

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WEST DEPTFORD TOWNSHIP BOARD OF EDUCATION

Respondent

and

Docket No. C-3

CAROLINE L. FORD

Complainant

DECISION

Pursuant to a Notice of Hearing to resolve a question concerning charges alleging violations of the Act, a hearing was held on June 24, 1969 before ad hoc Hearing Officer Walter J. Gershenfeld at which all parties were given an opportunity to examine and cross-examine witnesses, present evidence, and argue orally. Thereafter, on August 7, 1969 the ad hoc Hearing Officer issued a Report and Recommendations. Exceptions have been filed by the Respondent to the Hearing Officer's Report and Recommendations. The Commission has considered the record, the Hearing Officer's Report and Recommendations, and the Exceptions and, on the facts in this case, finds:

1. The West Deptford Township Board of Education is a public employer within the meaning of the Act and is subject to the provisions of the Act.
2. Caroline L. Ford is a public employee within the meaning of the Act.
3. Charges having been filed with the Commission alleging discrimination and unfair labor practices by the public employer under the Act, a question concerning alleged violations of the Act exists and this matter

is appropriately before the Commission for determination.

4. The Hearing Officer's Report and Recommendations, attached hereto and made a part hereof, is adopted except as modified herein.
5. Jurisdiction of Commission

The Public Employer questions the jurisdiction of the Public Employment Relations Commission to hear this case. The Public Employer contends that the Commissioner of Education should hear this case pursuant to the Education Law, Title 18A of the New Jersey Statutes. This position is based upon the provision of Chapter 303, Laws of 1968 which provides that, "Nothing in this act shall be construed to annul or modify, or to preclude the renewal or continuation of any agreement heretofore entered into between any public employer and any employee organization, nor shall any provision hereof annul or modify any statute or statutes of this State." However, Chapter 303, Laws of 1968 does afford certain rights to public employees: "Except as hereinafter provided, public employees shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity...." This legislation, which grants new rights to public employees, would be meaningless if it did not protect employees in the exercise of these rights. Therefore, the Commission finds that it does have jurisdiction in view of the fact that the Complainant has alleged a violation of Chapter 303, Laws of 1968, which the Commission has been empowered to enforce.^{1/}

1/ See Burlington County, Evergreen Park Mental Hospital and Dorothy Cooper, P.E.R.C. NO. 14 (September 19, 1969).

6. The Alleged Violation

The Complainant alleges that the Board of Education refused, on March 17, 1969, to grant her a contract for the school year 1969-70 as a reprisal because of her husband's activities as President of the Education Association. The uncontroverted evidence reveals:

(a) Complainant, Mrs. Ford, received excellent recommendations from the Elementary Supervisor and the Principal of the school in which she taught for three years. In addition, the Superintendent of Schools recommended that she be granted tenure. (b) Mrs. Ford testified that she never received any complaints or reprimands concerning her teaching. Further, she was never told why she was not rehired. (c) She is the wife of the President of the West Deptford Education Association which negotiated the first collective negotiations agreement during the 1968-69 school year. These negotiations reached a successful conclusion on June 3, 1969, when the agreement was signed. (d) According to Mr. Ford, negotiations "were marred by frequent blow-ups." He gave several examples. Board Member Ritz at one meeting "grabbed it [the counter proposal], stood up, threw it down and said 'You people don't want to proceed'." Board Member Best "got up and not too long after the meeting opened and, in fact, turned to the Board President and said, 'I am getting out of here before I say something I shouldn't say', and stormed out and was not with us the rest of the session." According to Mr. Ford, Board Member Kennedy during negotiations "made the comment that things would be different, and it was not in a friendly tone when it was made." These remarks apparently occurred prior to the Board's action of March 17 when they refused to grant Mrs. Ford a contract. Mr. Ford testified that on March 5 when the New Jersey Education Association representative, Mr. Sharp, entered the negotiations on behalf

of the Association, progress was made in that "he got the Board talking about a lot of things they said were non-negotiable." He testified further that at the March 12 meeting, "Then they sort of froze up." (e) Three other teachers who were not rehired were given an opportunity to resign but Mrs. Ford was not given this opportunity. It should be noted that the record does not reveal whether Mrs. Ford requested an opportunity to resign or whether other teachers who were given an opportunity to resign had requested this opportunity of the Board. (f) Lenore Larson, a teacher who served as the Acting Principal at Mrs. Ford's school during most of the last half of the 1968-69 school year, testified as follows when informed by Superintendent Wendler that Mrs. Ford had not been rehired:

My immediate reaction was, "Why?" and Dr. Wendler had no reason -- they didn't give him any reason.

