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IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

BOARD OF EDUCATION OF THE CAESAR RODNEY SCHOOL DISTRICT,	)	
Respondent Below-Appellant,	)	
v.	)	C.A. No. 1549-K
CAESAR RODNEY EDUCATION ASSOCIATION, DSEA/NEA,	)	
Charging Party Below-Appellee.	)	

MEMORANDUM OPINION

Date Submitted: September 3, 2003
Date Decided: September 17, 2003

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STRINE, Vice Chancellor

Petitioner William Michael Hoffman ("Hoffman") was fired from employment as a paraprofessional in the Caesar Rodney School District (the "District"). Hoffman attempted to submit his claim that the District lacked just cause to terminate him (the "Just Cause Claim") to arbitration, but the District's Board of Education (the "Board") refused. On behalf of Hoffman, the Caesar Rodney Education Association, DSEA/NEA (the "Union") filed an unfair labor practice ("ULP") charge against the Board with the Public Employment Relations Board ("PERB"), contending that its refusal to process the Just Cause Claim and submit the matter to arbitration violated the contractual grievance procedures set forth in Article II of the Collective Bargaining Agreement (the "CBA") between the Board and the Union. During the PERB proceedings, the Union also advanced the alternative argument that the question of whether the Just Cause Claim was arbitrable was itself to be decided by an arbitrator, per Article II.E of the CBA. Before the PERB, the Board argued that Hoffman's Just Cause Claim was not subject to the CBA's grievance procedures, and that Article II.E did not apply because the disagreement was not simply over whether the Just Cause Claim was arbitrable, but whether it was subject to the grievance process at all.

The PERB ultimately agreed with the Union, and premised its ruling on the Union's narrower argument. Specifically, the PERB found that the Board had violated Article II.E of the CBA. The PERB held that Article II.E required that a dispute over the arbitrability of the Just Cause Claim should itself be submitted to arbitration.

The Board has appealed from the PERB's ruling, contending that the PERB misinterpreted the CBA. To resolve this appeal, I have to decide only a single issue: Who decides — an arbitrator or this court — whether Hoffman has a contractual right under the CBA to demand arbitration of a claim that he was terminated in violation of the CBA? Because the CBA clearly reflects the parties' agreement that they would submit disputes about the scope of the CBA's grievance procedures to an arbitrator, I conclude that the Board breached its obligations under the CBA by refusing to arbitrate. I therefore affirm the PERB's decision.

I. Factual Background

The facts are largely undisputed. Hoffman submitted an application for employment as a paraprofessional with the District in September 2000. The application contained the question "[h]ave you ever been convicted of a felony or a Class A misdemeanor?" Hoffman responded "no."[1] It was later

[1] *See* Appellee's Answering Br. at 2.

discovered through criminal background checks and other methods that Hoffman had in fact been convicted of a Class A misdemeanor, had provided other erroneous information regarding his criminal history, and had provided false information on his résumé. On November 21, 2001, the Superintendent of the District, Dr. David E. Robinson, notified Hoffman that the Board intended to terminate his services based on "misconduct in office, immorality, insubordination, and [his] providing false, incomplete and/or inaccurate information on and with [his] employment application."[2] Dr. Robinson also informed Hoffman of his right to a hearing before the Board. Hoffman took advantage of that right.

After the hearing in February 2002, the Board concluded that the evidence did not justify the conclusion that Hoffman was guilty of misconduct in office or willful and persistent insubordination, but that it did justify the conclusion that he was guilty of immorality. The basis of this conclusion rested primarily on Hoffman's failure to make full and honest disclosure of his prior Class A misdemeanor conviction, and certain other

[2] Appellant's Opening Br. Ex. B (Letter from David E. Robinson, Superintendent, to William Michael Hoffman, Nov. 21, 2001).

misrepresentations he made about his work history.[3] Given the seriousness of Mr. Hoffman's misstatements, the Board believed that his termination would be justified, but it exercised leniency and decided not to terminate him provided that he accept certain disciplinary conditions.

