

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

In the Matter of

EMMA ALPARONE, LISA KERR,
SHERRY KERR, RICHARD KOLTON,
STEVEN KOVACS, KATHERINE LAZZARA,
BARBARA MANN, AMYE PAIGE MCGAHERN,
EVELYN MICKEL, CARLA NOWELL,
JUDY ROGERS, BETTY SUTTON,
KIM ERZUOLO, JEFFREY THOMPSON,
GERALD TOLOMEO AND PATRICIA TUMA,

OAL DKT. NO. EDU 12183-08
AGENCY DKT. NO. 334-11/08

JOINT ORDER ON
CONSOLIDATION AND
PREDOMINANT INTEREST

Petitioners,

v.

HIGH BRIDGE BOROUGH BOARD OF
EDUCATION, HUNTERDON COUNTY,

Respondent.

-and-

HIGH BRIDGE TEACHERS ASSOCIATION,

Petitioner,

v.

PERC DKT. NO. CO-2009-190

HIGH BRIDGE BOROUGH BOARD OF
EDUCATION, HUNTERDON COUNTY.

Respondent.

SYNOPSIS

The Chair of the Public Employment Relations Commission and the Acting Commissioner of Education issue a joint order consolidating for hearing individual petitions before the Commissioner of Education and an unfair practice charge before PERC filed by the employee's majority representative. The Chair and Acting Commissioner further hold that the predominant interest rests with PERC.

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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HIGH BRIDGE BOROUGH BOARD OF
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Respondent.

Appearances:

For Respondent High Bridge Board of
Education, Marshall Dennehy, Warner, Coleman
& Coggin, attorneys (Howard B. Mankoff, of
counsel) and Schwartz, Simon, Edelstein,
Celso & Kessler, attorneys (Nicholas Celso,
III, of counsel)

For Petitioners, Emma Alparone, Lisa Kerr, Sherry Kerr, Richard Kolton, Steven Kovacs, Katherine Lazzara, Barbara Mann, Amye Paige McGaheran, Evelyn Mickel, Carla Nowell, Judy Rodgers, Betty Sutton, Kim Erzuolo, Jeffrey Thompson, Gerald Tolomeo and Patricia Tuma, Selikoff & Cohen, attorneys (Keith Waldman, of counsel)

For Charging Party, High Bridge Teachers Association, Detzky & Hunter, attorneys (Stephen B. Hunter, of counsel)

JOINT DECISION

On November 7, 2008, Emma Alparone, Lisa Kerr, Sherry Kerr, Richard Kolton, Steven Kovacs, Katherine Lazzara, Barbara Mann, Amye Paige McGaheran, Evelyn Mickel, Carla Nowell, Judy Rodgers, Betty Sutton, Kim Erzuolo, Jeffrey Thompson, Gerald Tolomeo and Patricia Tuma filed petitions with the Commissioner of Education appealing the determination of Respondent High Bridge Board of Education, Hunterdon County, to recoup funds allegedly erroneously paid to them under their contracts from 2002-2005 and 2005-2008 by freezing their salaries and withholding increments and other benefits.

On November 24, 2008, the High Bridge Teachers Association filed an unfair practice charge with the Public Employment Relations Commission alleging that the Board violated the New Jersey Employer-Employee Relations Act, specifically N.J.S.A. 34:13A-5.4a(1)&(5)^{1/}, when it recouped funds in violation of the

^{1/} These provisions prohibit public employers, their
(continued...)

parties' collective negotiations agreement and without prior negotiations.

The Board contends that it was entitled to recoup the funds and that the matter is strictly a contractual dispute that does not require negotiating the terms of repayment.

On August 3, 2009, petitioners and the Association filed a joint motion to consolidate and for a determination of predominant interest. On September 17, 2009, the Board also filed a motion to consolidate and for a predominant interest determination. All parties are in agreement that the matters should be consolidated. The Board argues that the Commissioner of Education has the predominant interest. The Association argues that PERC has the predominant interest.

On June 1, 2012, Administrative Law Judge Susan M. Scarola issued an Order For Consolidation and Determination of Predominant Interest finding the matters should be consolidated and that PERC has the predominant interest.

Having independently evaluated the record and considered the Administrative Law Judge's Order, the Chair of the Public

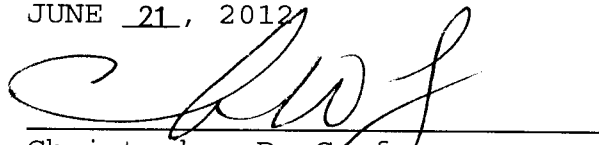
1/ (...continued)
representatives or agents from: "(1) Interfering with, restraining or coercing employees in the exercise of the rights guaranteed to them by this act. . . . [and] (5) Refusing to negotiate in good faith with a majority representative of employees in an appropriate unit concerning terms and conditions of employment of employees in that unit, or refusing to process grievances presented by the majority representative."

Employment Relations Commission on June 19, 2012, acting pursuant to authority delegated to her by the full Commission and the Commissioner of Education on June 21, 2012, made the following determination in this matter.

JOINT ORDER

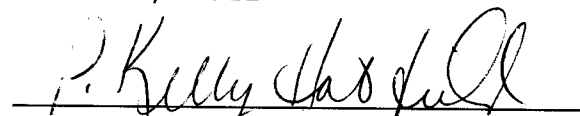
The matters should be consolidated for hearing before the Administrative Law Judge. The Administrative Law Judge will first offer recommended findings of fact and conclusions of law to both the Public Employment Relations Commission and the Commissioner of Education, disposing of all issues in controversy 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 Public Employment Relations Commission to resolve the unfair practice issues within its jurisdiction. PERC's decision and the complete record will then be sent to the Commissioner of Education who will then decide any remaining contractual and education law issues.

DECISION RENDERED BY THE
ACTING COMMISSIONER OF
EDUCATION ON
JUNE 21, 2012



Christopher D. Cerf
Acting Commissioner
Trenton, New Jersey

DECISION RENDERED BY THE CHAIR
OF THE PUBLIC EMPLOYMENT
RELATIONS COMMISSION ON
JUNE 19, 2012



P. Kelly Hatfield
Chair
Trenton, New Jersey