I said, "My reaction is that they are doing this because her husband is President of the Teachers' Association. They will not deal with him directly, so, indirectly, they are trying to get at Bill through Caroline."

That was my reaction. Dr. Wendler was surprised that I would have this reaction.

He said that he didn't seem to feel this, and I said, "Unless the Board has other reasons, I am afraid I won't be the only one that feels this way."

Several other facts emerge from the record: (a) Mr. Ford was given a fourth contract by the Board of Education at the same meeting that the Board declined to extend a fourth contract to Mrs. Ford. Thus, Mr. Ford now has tenure in the West Deptford school system. (b) The biggest problem during the negotiation of the contract was the negotiability of certain items. In the experience of the Commission, the question of what is negotiable had been a problem in many school districts and was not unique to West Deptford. (c) Although Superintendent Wendler

suggested to Mrs. Ford that she file a motion for reconsideration with the Board of Education, the record shows that she did not do so despite the fact that only eight of the nine Board members voted on her reappointment. It is, of course, conjectural whether or not she would have been granted a hearing or whether the Board would have reconsidered and, if so, whether the outcome would have been any different. The Commission decision, however, is not based upon whether or not Mrs. Ford followed the suggestion of Dr. Wendler.

The Board argued that, consonant with several cases decided by the Commissioner of Education - Ruch v. Board of Education of Greater Egg Harbor Regional High School District, January 29, 1968 and Schaffer v. Board of Education of the Borough of Fair Lawn, September 16, 1968 - and the Supreme Court decision in Zimmerman v. Board of Education of Newark, 1962, the Board did not have to give any reason to Mrs. Ford for not rehiring her nor was she entitled to a hearing. The Commission notes, however, that the Court in the Zimmerman decision stated: "Today, the powers of a board of education in appointment, transfer or dismissal are not so broad. They are limited by the Fourteenth Amendment of the United States Constitution.....The Board's powers are also limited not only by the terms of the contract of employment but also by the New Jersey Constitution, by the Teachers' Tenure Act, and by other statutory provisions such as the Law Against Discrimination." (38 New Jersey Report, 65, pp. 70-71)^{2/} Clearly, action or behavior contrary to Chapter

^{2/} In this connection it should be noted that the U. S. Court of Appeals for the Seventh Circuit has held that a school board's right to deny a teacher tenure because of his union activity is not absolute but is modified by the U. S. Civil Rights Act of 1871 McLaughlin v. Tilendis 398F 2d 287

303, Laws of 1968, would not be consistent with the Zimmerman decision.

7. Discussion

(a) The statements and actions attributed to various members of the Board, while not condoned, occurred during negotiations when tempers may be expected to flare and when individuals are not necessarily at their best behavior. The statements made in this case, which were ambiguous at best and uttered in the context of negotiation sessions, are not found to be violations of the Act nor are they found to be antithetical to the purposes of the Act. Similarly, these remarks do not warrant an assumption that the Board exhibited an animus toward the Association or Mr. Ford so as to justify a presumption that action against Mrs. Ford was an act of reprisal predicated upon her husband's activities. Furthermore, none of the statements expressly or impliedly indicate a threat or suggestion of reprisal against Mrs. Ford or any adherent of the Association. (b) Moreover, of the three Board members alleged to have made remarks exhibiting antagonism to the concept of collective negotiations, one (Board Member Ritz) did not participate in the vote regarding the renewal of Mrs. Ford's contract; Board Member Best voted in favor of renewing her contract; and only Board Member Kennedy, of the three, voted to deny her a contract. Therefore, only one of the three members of the negotiating committee, as to whom antagonistic remarks are attributed, voted against renewing Mrs. Ford's contract. Furthermore, there is no evidence in the record that any of the other three Board members who voted against renewing Mrs. Ford's contract exhibited a predilection to engage in reprisals against any employee because of his activities on behalf of an employee organization. (c) Mrs. Larson's statement is found to be an opinion which carries no weight in determining whether or not Mrs. Ford was denied reappointment