Hoffman was unwilling to accept those conditions, and informed the Board that he would pursue resolution of the matter through the grievance procedure set forth in Article II of the CBA. He claimed that the Board had violated Section A of Article XIV, Part II of the CBA because it lacked just cause to terminate him on the basis of immorality.[4] That contention is what has been defined as Hoffman's Just Cause Claim.

Hoffman further requested that his Just Cause Claim be submitted directly to the Level Four Impasse Procedure under the CBA. That level provides for final and binding arbitration. Hoffman argued that it would be futile to have his grievance processed through Levels One through Three of the CBA's grievance procedure[5] because those steps had effectively already been taken and resolved adversely to Hoffman. Through its attorney, the

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[3] These misrepresentations included claiming that he was employed at times when he was actually incarcerated for theft.

[4] Section A of Article XIV, Part II states "The Board agrees that no paraprofessional will be dismissed without 'just cause'." Appellant's Opening Br. Ex. A (Collective Bargaining Agreement), at Art. XIV, Part II, § A.

[5] Levels One through Three of the grievance procedure provide for review of employee grievances by the principal or immediate supervisor, Superintendent, and the Board, respectively.

Board rejected Hoffman's attempt to submit the issue of his termination to binding arbitration, arguing that Hoffman waived any right he had to grieve the basis for the Board's decision by electing to request a full hearing before the Board.

The Union then filed, on behalf of Hoffman, a ULP charge against the Board with the Executive Director of the PERB. The Union alleged that by refusing to process the Just Cause Claim in accordance with the grievance procedure, the Board had unilaterally altered the status quo of a mandatory subject of bargaining in violation of § 4007(a)(5) of the Public School Employment Relations Act ("PSERA"). Alternatively, the Union contended that the Board violated § 4007(a)(5) by refusing to allow an arbitrator to determine whether the Just Cause Claim was arbitrable.

The Executive Director of the PERB agreed with the Union that the Board had violated the PSERA, accepting the Union's alternative argument.[6] As a remedy, he ordered the Board to let an arbitrator decide whether

[6] *Caesar Rodney Educ. Ass'n*, U.L.P. No. 02-06-360, at 9 (Executive Dir., Del. Pub. Employment Relations Bd. Aug. 30, 2002) (holding that Article II.E is "clear and unambiguous and requires that unresolved issues of [sic] concerning whether a matter is subject to arbitration [be] properly resolved by an arbitrator").

Hoffman could arbitrate his Just Cause Claim.[7] That is, the Executive Director's decision was narrowly tailored — he did not order the Board to submit the Just Cause Claim to arbitration, but only to submit the issue of the arbitrability of that Claim to arbitration. The Executive Director based his decision on Article II.E of the CBA, which he read as requiring the parties to arbitrate any disputes that arose between them regarding the scope of the CBA's Article II grievance process.

The Board appealed the Executive Director's decision to the entire PERB, which unanimously affirmed.[8] The Board then appealed the PERB's decision to this court, pursuant to 14 *Del. C.* § 4009(a).

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[7] The record does not indicate whether, after the Board refused to submit Hoffman's Just Cause Claim to arbitration, the Union specifically requested arbitration over the narrow issue of whether the Just Cause Claim was arbitrable. Apparently, the Union immediately filed a ULP charge alleging that the Board's refusal to submit the Just Cause Claim *itself* to arbitration was a ULP, and did not raise its claim that the Board had committed a ULP by refusing to arbitrate that narrow issue until its final filing in the proceedings before the Executive Director. The decisions of both the Executive Director and the full PERB ultimately rested on that narrow ground, as the Board itself recognizes, *see* Appellant's Opening Br. at 9, and the Board does not contest the PERB's implicit factual finding that the Board also refused to arbitrate the question of arbitrability. Put differently, the Board has not objected to the PERB's decision to address the applicability of Article II.E to this dispute, only to its ultimate decision about that issue.

