

P.E.R.C. NO. 2006-23

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

THOMAS DERBY,

Petitioner/Charging Party,

-and-

OAL Dkt. No. EDU-8516-01

EDU Dkt. No. 437-10/01

PERC Dkt. No. CI-2002-43

CAMDEN BOARD OF EDUCATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission remands to a Hearing Examiner an unfair practice charge filed by Thomas Derby against the Camden Board of Education. The charge alleges that the employer violated the New Jersey Employer-Employee Relations Act by retaliating against Derby for engaging in protected activity as chairperson of the Association - Administration Liaison Committee in his building. Derby also filed a petition with the Commissioner of Education alleging that the Board violated his tenure and seniority rights. An Administrative Law Judge granted summary judgment finding that the Board did not violate Derby's tenure and seniority rights, but the ALJ did not rule on the allegations in the unfair practice charge. The Commissioner adopted the ALJ's decision on the seniority and tenure claims, but declined to rule on the mootness of the charge and forwarded the remaining issues to the Commission. The Commission concludes that further proceedings are needed to decide the merits of the unfair practice claims and remands the charge to the Hearing Examiner for further proceedings.

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.

P.E.R.C. NO. 2006-23

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

THOMAS DERBY,

Petitioner/Charging Party,

-and-

OAL Dkt. No. EDU-8516-01
EDU Dkt. No. 437-10/01
PERC Dkt. No. CI-2002-43

CAMDEN BOARD OF EDUCATION,

Respondent.

Appearances:

For the Petitioner/Charging Party, Bergman & Barrett,
attorneys (Michael Barrett, of counsel)

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

DECISION

On February 21, 2002, Thomas Derby filed an unfair practice charge against the Camden Board of Education. The charge alleges that the employer violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., by retaliating against him for engaging in protected activity as chairperson of the Association - Administration Liaison Committee in his building. The charge states that Derby expressed the concerns of unit members on numerous occasions and filed an earlier unfair practice charge challenging alleged retaliatory conduct toward him. The charge contends that the Board violated the Act by abolishing his teaching staff position, creating new educational

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

On August 2, 2002, a Complaint and Notice of Hearing issued. On August 27, the employer filed an Answer denying the material allegations.

Derby also filed a petition with the Commissioner of Education claiming that after the Board 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. In a joint order, the Commissioner of Education and the Commission Chair consolidated the charge and appeal for hearing before an Administrative Law Judge and directed the Judge to offer recommended findings of fact and conclusions of law to both the Commissioner and the Commission through a single initial decision. The record would then 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 would then be sent to this Commission, which would then decide any remaining unfair practice issues within our jurisdiction.

On August 2, 2005, the Judge's Initial Decision was mailed to the parties. The Judge found that the Board did not violate Derby's tenure and seniority rights and granted it summary

judgment on the school law issues. The Judge then saw no reason for proceeding with a hearing on the unfair practice charge. In so concluding, the Judge referred to this statement in a certification filed by Derby:

It is not clear to me or, in any event, probably not legally provable, that the Superintendent desired to abolish middle and high school reading as a subject because of me and in retaliation against my determination to voice my opinion but what is clear is that the initiation of the new content area (First Reading Specialist and later Education Program Specialist) and the subsequent method by which administration filed those positions was engineered to eliminate me from consideration and to "box me out."

Exceptions to the Initial Decision were due by August 15, were not filed until August 17, and were ruled untimely by the Commissioner of Education.

On September 14, 2005, the Commissioner adopted the Administrative Law Judge's decision with respect to Derby's tenure and seniority claims, but declined to rule on the mootness of the unfair practice charge. Consistent with the Joint Order, it forwarded the remaining issues to this Commission, including the question of the mootness of the charge.

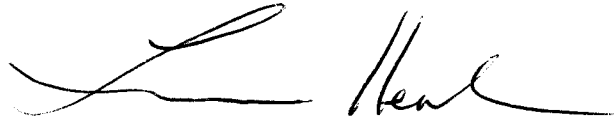
We conclude that further proceedings are needed to decide the merits of the unfair practice allegations. Even though Derby was not entitled to a different position by virtue of his tenure or seniority, he must still have an opportunity to prove his

claim that he was denied a position for which he was qualified in retaliation for his protected activity. In the interests of administrative efficiency and consistent with the Legislature's decision to have Commission Hearing Examiners hear unfair practice allegations, we will remand this matter to the original Commission Hearing Examiner rather than the Administrative Law Judge, who was granted jurisdiction over those allegations only because the unfair practice case was consolidated with the school law petition. See N.J.S.A. 52:14F-8 (Administrative Law Judges not assigned to hear Commission cases absent a specific request). That petition has now been resolved and there is no reason to have the unfair practice allegation heard by an administrative law judge.

ORDER

This matter is remanded to the original Hearing Examiner for further proceedings consistent with this decision.

BY ORDER OF THE COMMISSION

A handwritten signature in black ink, appearing to read "Lawrence Henderson", is written over a horizontal line.

Lawrence Henderson
Chairman

Chairman Henderson, Commissioners Buchanan, DiNardo, Fuller and Watkins voted in favor of this decision. None opposed. Commissioner Katz was not present.

DATED: October 27, 2005
Trenton, New Jersey
ISSUED: October 27, 2005