in violation of the Act. Her role as acting principal, under the facts in this case, does not warrant a finding that she spoke for the Board in this instance. (d) The Board did, in fact, renew Mr. Ford's contract and did, in fact, execute a collective negotiation agreement which should be viewed in the evaluation of the total picture. (e) The Board's failure to explain its refusal to grant Mrs. Ford a contract, despite favorable recommendations and absent unfavorable comments, may not, standing alone, be viewed as conclusive evidence that the Act has been violated. Although this action may be viewed with suspicion, this does not warrant a finding that it was violative, per se. However, the Commission believes that it would have been better practice for the Board to have set forth its reasons.^{3/} Its failure to do so, though not condoned, does not require a finding that the Board's action constitutes an act of reprisal prohibited by Chapter 303 because of her husband's activities on behalf of the Association. (f) The Board's failure to permit Mrs. Ford to resign has been alluded to as further evidence of reprisal. The record, as noted, does not reveal that she sought this opportunity or that others were given this right in similar circumstances without their making such a request. In essence, the evidence on this point does not establish that she was treated in a discriminatory fashion because of her husband's activity.

8. Conclusion

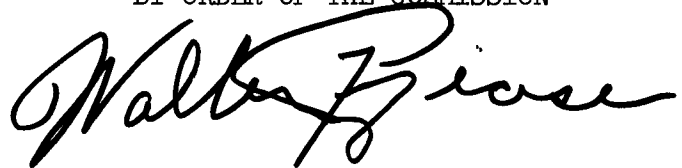
Based upon the above, the Commission finds that the Complainant has

^{3/} In this respect the holding of the U. S. District Court, District of Massachusetts, in David Lucia v. James Duggan et al (August 26, 1969) G.E.R.R. No. 316 September 29, 1969 is worthy of note. The District Court found that the school board's dismissal of a non-tenured teacher was improper because of "a lack of procedural due process". The Court's opinion, in pertinent part, stated "The American public school system,

(Continued)

failed to meet its burden proving the allegations of the charge by a preponderance of the evidence. Accordingly, the charge is hereby dismissed in its entirety.

BY ORDER OF THE COMMISSION ^{4/}



WALTER F. PEASE
CHAIRMAN

DATED: November 21, 1969
Trenton, New Jersey

3/ (Continued) which has a basic responsibility for instilling in its students an appreciation of our democratic system, is a peculiarly appropriate place for the use of fundamentally fair procedures."

4/ Dissent of Commissioners Frederick L. Hipp and Thomas L. Parsonnet is attached.

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WEST DEPTFORD TOWNSHIP BOARD OF EDUCATION

Respondent

and

Docket No. C-3

CAROLINE L. FORD

Complainant

DISSENTING DECISION

The New Jersey Employer Employee Relations Act guarantees that all "public employees shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization ***." P.L. 1968, Ch. 303, Sec. 7. It is the duty of this Commission to see that those rights are not violated. A refusal to continue employment of a teacher because of organizational membership or activities is a violation.

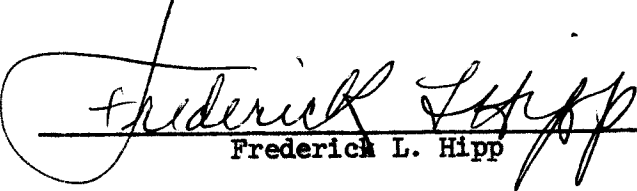
In the instant matter, the undisputed evidence presented to the Hearing Officer leaves no doubt that Mrs. Ford was an excellent and able teacher and that her supervisors recommended that her employment be continued. It is also clear from the uncontested evidence that Mrs. Ford's husband did engage in negotiations with the Board on behalf of the Association which was the majority representative of the unit of its employees representing its teachers during which strong feelings were aroused.

