

L.D. NO. 96-5

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

GREATER EGG HARBOR BOARD
OF EDUCATION AND OAKCREST-ABSEGAMI
TEACHERS ASSOCIATION,

Respondents,

-and-

Docket No. CI-94-24

LOUIS A. EMONDS, et al.

Charging Party.

Appearances:

For the Respondent - Board of Education
Cassetta, Taylor & Whalen
(Bruce Taylor, Consultant)

For the Respondent - Teachers Association
Freeman, Zeller, Bryant, attorneys
(Allen S. Zeller, of counsel)

For the Charging Party
John T. Barbour, attorney

DECISION ON MOTION TO DISMISS

On October 13, October 25, November 12, 1993 and January 5, 1994, Louis Emonds and other unit members filed an unfair practice charge and amendments against the Oakcrest-Absegami Teacher Association and the Greater Egg Harbor Regional Board of Education. It was alleged that the Association violated its duty of fair representation when it negotiated a wage increase that was far less for the charging parties than that for other unit employees and that the employer and the union colluded when the Board sought the

position of the Association in order to prevent a grievance from going forward to arbitration.

On May 17, 1994, as Director of Unfair Practices, I issued D.U.P. No. 94-45, 20 NJPER 254 (¶25125 1994) dismissing that portion of the allegation concerning the inequitable wage increase. I also issued a Complaint and Notice of Hearing on the allegation(s) that the Association and Board colluded to prevent the Emonds et al. grievance from proceeding to arbitration. In December 1994, the parties agreed to submit the allegation in the Complaint and Notice of Hearing to the Commission's Litigation Alternative Program. Specifically, the parties agreed to the Commission would appoint an umpire to determine if the contract and/or policies and practices of the parties were violated.^{1/}

The parties also agreed that the umpire would determine if policies and practices of the Board and/or the parties contract was violated.

Hearings were conducted on February 6 and March 13, 1996. At the conclusion of the grievants' (Emonds et al.) case, the Board and the Association moved to dismiss this matter.

^{1/} Paragraph 5 of the Agreement provides:

The decision of the LAP Umpire shall be final and binding upon all parties to this matter. The decision shall constitute a final determination of this matter and shall not be subject to appeal.

A motion to dismiss will be granted when no genuine issue of material fact exists which is, when viewed in the light most favorable to the non-moving party (Emonds, et al.), sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party. Brill v. Guardian Life Insurance of America, 142 N.J. 520 (1995).

I found after hearing the grievants' case there was no genuine issue of material facts which would cause me as the factfinder to find in favor of Emonds, et al. I therefore granted the motion.

The facts as adduced by Emonds, et al. are as follows:

From 1974 through 1986, the collective negotiations agreement between the Association and the Board provided supplemental compensation or longevity pay for teachers at the top of the salary guide, based upon their years of experience. When eligibility for longevity pay was computed, credit was given for both military service and teaching experience in other school districts. Emonds was credited with three years of teaching experience outside the District. Longevity payments were eliminated from the contract in 1987.

The tentative agreement for 1992-94 once again provided for longevity pay. When the Association sought ratification of this agreement, it scheduled a meeting to explain the contract. At the meeting, the Association announced that the new agreement provided for longevity payments. Emonds, Hammond, Torres and Lloyd all

testified that the Association did not explain the criteria for computing longevity. However, the Association distributed a hand out at the meeting which included a salary schedule for both years of the contract (A-2 in Evidence). The 1992-1993 salary schedule is silent as to longevity payment. The 1993-1994 schedule does describe the longevity provision as follows:

LONGEVITY CLAUSE: In addition, those with more than 23 years of total credited experience will receive:

0-20 years in the district	+\$500
21-23 years in the district	+\$1,000
24-26 years in the district	+\$1,500
27-29 years in the district	+\$2,000
30 + years in the district	+\$2,500

Emonds did not dispute that A-2 contained this provision.

The four witnesses on behalf of the grievants were not happy with the distribution of salaries on the guide. There was a cluster of salaries which were much higher than most other salaries or a "salary bubble". They believed this salary bubble favored the Association negotiation team to the detriment of those at the top of the salary guide and they voted against it. However, the contract was ratified. This issue, inequitable salary distribution, was not before me as it was dealt with in D.U.P. No. 94-45.