[8] *Caesar Rodney Educ. Ass'n*, U.L.P. No. 02-06-360 (Del. Pub. Employment Relations Bd. Nov. 12, 2002). I interpret the PERB's (somewhat ambiguous) affirming order as solely requiring the Board to arbitrate the narrow issue of whether Hoffman's Just Cause Claim is itself subject to the grievance procedure. This is how the Union interprets it. *See* Appellee's Answering Br. at 6-7.

II. The Collective Bargaining Agreement

Several provisions of the CBA are critical to understanding the parties' dispute. Article XIV of the CBA, relating to Fair Dismissal Procedures, is divided into two Parts. Part I generally addresses the dismissal of teachers, and its heading reads as follows: "Fair Dismissal Procedure – Teachers." Meanwhile, Part II generally addresses dismissal of paraprofessionals, and its heading reads: "Fair Dismissal Procedures – Paraprofessionals."

Part I states that no teacher will be dismissed without just cause, and that all teachers will be guaranteed the full constitutional protection of due process. It further states that "Reduction in Force shall be just cause for dismissal," and outlines a variety of procedures that must be followed in the event of a Reduction in Force, addressing such matters as seniority and placement upon a recall list. Article XIV, Part I, Section D then states:

> Article II, Grievance Procedures, does not apply to this article except for procedural process associated with Reduction in Force.[9]

[9] Appellant's Opening Br. Ex. A (Collective Bargaining Agreement), at Art. XIV, Part I, § D.

Part II of Article XIV similarly states that no paraprofessional will be dismissed without just cause and that all paraprofessionals will be guaranteed the full constitutional protection of due process. Section C of that Part reads:

> C. Termination
>
> 1. Conditions that would cause the District to terminate employment are:
>
> . . .
>
> c. Immorality, misconduct in office, incompetency [sic], disloyalty, neglect of duty or willful and persistent insubordination.[10]

Notably, Part II of Article XIV has no counterpart to the grievance exclusion set forth in Section D of Article XIV, Part I.

The general grievance procedure set forth in the CBA is contained in Article II. It defines a "grievance" broadly as "a complaint by an employee or the Association that there has been to the employee a violation or inequitable application of any of the provisions of this Agreement."[11] By its plain terms, this definition encompasses Hoffman's Just Cause Claim, unless some other part of the contract (e.g., Article XIV, Part I, Section D) can be read as excluding it from Article II's reach.

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[10] *Id.* at Art. XIV, Part II, § C.
[11] *Id.* at Art. II, § A.1.

Section D of Article II sets out the procedure for initiation and processing of grievances. Level One of the grievance procedure requires that employees with grievances first discuss them with their principal or immediate supervisor. Level Two permits an appeal of an adverse decision to the Superintendent, and Level Three allows the employee to request a Board hearing. The "Level Four Impasse Procedure" provides that "[i]f the answer of the School Board is not accepted, the grievant within five (5) days after receiving the School Board's answer may request that the grievance be submitted to final and binding arbitration."[12]

Article II.E is of critical importance to this case. It reads as follows:

a. If the parties disagree as to whether a matter is subject to arbitration, either party may request a conference with the other party to discuss the issue of arbitrability without jeopardizing the grievance process.
b. If the disagreement over arbitrability is not resolved in the conference, the subject of arbitrability will be submitted to arbitration without jeopardy to the grievance at the point arbitrability was raised.[13]

III. Legal Analysis

The issue in this case is straightforward: Who has the authority to determine whether Hoffman's claim is subject to the grievance procedure

[12] *Id.* at Art. II, § D.4.a.
[13] *Id.* at Art. II, § E.