There is some evidence to show that the failure to retain this excellent teacher was because of her husband's activities on behalf of the Association to which she also belonged. The Board had every opportunity to

refute this by showing its reasons or those of its members. Its failure to do so lends credence to the conclusion that it was because of Associational Membership and activities and, therefore, in violation of Sec. 7 of the law.

We do not believe that the Commission should insist upon evidence of a direct nature and reject evidence from which inference may be drawn. To do so would be to deny to employees the basic protection intended to be covered by Sec. 7.

For the foregoing reasons, we find that the Board of Education violated the Act and would direct that it reemploy Mrs. Ford as a teacher.


Frederick L. Hipp


Thomas L. Parsonnet

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Arbitration between :
:
WEST DEPTFORD TOWNSHIP : HEARING OFFICER'S
BOARD OF EDUCATION : REPORT AND RECOMMENDATIONS
PUBLIC EMPLOYER :
:
- and - : August 7, 1969
:
WEST DEPTFORD EDUCATION ASSOCIATION :
CHARGING PARTY :
:
Docket No. C-3 :

Appearances:

West Deptford Township Board of Education

E. Milton Hannold, Attorney

Present:

Richard L. Wendler

West Deptford Education Association

Henry Bender, Attorney

Witnesses:

Caroline L. Ford

William G. Ford

Lenore Larson

Background:

Pursuant to a Notice of Hearing issued by the Public Employment Relations Commission (hereinafter called the Commission), the undersigned Hearing Officer met with representatives of the parties in Trenton, New Jersey, on June 24, 1969. A transcript was taken of the proceedings, which was delivered to the undersigned on July 28, 1969.

Following the enactment into law of the New Jersey Employer-Employee Relations Act (Chapter 303, N. J. Public Laws of 1968), the

West Deptford Education Association (hereinafter called the Association) became the collective-bargaining representative for teachers employed by the West Deptford Board of Education (hereinafter called the Board).

In his capacity as President of the Association, Mr. William G. Ford led the Association in the negotiation of a collective-bargaining agreement with the Board. After extended negotiations an Agreement between the parties was concluded on June 3, 1969.

The grievant, Caroline L. Ford, has been an elementary-school teacher at the Oakview School for the past three years (September, 1966-June, 1969). The School Principal is Miss C. Crea. Miss Crea was absent from her duties for approximately one-half of the 1968-69 school year, and her duties for that period were filled by Miss Lenore Larson.

The 1968-69 school year marked Mrs. Ford's third year of teaching with the Board and thus concluded the normal probationary period. The Board met to consider her for tenure on March 17, 1969. The vote was 4-4. Inasmuch as a majority of the Board must vote for tenure, tenure was denied Mrs. Ford.

Mrs. Ford grieved the denial of tenure and was refused a hearing by the Board. The matter was thereupon pursued by the Association under Chapter 303 and gave rise to the instant hearing.

Mrs. Ford is the wife of Mr. Ford, the President of the Association Chapter. The Association contends that the action of the Board in denying tenure to Mrs. Ford was a reprisal for Mr. Ford's activities as President of the Association and thus constituted a violation of Section 7 of Chapter 303.

Issues:

There are two issues in this case. The Board contends that this matter is not properly before the Hearing Officer and that Mrs. Ford

should have pursued recourse under Title 18A of the New Jersey statutes to the Commissioner of Education. Hence, the first issue is:

1. Is the denial of tenure to Mrs. Ford, a probationary employee, a matter pursuable under Chapter 303, N. J. Public Laws of 1968?

In the event that there is an affirmative answer to the first issue, the second or contingent issue to be decided is:

2. Was the action of the Board in denying tenure to Mrs. Ford a violation of Section 7 of Chapter 303, N. J. Public Laws of 1968, and if so, what shall the remedy be?

