

P.E.R.C. NO. 2003-60

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION  
AND  
COMMISSIONER OF EDUCATION

In the Matter of

THOMAS DERBY,

Petitioner/Charging Party,

-and-

CAMDEN BOARD OF EDUCATION,

Respondent.

JOINT ORDER ON CONSOLIDATION  
AND PREDOMINANT INTEREST

OAL Dkt. No. EDU-8516-01

EDU Dkt. No. 437-10/01

PERC Dkt. No. CI-2002-43

SYNOPSIS

The Chair of the Public Employment Relations Commission and the Commissioner of Education issue a Joint Order consolidating for hearing a tenure rights case and an unfair practice case involving the abolishment of a position and the assignment of the duties of the position to other employees. After an Administrative Law Judge issues an Initial Decision, the Commissioner will resolve the tenure and seniority issues within the Commissioner's jurisdiction. The Commission will then decide any remaining unfair practice issues within its jurisdiction.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.



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Appearances:

For the Petitioner/Charging Party, Zazzali, Fagella,  
Nowak, Kleinbaum & Friedman, attorneys (Richard A.  
Friedman, of counsel)

For the Respondent, Murray & Murray, attorneys (Karen  
A. Murray, of counsel)

JOINT DECISION

Thomas Derby filed a petition with the Commissioner of Education claiming that after the Camden Board of Education abolished his teaching staff position as a reading teacher, it placed and continues to place non-tenured or less senior individuals in positions in violation of his tenure and seniority rights. Derby also filed an unfair practice charge with the Public Employment Relations Commission. In the charge, Derby claims that the Board retaliated against him for engaging in protected activity by abolishing his teaching staff position,

creating new educational program specialist positions, and placing less qualified individuals in those positions.

On January 9, 2003, the Board filed a motion for consolidation and predominant interest determination. By letter dated January 10, the petitioner agreed that the matters should be consolidated and that the Commissioner has the predominant interest.

On January 24, 2003, Administrative Law Judge Joseph F. Martone issued an Order For Consolidation and Determination of Predominant Interest reflecting the parties' agreement. Under that agreement, the Commissioner's decision with respect to the issue of petitioner's tenure and seniority rights will precede the Commission's resolution of the unfair practice allegations. The consolidated matter would be heard by the Administrative Law Judge who would forward the record first to the Commissioner of Education for a final determination as to petitioner's tenure and seniority rights. Thereafter, the record and decision of the Commissioner would be sent to the Commission to resolve any remaining unfair practice issues and to fashion any remedy unique to its jurisdiction.

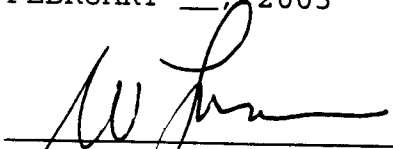
Having independently evaluated the record and considered the Administrative Law Judge's order, the Commissioner of Education on March 5, 2003, and the Chair of the Public Employment Relations Commission, acting pursuant to authority delegated to

her by the full Commission, on February 24, 2003, made the following determination in this matter.

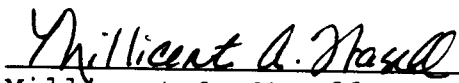
JOINT ORDER

The matters should be consolidated for hearing before the Administrative Law Judge. The Administrative Law Judge will first offer recommended findings of fact and conclusions of law to both the Commissioner of Education and the Public Employment Relations Commission, disposing of all issues in controversy through a single initial decision under N.J.A.C. 1:1-18.3 and consistent with N.J.A.C. 1:1-17.8(a). Upon transmittal of the initial decision to both agencies, the underlying record will be forwarded to the Commissioner to resolve the tenure and seniority issues within the Commissioner's jurisdiction. The Commissioner's decision and the complete record will then be sent to the Commission which will then decide any remaining unfair practice issues within its jurisdiction.

DECISION RENDERED BY THE  
COMMISSIONER OF EDUCATION ON  
FEBRUARY 24, 2003

  
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William A. Librera  
Commissioner of Education

DECISION RENDERED BY THE CHAIR OF  
THE PUBLIC EMPLOYMENT RELATIONS  
COMMISSION ON  
FEBRUARY 24, 2003

  
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Millicent A. Wasell  
Chair, Public Employment  
Relations Commission

DATED: 3-5-03  
Trenton, New Jersey

DATED: February 24, 2003  
Trenton, New Jersey