(and therefore arbitration) — an arbitrator or this court?[14] Was the Board obligated under the CBA to submit the question of the grievability of Hoffman's dispute to arbitration? If so, then the PERB's order requiring the Board to submit the issue of arbitrability to arbitration must be affirmed.[15] I

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[14] In reviewing decisions of the PERB, the Court of Chancery is required to decide questions of law *de novo*. *See Red Clay Educ. Ass'n v. Bd. of Educ.*, 1992 WL 14965, at *3 (Del. Ch. Jan. 16, 1992). "It is elementary that when an appellate tribunal reviews a [purely legal] question, its function is to reach its own determination of the legal question. In doing so, however, I am not unmindful that the agency whose decision is being reviewed is an expert one functioning in an area that requires or at least is greatly aided by such expertise." *Seaford Bd. Of Educ. v. Seaford Educ. Ass'n*, 1988 WL 8773, at *1 (Del. Ch. Feb. 5, 1988) (citations omitted), *quoted in Red Clay Educ. Ass'n*, 1992 WL 14965, at *3. Here, the facts are undisputed and this case turns on the proper interpretation of the CBA — a purely legal question — rather than any finding of fact, to which deference would be due under the substantial evidence standard. Therefore, I exercise plenary review.

[15] The parties have apparently assumed that if the PERB correctly decided that there was a major breach of the CBA, then the Board committed a ULP by violating § 4007(a)(5). That section of the PSERA makes it an unfair labor practice for a public school employer to "[r]efuse to bargain collectively in good faith with an employee representative which is the exclusive representative of employees in an appropriate unit." 14 *Del. C.* § 4007(a)(5). That is, the parties have accepted the proposition that Board committed a ULP if it breached the CBA by refusing to arbitrate the arbitrability of the Just Cause Claim; in essence, taking the position that if the Board was wrong in its position that Article II.E did not require it to arbitrate the question of the grievability of the Just Cause Claim, then it had turned its back on the parties' agreed-upon dispute resolution procedures in contravention of § 4007(a)(5).

In candor, the parties have shed little light on this aspect of this case and my brief review of additional authorities has not provided greater clarity. The proposition that a public employer commits a ULP by refusing to arbitrate an issue when it holds a good faith belief that the issue is not arbitrable under a collective bargaining agreement is not one that emerges clearly from the authorities submitted by the parties and is arguably at odds with prior PERB authority. *Cf. Indian River Educ. Ass'n*, U.L.P. No. 88-11-027 (Executive Dir., Del. Pub. Employment Relations Bd. Dec. 16, 1988) (holding that Board's rejection as untimely of employee's appeal of grievance to President of School Board was not ULP partly because it was based on Board's "good faith perception of its rights under the relevant contract language").

Nevertheless, I accept the parties' apparent agreement that the PERB should be affirmed if it correctly interpreted the CBA and limit myself to determining whether its contract interpretation was proper, and make no independent finding on this separate legal issue. In any event, this case may be alternatively seen as one seeking compulsion of arbitration by Hoffman, a type of claim traditionally within this court's jurisdiction, regardless of whether or not the Board may have committed a ULP.

turn to these questions now, centering my analysis largely on the Board's two arguments for reversal.

A.

The first of the Board's two primary arguments for reversal, however, attempts to confuse the key issue in this case — who decides the arbitrability of the Just Cause Claim? — by arguing that the answer to the question of whether the Just Cause Claim is arbitrable is clearly and unambiguously no.

To support that contention, the Board points to the language of the grievance exclusion, which states "Article II, Grievance Procedures, does not apply to this *article*,"[16] and contends that this language "clearly and unambiguously" excludes all paraprofessional disputes relating to the Article XIV Fair Dismissal Procedure from the grievance procedure. Therefore, the Board says, Hoffman has no right to demand arbitration of the Just Cause Claim. The Board argues that interpreting Article II.E to require an arbitrator to decide whether Hoffman's Just Cause Claim is arbitrable would produce an "absurd result." Specifically, that interpretation would allow the Union to force arbitration unilaterally by contending that a matter is subject to the grievance process even where the CBA "clearly and unambiguously" states that it is not.

[16] Appellant's Opening Br. Ex. A (Collective Bargaining Agreement), at Art. XIV, Part I § D. (emphasis added).