Applicable Statute Portions:

Chapter 303, Section 7 (Partial)

"7. Except as hereinafter provided, public employees shall have, and shall be protected in the exercise of, the right, freely and without fear of penalty or reprisal, to form, join and assist any employee organization or to refrain from any such activity; provided, however, that this right shall not extend to any managerial executive except in a school district the term managerial executive shall mean the superintendent of schools or his equivalent, nor, except where established practice, prior agreement or special circumstances, dictate the contrary, shall any supervisor having the power to hire, discharge, discipline, or to effectively recommend the same, have the right to be represented in collective negotiations by an employee organization that admits non-supervisory personnel to membership, and the fact that any organization has such supervisory employees as members shall not deny the right of that organization to represent the appropriate unit in collective negotiations; and provided further, that, except where established practice, prior agreement, or special circumstances dictate the contrary, no policeman shall have the right to join an employee organization that admits employees other than policemen to membership."

Chapter 303, Section 10

"10. Nothing in this act shall be construed to annul or modify, or to preclude the renewal or continuation of any agreement heretofore entered into between any public employer and any employee organization, nor shall any provision hereof annul or modify any statute or statutes of this State."

Discussion: Applicability of Chapter 303

The Board argues that Section 10 of Chapter 303 clearly spells out the fact that 303 is limited in that it cannot be construed to annul or modify existing statutes. Since Boards of Education are regulated under the provisions of Title 18A of the state statutes, it is these provisions which should govern. Inter alia, 18A provides at 18A: 11-1 and 27-4 that Boards of Education are given authority to make rules and regulations with regard to employment and tenure of their employees.

Recently decided cases have demonstrated that Boards of Education have been given considerable latitude by 18A in determinations affecting the employment and tenure of probationary teachers. In the case of Ruch v. Board of Education of the Greater Egg Harbor Regional High School District, dated January 29, 1968, the Commissioner of Education held:

The employment of teachers who have not achieved tenure status is a matter lying wholly within the discretionary authority of the Board.

~~A New Jersey~~ Supreme Court case is then cited in support of this position, Zimmerman v. Board of Education of Newark, 38 N. J. 65 (1962), and the Commissioner of Education adds:

Respondent was under no obligation to renew its agreement with petitioner, and in failing to take any action with respect to his reemployment it did no more than exercise the discretionary powers accorded it by statute.

In another case, Schaffer v. Board of Education of the Borough of Fair Lawn, dated September 16, 1968, the Commissioner of Education held:

Nowhere does the Legislature make provision for a hearing at any level for a teacher whose contract is terminated in accordance with its own terms (cf. Branin v. Board of Education of Middletown Township, decided by the Commissioner January 25, 1967) or whose contract is not renewed (cf. Ruch v. Board of Education of Greater Egg Harbor Regional School District, supra). The Commissioner may not presume that the Legislature intended to confer upon boards of education a power or an obligation which it did not write into the law.

The Ruch case involves a teacher who after three years of employment in respondent's school system was not reappointed and not granted a hearing. Mr. Ruch's Department Chairman had recommended dismissal on grounds that Mr. Ruch did not meet standards of the district. The Schaffer case involves a teacher who similarly was not given a contract after three years of employment as a teacher. The petitioner in the Schaffer case was denied a written statement of the charges against her and a hearing on the charges. In the Schaffer case the petitioner was informed by the Principal of her school that he was not recommending re-employment.

The Board argues that inasmuch as nothing in Chapter 303 supersedes Section 18A, the two consequences which flow are that Chapter 303 may not be applied to the present case and that the Petitioner's recourse is an appeal via the well-established machinery set up by the Commissioner of Education under Title 18A to consider cases of this type. The Board of Education adds that it:

.....has acted solely within its duly constituted powers, as furnished by the Legislature, acting under the rules and decisions, as

determined by the State Board of Education, and by the cases of the State of New Jersey, including the Zimmerman case, which was a Supreme Court case in the State of New Jersey (Notes of Testimony, p. 85).

The Association argues that Section 7 of Chapter 303, which protects employees in the right of self-organization, goes to the heart of Chapter 303. Unless public employees are protected in the exercise of the right to self-organization, the law is meaningless. The Association recognizes that the wording of Section 10 provides for no infringement of existing statutes. In the view of the Association, however, the legislature could not have intended to create a nullity, which Chapter 303 would become if Section 10 is interpreted as not applying to the protection of public employees engaged in the activity of self-organization.

