

P.E.R.C. NO. 86-130

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

LIVINGSTON BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-86-38-64

LIVINGSTON EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission holds that an unfair practice charge filed by the Livingston Education Association against the Livingston Board of Education with the Commission should be consolidated with a petition the Board filed with the Commissioner of Education for a hearing before the Office of Administrative Law. The charge alleged the Board violated the New Jersey Employer-Employee Relations Act when it denied the request of a unit employee, Jeanmarie Ward, for an unpaid leave of absence. The petition seeks a declaratory judgment concerning Ward's tenure rights, contending that she abandoned tenure when she left the Board's employ after the Board denied her leave request. The Commission further holds, in agreement with a recommendation by an Administrative Law Judge, that the Commission has the predominant interest to decide the dispute since the Association has conceded that the Board's actions were proper under education law.

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Appearances:

For the Respondent, Riker, Danzig, Scherer, Hyland & Perretti, Esqs. (James S. Rothschild, Jr., of Counsel)

For the Charging Party, Carol Rosenfeld, Field Representative, NJEA UniServ Regional Office

DECISION AND ORDER

On August 12, 1985, the Livingston Education Association ("Association") filed an unfair practice charge against the Livingston Board of Education ("Board"). The charge alleged the Board violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq., ("Act"), specifically subsections 5.4(a)(1) and (5), when, on June 11, 1985, it denied the request of a unit employee, Jeanmarie Ward, for an unpaid leave of absence. It contends this denial unilaterally altered a term and condition of employment.

On or about November 14, 1985, the Board filed a petition with the Commissioner of Education. The petition seeks a declaratory judgment concerning Ward's tenure rights. It contends

that she abandoned tenure when she left the Board's employ after the Board denied her leave request.

On October 24, 1985, a Complaint and Notice of Hearing issued.

On November 13, 1985, the Board filed a motion to consolidate and sought a predominant interest determination with the Office of Administrative Law. It contends the Commissioner of Education has predominant interest. The Association agrees that the matters should be consolidated but contends that the Commission has predominant interest.

On March 5, 1986, Hon. Leon S. Wilson, A.L.J. issued an order on motion for consolidation and determination of predominant interest. The administrative law judge first concluded, in agreement with the parties, that consolidation was appropriate. He then concluded that the Commission had the predominant interest. He found that "the principal matter in controversy...is...the act of the board by which it denied petitioner's application for extended leave of absence." He based this conclusion, in part, on the Association's concession that in the event the action is not an unfair labor practice, the Board's actions were proper under education law. Thus, according to Judge Wilson, the only issue in dispute was the unfair practice charge. He then concluded that leaves of absence were, in general, mandatorily negotiable under the New Jersey Employer-Employee Relations Act and therefore "of immediate and primary concern to the public policy entrusted to PERC

and...comparatively remote to the charge of the Department of Education."

The Administrative Law Judge served his decision on the parties, the Commission, and the Commissioner of Education and informed them that the order would be deemed adopted if neither agency head reversed or modified it within 45 days or received an extension of time to consider the order. Neither of the parties had excepted to the order.

Under all the circumstances of this case, we agree that the Commission has the predominant interest. In particular, the tenure issue is not implicated here since the Association has conceded that the Board's actions were proper under education law. Given this, the predominant issue in dispute appears to be the Board's alleged violation of subsection 5.4(a)(5) regarding the alleged unilateral alteration of a term and condition of employment without negotiations.^{1/} Pursuant to N.J.A.C. 1:1-14.6(d) we direct this matter be heard by an Administrative Law Judge.

^{1/} We stress, however, that all we need decide is that issue. If Ward left the employ of the Board without its consent, the issue of her reinstatement would present another issue. Even if the denial of her leave violated our Act, it appears that reinstatement would not be an appropriate remedy. Her alleged insubordinate behavior raises a separate issue. See Demarest Bd. of Ed. v. Demarest Ed. Assn., 177 N.J. Super. 211 (App. Div. 1980).

ORDER

Judge Wilson's Order on Motion for Consolidation and Designation of Predominant Interest is adopted.

BY ORDER OF THE COMMISSION


James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Johnson, Smith and Wenzler voted in favor of this decision. None opposed. Commissioners Hipp and Reid abstained.

DATED: Trenton, New Jersey
May 21, 1986
ISSUED: May 22, 1986