Emonds testified that it was not until substantially after the contract was ratified that he realized he would not get appropriate credit for his past experience outside the district. He went to the Superintendent of Schools, John Dugan, and explained that as he understood the contract language, he should be credited

with his experience outside the District. The Superintendent apparently agreed (Exhibit 23). In May 1993, Mr. Emonds also went to Gene Sharp of the New Jersey Education Association and Sharp agreed that his experience outside the district should still be counted towards his longevity. Sharp made notations on Emonds copy of the salary guide attached to his grievance (Exhibit 24). However, the very next page of the salary guide attached to the grievance states that a teacher will be entitled to longevity if she has "completed more than twenty-seven (27) years of District teaching experience". (emphasis supplied)

The ten grievants, including Emonds, therefore, did not receive credits for their outside experience when the Board computed their longevity eligibility.

Emonds then filed a grievance with Superintendent Dugan dated May 25, 1993 (Exhibit 25) which was signed by nine other people contesting the manner in which longevity was computed.

Dugan wrote to the Association and asked for it's position regarding moving the grievance to arbitration. The Association did not agree with the grievance and did not move it to arbitration. It believed the contract was being interpreted properly. Emonds wrote several letters to the Association challenging this position. The Association's refusal to arbitrate was taken up at an Association Executive Board meeting (Exhibit 26). The Executive Board held that the grievance should not be forwarded to arbitration since it did not agree with the negotiation committee's understanding of the contract.

Emonds claims that this action was taken due to animus against him which flowed from an earlier grievance he filed (Exhibits 35 through 52). The grievance concerned language in one of Emonds' evaluations. (A1 in evidence, August 3 handout)

Association President, Peter Dubas, opposed that grievance. He believed it was not a grievable matter. Emonds hired outside counsel to pursue his grievance. Ultimately, Emonds prevailed and the language in the evaluation was changed.

Emonds also testified the Association failed to appoint him to the negotiations committee and failed to appoint him to the negotiations research.

However, when Emonds complained to Dubas about the failure to appoint him, Dubas wrote an apology to Emonds and appointed him to the negotiation research committee.

Maria Torres testified that she felt like an outsider and was never accepted within the District.

There is no evidence of hostility or animus concerning the other eight employees who also believe they were wrongfully denied longevity pay.

The only direct evidence of possible collusion adduced at the hearing was that both Gene Sharp of the NJEA and Superintendent Dugan agreed with Emonds' interpretation of the contract as to longevity payments. This evidence, even when coupled with evidence of difficulties between Emonds and Dubas, does not prove collusion. There is no evidence that Sharp or the Superintendent were involved

in negotiating the disputed contract language. That they shared the same interpretation of the contract with Emonds does not prove that anyone colluded to alter the contract simply to "get at" Emonds.

To this end, it is highly significant that the salary schedule signed by Sharp states on the next page that longevity is based on "District experience".

Although Superintendent Dugan did apprise the Association of Emonds' grievance and asked whether it, not Emonds, wished to pursue the grievance, paragraph 8 of the parties grievance procedure (Level 8) provides that the decision to go to arbitration rests with the Association. Accordingly, the Board was required to contact the Association. Dugan's conduct does not constitute improper collusion, nor is it evidence of collusion.

Nor do I believe there was a violation of the contract.

The contract provision states:

C. Longevity

1. In order to be eligible for longevity, the teacher must:

a. have completed more than 21 years of credited teaching experience by the preceding June 30. Credited teaching experience is defined as all years credited to a teacher for salary guide placement at initial hire in the District plus all years served since initial hire; and,

b. have completed the requisite number of years teaching in the District.

2. The years teaching in the District requirement and the longevity amount are as follows:

0-17 years	\$1,500
18-20 years	2,500
21-23 years	3,500
24-26 years	4,500
27 + years	5,500

3. The relevant longevity amount is added to the top step of the applicable column to determine the annual salary. For example, a teacher who is on the B.A. column and has completed twenty-seven (27) years of District teaching experience as of June 30, 1996, shall receive the top B.A. salary of \$55,200 plus the longevity amount of \$5,500 for a total of \$60,700.

This language, although confusing, does refer to District experience. There is no mention of experience outside the District. The intent of the language is clear. Longevity credit is limited to District experience. The experience under the old contract does not create a binding custom or practice for there was an eight year gap between the last time longevity pay was paid and the current agreement.

Accordingly, the entire grievance was dismissed.


Edmund G. Gerber
LAP Umpire

DATED: April 24, 1996
Trenton, NJ