The Association believes that the right of public employees to be protected in the right of self-organization must be looked at in the historical perspective of evolving public policy toward labor in this country. In this connection, a fundamental cornerstone of public policy has been the emphasis placed on protecting individual rights and thereby group rights of organization. The very words of Section 7, "to form, join and assist," are taken directly from the Wagner Act. That Act provided a mechanism for protection of these rights in the National Labor Relations Board. Similarly, the New Jersey Act has provided for a Public Employment Relations Commission for the same purpose. It would seem specious to hold that the Petitioner is not covered by Chapter 303 when she is a public employee and to ask her to seek redress under Title 18A when the violation which has occurred is one which goes directly to the heart of Chapter 303.

In reviewing the evidence and arguments of the parties, the Hearing Officer is impressed with the argument that the legislature did not intend to enact a meaningless document in Chapter 303. Unless employees are protected in the right to self-organization, the entire statute loses its meaning. Section 10 of Chapter 303 must be interpreted in this light.

As pointed out by Counsel for the Board, Chapter 303 applies to labor disputes, but that is only one facet of its application. The obvious intent of the statute is to afford employees the choice as to whether or not they wish to organize and to regulate such disputes as may flow from these decisions.

The Hearing Officer finds support for this belief in the fact that many Boards of Education in the State of New Jersey have negotiated collective-bargaining agreements with their teachers and other employees. Terms and conditions for tenured and probationary employees have been spelled out in these agreements. The authority given Boards of Education under Title 18A to make and amend rules and regulations concerning employment matters have thus already been modified by the activities of agencies for collective negotiations which have negotiated firm agreements covering probationary and other employees. In fact the situation may be viewed as one where the Boards have used their authority under Title 18A to negotiate employment conditions under Chapter 303. Thus, Chapter 303 has already been applied for purposes covered under Title 18A.

In the Ruch case cited by the Respondent, the Commissioner further makes clear that:

A board of education's discretionary authority is not unlimited, however, and it may not act in ways which are arbitrary, unreasonable, capricious or otherwise improper.

In the Schaffer case, the Commissioner of Education noted that the courts have observed that there are certain statutory limitations, such as those on discrimination and tenure which have been placed on boards of education. It is the recommendation of the Hearing Officer that the instant case be considered as Chapter 303 placing a new restriction on powers of Boards of Education, namely that a charge of violation of Section 7 of Chapter 303 may properly be brought before the Public Employment Relations Commission.

Finally, the Hearing Officer notes that the Schaffer case was dated September 16, 1968, three days after Chapter 303 became law. The closeness of the dates leads the Hearing Officer to believe that the Schaffer decision was not issued in contemplation of Chapter 303.

Recommendation:

The Hearing Officer recommends that the charge that Section 7 of Chapter 303, N. J. Public Laws of 1968 has been violated may properly be considered by the Public Employment Relations Commission despite the probationary status of the teacher involved in this case.

Discussion: Alleged Violation of Section 7

The Board did not present a case, per se, with regard to the alleged violation of Section 7 of Chapter 303. As noted above, the Board relied on its belief that the matter was not properly before the Hearing Officer and the Petitioner should have proceeded via Title 18A to the Commissioner of Education. Nevertheless, in the process of questioning witnesses and summarizing its case the Counsel for the Board did present arguments addressed to whether or not Section 7 had been violated by the Board. It is these arguments which are summarized below.

The Board noted that Mrs. Ford was not denied tenure or fired. The Board simply failed to act, and this cannot be construed as other than an act within the proper discretion of the Board. There were four Board members who voted to grant Mrs. Ford tenure. By no stretch of the imagination can we believe that these members discriminated against Mrs. Ford. Why then should we deny to the other four members the opportunity to exercise their best judgment as to whether the retention of Mrs. Ford was in the best interest of the school district?

Other husband and wife teams have been retained by the Board, and these teams include individuals who were active in the Association. Thus, the Association cannot point to a pattern of discrimination. The action in Mrs. Ford's case was an individual situation.