The argument that the Board faces an absurd predicament is insubstantial, however. The problem that the Board faces is that it arguably agreed that an arbitrator, and not a court, would determine the reach of Article II's grievance procedures. The issue in this case is not whether Hoffman may grieve his Just Cause Claim, but *who decides* whether that Claim is subject to the grievance procedure. The relevant question before this court must be determined by reference to the CBA's terms regarding arbitration over arbitrability, and not by reference to the underlying merits of the claim sought to be arbitrated.

To find otherwise and to accept the Board's argument would require me to ignore binding precedent. In the recent case of *SBC Interactive, Inc. v. Corporate Media Partners*,[17] the Delaware Supreme Court stated:

> We begin our analysis with the premise that the public policy of Delaware favors arbitration . . . . In determining arbitrability, the courts are confined to ascertaining whether the dispute is one that, on its face, falls within the arbitration clause of the contract. Courts may not consider any aspect of the merits of the claim sought to be arbitrated, no matter how frivolous they appear. Any doubt as to arbitrability is to be resolved in favor of arbitration.[18]

[17] 714 A.2d 758 (Del. 1998).
[18] *Id.* at 761 (citations omitted).

Here, the "claim sought to be arbitrated" is whether Hoffman's Just Cause Claim can be arbitrated under Level Four of the Article II grievance procedures. Therefore arguments regarding whether Article XIV, Part I, Section D "clearly and unambiguously" excludes Hoffman's Just Cause Claim from the reach of Article II go to the merits and cannot be considered by the court. Rather, this court's duty is to determine whether Article II.E provides that an arbitrator, rather than a court, should decide whether Hoffman's Just Cause Claim is subject to the grievance procedures set forth in Article II of the CBA.

Nor does any absurd result flow from a judicial adherence to *SBC Interactive*. Even assuming that an arbitrator might later find that the CBA "clearly and unambiguously" excluded paraprofessional terminations from the grievance process — an assumption that the Union contests with rational

arguments[19] — it is not irrational for the Union to hold the Board to its agreement to allow an arbitrator to make that determination in the first instance. Some decisionmaker — either an arbitrator or a court — must

[19] The Board's argument that the contract clearly and unambiguously forecloses Hoffman from arbitrating his Just Cause Claim is not a strong one. The CBA is a document filled with inconsistent uses of language. Most pertinently, it is notable that Article XIV has two "Parts," only one of which is directed by its own terms to paraprofessionals. And unlike many contracts, the CBA lacks any provision stating that the headings used for various parts of the contract are to be ignored in interpreting the contract's meaning. In view of these factors, the fact that the paraprofessional Part lacks any explicit language excluding the application of the Article II grievance procedures to Hoffman's Just Cause Claim suggests that the Board's simplistic argument may not prevail.

Giving further color to the Union's argument is Article XIII of the CBA. Like Article XIV, Article XIII is divided into two Parts dealing with Teachers and Paraprofessionals. By contrast to Article XIV, each of Article XIII's Parts contains a provision excluding that Part from the reach of Article II's grievance procedures. *See* Appellant's Opening Br. Ex. A (Collective Bargaining Agreement), at Art. XIII, Part I, § H; *id.* at Art. XIII, Part II, § E. This difference in treatment buttresses the Union's argument that the exclusion in Part I of Article XIV cannot be read as applying to paraprofessionals governed by Part II of that Article.

