

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

In the Matter of

THE TENURE HEARING OF
BARBARA DIRK,

-and-

OAL Docket No. EDU 5169-99
Agency Docket No. 78-4/99

BOARD OF EDUCATION OF THE
PASSAIC COUNTY MANCHESTER
REGIONAL HIGH SCHOOL,
PASSAIC COUNTY.

MANCHESTER REGIONAL HIGH SCHOOL
BOARD OF EDUCATION,

Respondent,

-and-

Docket No. CO-H-99-325

MANCHESTER REGIONAL HIGH SCHOOL
DISTRICT EDUCATIONAL SECRETARIES
ASSOCIATION,

Charging Party.

SYNOPSIS

The Chair of the Public Employment Relations Commission, in a joint order with the Commissioner of Education, finds that an unfair practice charge filed by the Manchester Regional High School District Educational Secretaries Association against the Manchester Regional High School Board of Education should be consolidated with tenure charges brought by the Board against Barbara Dirk. The consolidated case will be heard by an Administrative Law Judge. The Judge will offer recommended findings of fact and conclusions of law to both the Commission and the Commissioner disposing of all issues in controversy through a single initial decision. Upon transmittal of the initial decision to both agencies, the underlying record will be forwarded to the Commission to determine whether the bringing of tenure charges and the withholding of Dirk's increment violated the New Jersey Employer-Employee Relations Act. The Commission's decision and complete record will then be sent to the Commissioner to determine whether the tenure charges were otherwise warranted under education law.

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. 2000-11

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Appearances:

For the Board, Fogarty and Hara, attorneys
(Stephen R. Fogarty, on the brief)

For the Association and Barbara Dirk, Bucceri & Pincus,
attorneys (Sheldon H. Pincus, on the brief)

DECISION

On April 15, 1999, the Manchester Regional High School
District Board of Education certified tenure charges against
Barbara Dirk and suspended her without pay. On May 5, the

Commissioner of Education referred the matter to the Office of Administrative Law for disposition.

On April 22, 1999, the Manchester Regional High School District Educational Secretaries Association filed an unfair practice charge with the Public Employment Relations Commission alleging that the tenure charges were filed to interfere with Dirk's role as Association president and to discriminate against her because of her protected activity.

On May 4, 1999, the Board advised Dirk that she would be denied her salary increments for the 1999-2000 school year. On May 14, the Association amended the unfair practice charge to include the increment withholding. On May 18, an appeal of the increment withholding was filed with the Commissioner of Education.

On June 10, 1999, a Complaint and Notice of Hearing on the unfair practice charge issued.

On June 14, 1999, Dirk filed a motion for consolidation and predominant interest determination. The motion sought consolidation of the tenure charge matter, the unfair practice charge, and the appeal of the increment withholding. The motion also sought a finding that the Commission has the predominant interest in these cases.

On June 25, 1999, the Board filed a response supporting consolidation but arguing that the Commissioner has the predominant interest.

On July 1, 1999, Dirk filed a reply.

On July 7, 1999, Administrative Law Judge Thomas R. Vena recommended that the motion for consolidation be denied. He found that the salary increment and unfair practice proceedings would be much different from the tenure charge case. He noted that the Association is the moving party in the unfair practice case; the Board does not have the burden of proof in the unfair practice and increment withholding cases; and the standard of proof differs between the increment withholding case and the tenure charges. Lastly, he found that L. 1998 c. 42 requires that the tenure case be handled expeditiously.

On July 16, 1999, Dirk and the Association filed exceptions. They argue that the cases should be consolidated and that the Commission should be found to have the predominant interest.

On July 20, 1999, the Board filed exceptions. It also argues that the cases should be consolidated, but that the Commissioner should be found to have the predominant interest.

Having independently evaluated the record and considered the Administrative Law Judge's order, the Commissioner of Education on August 9, 1999 and the Chair of the Public Employment Relations Commission, acting pursuant to authority delegated to her by the full Commission, on August 3, 1999, made the following determination in this matter.

The unfair practice charge and the tenure charges should be consolidated. The parties are identical; the principal factual

and legal issues overlap; consolidation will save time and expense, avoid duplication, and prevent inconsistency; and dissimilar questions of fact and law will cause some delay but not prejudice or confuse any party. See N.J.A.C. 1:1-17.3. We share the Judge's concern about the timelines in L. 1998, c. 42, but both matters can be handled expeditiously. The danger of inconsistent results and concomitant protracted litigation outweigh the possibility of some delay in the initial proceedings.

Ordinarily, we would consolidate the cases to be heard in a single proceeding. The record would then be forwarded to the Commission to determine whether Dirk engaged in activity protected under the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. and whether the activity, if protected, was a substantial or motivating factor in the bringing of tenure charges and the withholding of her increment. See In re Bridgewater Tp., 95 N.J. 235 (1984). The Commission's decision and the complete record would then be sent to the Commissioner to determine whether the adverse personnel actions were for legitimate business reasons and were otherwise warranted under education law. However, the Commissioner of Education does not have jurisdiction to review Dirk's increment withholding under N.J.S.A. 18A:29-14 since that statute covers only teaching staff members. The Commission should therefore consider all issues relevant to the unfair practice charge concerning the increment withholding, including whether legitimate business reasons motivated the withholding and whether

it would have occurred for such reasons absent Dirk's protected activity. And since the same analysis would have to be made concerning the tenure charges, the Commission should do that analysis at the same time. Accordingly, in addition to determining whether protected activity motivated increment withholding and tenure charges, the Commission will determine whether those actions were also motivated by legitimate business reasons and would have occurred absent Dirk's protected activity. The consolidated matter will then be sent to the Commissioner to determine whether the tenure charges were otherwise warranted under education law. The increment withholding petition filed before the Commissioner shall separately proceed to dismissal based upon the Commissioner's lack of jurisdiction over withholdings of increments for persons who are not teaching staff members.

ORDER

The unfair practice charge and the tenure charges are consolidated for hearing before an 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.S.A. 1:1-18.3 and consistent with N.J.A.C. 1:1-17.8(a); and

Upon transmittal of the initial decision to both agencies, the underlying record will be forwarded to the Commission to determine whether the bringing of the tenure charges and the withholding of the increment violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq.; and

The Commission's decision and the complete record will then be sent to the Commissioner of Education to determine whether the tenure charges were otherwise warranted under education law.

DECISION RENDERED BY THE
COMMISSIONER OF EDUCATION
AUGUST 9, 1999.



DAVID C. HESPE
COMMISSIONER

DECISION RENDERED BY THE
CHAIR OF THE PUBLIC
EMPLOYMENT RELATIONS
COMMISSION
AUGUST 3, 1999



MILLICENT A. WASELL
CHAIR