The Board of Education met regularly with the Association and consummated a collective-bargaining agreement in June, 1969. Thus the Board would not seem to be as antipathetic to the Association as maintained by the Association.

The Association introduced a set of exhibits which supported Mrs. Ford's claim that she is an effective teacher. Mrs. Ford's regular principal, Miss Crea, was present for only a portion of the academic year 1968-69 because of illness. Miss Crea's evaluations of Mrs. Ford and a notarized statement from her taken a day before the hearing indicate that she considers Mrs. Ford to be an excellent teacher. Miss Crea's replacement, Miss Decker, was present at the hearing and testified that based on her observation Mrs. Ford was doing an excellent job with a difficult grade. Mrs. Larson testified that she heard the Superintendent of Schools, Dr. Wendler, state that the Board refused tenure to Mrs. Ford over his recommendation and the recommendation of Mrs. Pearl Decker, Supervisor of Elementary Education. Mrs. Decker was also not present

at the hearing, but the Association introduced an exhibit in which Mrs. Decker evaluated Mrs. Ford's work highly and indicated in writing that she was recommending that Mrs. Ford be granted tenure.

The Association believes that the Board failed to grant Mrs. Ford tenure as an act of retribution because of the difficult year of negotiations with the Association led by Mrs. Ford's husband. Hesitant to take any direct action against him, the Association believes that the Board sought to hurt Mr. Ford by denying tenure to his wife and thus induce him to resign his position.

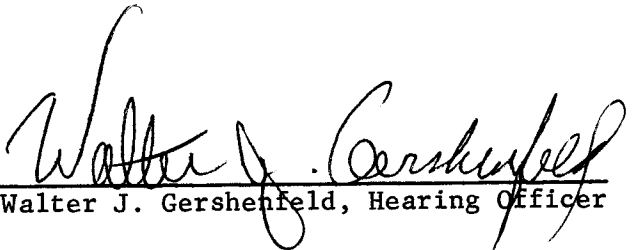
The Association notes that three other teachers within the system who were not granted tenure were given an opportunity to resign. No such opportunity was afforded Mrs. Ford.

At no time was Mrs. Ford given any warning that her performance was in any way inadequate, nor was she ever told anything about her teaching and deportment which was not favorable.

The Hearing Officer notes that the Board is at a disadvantage in that it did not put on a case directly in connection with the alleged violation of Section 7 of Chapter 303, nor were either Miss Crea or Miss Decker available for cross examination. Nevertheless, there is such an overwhelming amount of material in the record by those most qualified to observe and judge Mrs. Ford's work that there is no doubt in the mind of the Hearing Officer that Mrs. Ford is an able teacher. In view of the apparent violation of Section 7 of Chapter 303, there is room for no other recommendation but that either Mrs. Ford be given an adequate explanation of where her performance as a teacher or her behavior as a person has disqualified her as a teacher or, alternatively, the Board should forthwith rehire Mrs. Ford.

Recommendation:

The Hearing Officer recommends that Mrs. Ford be given either an adequate explanation of the failure of the Board to grant her tenure or else be rehired forthwith. In view of the nature of the case the determination of the adequacy of any explanation offered for denial of tenure should remain within the jurisdiction of the Public Employment Relations Commission.


Walter J. Gershenfeld
Walter J. Gershenfeld, Hearing Officer

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Arbitration between:

WEST DEPTFORD TOWNSHIP
BOARD OF EDUCATION
PUBLIC EMPLOYER

- and -

WEST DEPTFORD EDUCATION ASSOCIATION
CHARGING PARTY

Docket No. C-3

WEST DEPTFORD TOWNSHIP
BOARD OF EDUCATION
EXCEPTIONS TO HEARING
OFFICER'S REPORT AND
RECOMMENDATIONS

Employer-Respondent West Deptford Township Board of Education excepts to the report and recommendations of Hearing Officer's report in this matter as follows:

1) The statement on page 2, in the third paragraph, that the end of Mrs. Ford's third year of teaching with the Board "concluded the normal probationary period. The Board met to consider her for tenure on March 17, 1969" is a gratuitous conclusion based on no evidence. There is no proof of any normal probationary period established by the Board. Tenure is not voted by the Board. The Board may hire and tenure may ensue, but tenure is not at issue, employment is. There is no evidence before the Hearing Officer that a contract of hire for a specific term is in the nature of probation leading to tenure. There is no rule or law which vests any rights in an employee hired for a fixed term, in any employment preference beyond that term. Tenure affixes by operation of law, and there is no such thing in the school law as probationary tenure or tenure subject to veto or any such negative

concept as the wording of the report implies.