Furthermore, the Union has noted that without a right to arbitrate, paraprofessionals would be denied any opportunity to contest their dismissal in an adversarial evidentiary hearing before a neutral tribunal. Unlike teachers, who have a statutory right to file an appeal to Superior Court, *see* 14 *Del. C.* § 1414, paraprofessionals apparently lack a similar right. The Board points to 14 *Del. C.* § 1058, which allows appeals of school board decisions to the State Board of Education in "controversies involving the rules and regulations of the school board." The Union, however, contends that this statute is inapplicable because this case involves a contractual issue of "just cause" rather than "rules and regulations of the school board," and because the State Board's Hearing Procedures and Rules specifically provide that "[p]ersonnel actions which are covered under a collective bargaining agreement or are otherwise subject to adjudication by the Public Employment Relations Board" may not be appealed to the State Board under § 1058. Del. State Bd. of Educ., State Board of Education Procedures Manual app. B, § 4.3.2 (1998) (Hearing Procedures and Rules), *available at* http://www.doe.state.de.us/sbe/State_Bd_Proceedures.pdf. Given that paraprofessionals do not have a clear right to appeal the decisions of school boards, the Union contends that it bargained to preserve an arbitration right for paraprofessionals subject to termination.

Finally, the overall ambiguity of the CBA and the possible relevance of parol evidence is suggested by Section E of Article II, which follows the use of a lettered section heading with lettered subsections, in contrast to the rest of Article II, which follows the use of lettered section headings with numbered subsections. This is merely one example that demonstrates that placing too much emphasis on one word in the CBA might be hazardous because the drafters were not precise scriveners.

decide whether any particular claim arising under the CBA is subject to arbitration. The possibility of frivolous arguments always exists, and that possibility cannot justify overriding a contractual determination to permit an arbitrator to decide whether the Board's or the Union's position regarding arbitrability is the better one.

B.

Under *SBC Interactive*, I now decide the scope of Article II.E by reference to its terms and other pertinent provisions of the CBA, without considering the merits of the claim Hoffman seeks to arbitrate. When that approach is taken, the proper outcome is clear because the relevant terms of the CBA are plain. Article II.E of the CBA plainly states "If the disagreement over arbitrability is not resolved in the conference, the subject of arbitrability will be submitted to arbitration without jeopardy to the grievance at the point arbitrability was raised." By its terms, this language commits all disputes over arbitrability like this to arbitration. Article II.E of the CBA does not limit arbitration over arbitrability to cases where both parties have plausible arguments supporting their positions, but clearly commits all such disputes to arbitration, rather than judicial resolution.

That is, by contractual choice, the parties to the CBA reversed the current legal default position, which is that "the question of whether the parties agreed to arbitrate, commonly referred to as 'substantive arbitrability,' is generally one for the courts and not for the arbitrators."[20] This reversal was within the scope of contractual freedom left to the contracting parties. As the United States Supreme Court has stated:

> Just as the arbitrability of the merits of a dispute depends upon whether the parties agreed to arbitrate that dispute, so the question "who has the primary power to decide arbitrability" turns upon what the parties agreed about *that* matter. Did the parties agree to submit the arbitrability question itself to arbitration?[21]

Here, the parties clearly agreed to do just that.

The Board only makes one plausible argument to the contrary. To wit, the Board claims that Article II.E by its own terms only requires that disputes over "arbitrability" be submitted to arbitration. The Board contends that it is not arguing that Hoffman's Just Cause Claim is not arbitrable, it is instead claiming that his Just Cause Claim was not a grievance within the scope of Article II in the first instance. In other words, this dispute is over the "grievability" of Hoffman's Just Cause Claim and not its "arbitrability." Therefore, the Board contends that Article II.E does not apply.

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[20] *SBC Interactive*, 714 A.2d at 761. *See also DMS Properties-First, Inc. v. P.W. Scott Assoc.*, 748 A.2d 389, 392 (Del. 2000).
[21] *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 943 (1995) (citations omitted).

But the distinction that the Board makes between "arbitrability" and "grievability" does not rest on a sensible reading of the words of the CBA. The relevant portion of Article II.E states:

> If the disagreement over arbitrability is not resolved in the conference, the subject of arbitrability will be submitted to arbitration *without jeopardy to the grievance at the point arbitrability was raised.*[22]

Plainly, the emphasized language indicates that "disagreement over arbitrability" can arise at any point in the grievance procedure. The utility of such a provision is obvious. When the Board believes that an employee's claim is not even grievable under Article II, it can ask an arbitrator to end the grievance process in its early stages, by requesting that the arbitrator decide whether the employee has a grievable claim before precious Superintendent and Board resources are unnecessarily expended.

