant's position is subordinate to the Chief of Police, the Chief may be prohibited from ordering or influencing a settled agreement either in favor of or opposed to the Chief's wishes. Obviously, before a superior gets indirectly involved in a mediator's decision, it goes without saying one should seek the advice of a knowledgeable labor attorney.

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