2) The recommendation of the Hearing Officer on page 8, line 4, "that the instant case be considered as Chapter 303 placing a new restriction on powers of Boards of Education, namely that a charge of violation of Section 7 of Chapter 303 may properly be brought before the Public Employment Relations Commission," is directly contrary to the wording of the statute. Chapter 303, Section 10, as quoted on page 4, expressly says the contrary. Chapter 303 pertains to all public employees, municipal, county, authorities and commissions, and the restrictions placed on school employees and school laws do not nullify the law. It happens to be particularly limited in school law, but the legislative intent is clear, applying to all public employees.

3) The statement of the Hearing Officer on page 8, third paragraph, "that the charge that Section 7 of Chapter 303, N. J. Public Laws of 1968 has been violated may properly be considered by the Public Employment Relations Commission despite the probationary status of the teacher involved in this case. Discussion: Alleged Violation of Section 7" is not warranted by the facts and the law. This is a new hiring as far as legal rights are concerned, and she has no more rights than a person who has never been hired ----- unless and until the tenure date is reached. There is no difference if she had never worked for the Board and the Board refused to hire her without explanation. The basic rights of the Board of Education are attempted to be removed here. The intent of the law as determined by the case history of the law has been to allow the Board freedom of action in cases where

there may be no proof, in a strict legal sense, of character or conduct detrimental to a school system, yet the Board, or a sufficient number of members of a Board refuse to continue to hire for reasons which are sufficient to themselves, and these reasons may remain secret. These reasons may have nothing to do with the direct teaching process. To use an example of a man teacher, so there is no suggestion of reflection upon the female grievant, an awareness of increasing effeminate traits, plus reports of his spending his evenings in a taproom frequented by maritime characters, may lead Board members to refrain from hiring again, but a hearing on these issues would be practically impossible. One can run the gamut of possible reasons. I hesitate to suggest others because it may be interpreted to reflect the opinion of one or more Board members, whose reasons in this case, as far as I know, are still secret each to himself.

4) The Hearing Examiner's conclusions with regard to the ability of the grievant are not warranted because of the incomplete testimony. The grievant has the burden of proof but did not compel the attendance of Dr. Wendler or Miss Crea or Miss Decker. Their absence should not weigh against the Board, which has no affirmative duty; but against the grievant.

5) The recommendation of the Hearing Examiner on page 10, the last five lines, "In view of the apparent violation of Section 7 of Chapter 303, there is room for no other recommendation but that either Mrs. Ford be given an adequate explanation of where her performance as a teacher or her behavior as a person has disqualified her as a teacher, or alternatively, the Board should

forthwith rehire Mrs. Ford" is not warranted by the facts or the law. There was no action the Board was or is required to take in her case. The arguments set forth by the Board have not been given due weight. "In the case of Ruch v. Board of Education of the Greater Egg Harbor Regional High School District, dated January 29, 1968, the Commission of Education held:

The employment of teachers who have not achieved tenure status is a matter lying wholly within the discretionary authority of the Board.


In Zimmerman v. Board of Education of Newark, 38 N. J. 65 (1962), the Commissioner of Education adds:

Respondent was under no obligation to renew its agreement with petitioner, and in failing to take any action with respect to his reemployment it did no more than exercise the discretionary powers accorded it by statute.

In another case, Schaffer v. Board of Education of the Borough of Fair Lawn, dated September 16, 1968, the Commissioner of Education held:

Nowhere does the Legislature make provision for a hearing at any level for a teacher whose contract is terminated in accordance with its own terms."

West Deptford Township Board of Education demands that the grievance be dismissed.


E. MILTON HANNOLD, Attorney for
West Deptford Township Board
of Education