Imagine, for example, if a teacher filed a grievance because the District was serving fish sticks to the children at lunchtime and allowing them to dip them in ketchup. Assume the teacher filed a grievance arguing that the Board should halt this culinary atrocity, which she found offensive. By its plain terms, Article II.E would permit the Board to refuse to process the fish stick grievance, thus avoiding wasting the time of either its Superintendent or its Board with a hearing on a claim that was not grievable

[22] Appellant's Opening Br. Ex. A (Collective Bargaining Agreement), at Art. II, § E.b (emphasis added).

under the CBA. Article II.E would also allow the Board to refuse to submit a grievance that fell within the definition of Article II.A.1 to the next Level of processing if it believed that the grievant had procedurally defaulted.

In a situation of either kind, Article II.E sets forth a process for the Board and the Union to determine whether the Board is correct about the grievant's right to proceed if the parties disagree. Initially, the parties must meet and confer about the matter. If that does not succeed, they must put the issue before an arbitrator. If the arbitrator decides that the employee's claim is not grievable, the process immediately comes to an end. If, however, the arbitrator decides that the employee does in fact have a grievable claim, then the normal grievance process resumes, "without jeopardy to the grievance at the point arbitrability was raised."[23]

Under the Board's reading, however, Article II.E would provide no mechanism allowing the Board to attempt to cut off the grievance process before Level Four if the Board believed that an employee's claim was not even grievable. The employee would be able to force the Board to proceed through a full Level Three Board hearing before being permitted to ask an arbitrator to terminate the process. The Board's reading makes little practical sense in application and denudes Article II.E of its utility to the

[23] *Id.*

Board as an employer. As important, the Board's reading renders meaningless the proviso in Article II.E that states that the parties can contest arbitrability "without jeopardy to the grievance at the point arbitrability was raised."

Another provision in the CBA also suggests that Article II.E was intended to require arbitration of disputes over grievability. Article II.G.6 states that "[c]ertain limitations regarding arbitrability exist for Article XII, Transfer Procedures, Article XIII, Evaluation and Article XIV, Fair Dismissal Procedures."[24] By referring to the grievance exclusion in Article XIV (as well as a similar grievance exclusion in Article XIII[25]) as a "limitation[] regarding *arbitrability*,"[26] Article II.G.6 suggests that the parties did not intend any distinction between "grievability" and "arbitrability." Rather, the parties considered a dispute over the scope of an exclusion from the grievance procedures of Article II to be a "disagreement over arbitrability," requiring arbitration under Article II.E.

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[24] *Id.* at Art. II, § G.6.

[25] Both Parts of Article XIII, relating to Evaluation, state that the content of teacher or paraprofessional evaluations is not subject to the grievance procedure. *See id.* at Art. XIII, Part I, § H; *id.* at Art. XIII, Part II, § E.

[26] *Id.* at Art. II, § G.6 (emphasis added).

For these reasons, I conclude that Article II.E encompasses "disagreement over grievability" as a form of "disagreement over arbitrability," requiring arbitration when such a disagreement exists and a party to the contract demands it.[27]

IV. Conclusion

For the foregoing reasons, I conclude that the PERB correctly interpreted the CBA and that its decision should be AFFIRMED. IT IS SO ORDERED.

[27] The Board has raised the lack of formal processing of the Just Cause Claim at Levels One through Three in its papers as a basis for contesting the PERB's interpretation of the CBA. Given the PERB's correct interpretation of Article II.E, to the extent that the Board also intends to raise the argument that Hoffman is now procedurally barred from arbitrating the Just Cause Claim, such an argument should be addressed to the arbitrator, not this court or the PERB. If the arbitrator determines that Hoffman's Just Cause Claim is grievable, she can then decide whether he must initiate that claim at Level One or may proceed directly to the Level Four Impasse Procedure.