

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

In the Matter of	:	
	:	OAL DOCKET NO. EDU 9367-88
RIVERSIDE EDUCATION	:	EDU DOCKET NO. 354-11/88
ASSOCIATION AND	:	PERC DOCKET NO. CO-90-32
JOSEPH WILLARD,	:	
	:	
Charging Parties-Petitioner,	:	JOINT ORDER
	:	
-v-	:	CONSOLIDATION AND
	:	PREDOMINANT INTEREST
RIVERSIDE TOWNSHIP BOARD	:	DETERMINATION
OF EDUCATION,	:	
	:	
Respondent.	:	
	:	

Appearances:

For the Petitioners, Selikoff & Cohen, Esqs. (Charles H. Goldstein, of counsel)
 For the Respondent, Barbour & Costa, Esqs. (John T. Barbour, of counsel)

DECISION AND ORDER

Joseph Willard appealed to the Commissioner of Education concerning the Riverside Township Board of Education's decision not to appoint him as junior varsity soccer coach for the 1988-89 season and to hire an allegedly unqualified person under N.J.A.C. 6:29-6.3. The matter was transmitted to the Office of Administrative Law for determination as a contested case. In addition, Willard and the Riverside Education Association filed an unfair practice charge with the Public Employment Relations Commission claiming that Willard was not reappointed junior varsity assistant soccer coach, baseball coach and chairperson of the Department of Physical Education/Health in retaliation for Willard's protected activity.

The Board moved to consolidate the petition and charge and for designation of the Commissioner as having the predominant interest pursuant to N.J.A.C. 1:1-17.5. Willard and the Association argued that matters should not be consolidated and that if they were, the Commission should have the predominant interest.

The Administrative Law Judge concluded that the two matters should be consolidated and that the Commission has the predominant interest. He concluded that the Commission should first determine whether there was an unfair practice and that the Commissioner would then determine whether the nonreappointment of Willard and the appointment of another individual was proper. He stated that the Commission's unfair practice determination would only be a factor to be considered by the Commissioner and that the Commissioner shall be free to determine, within the confines of applicable law, that despite the existence of an unfair practice, the Board's action was nevertheless justified. These comments warrant clarification.

Predominant interest determinations are designed to avoid duplicative and inconsistent agency determinations. N.J.A.C. 1:1-17.1 et seq., see also Hackensack v. Winner, 82 N.J. 1 (1980). Once the agency with the predominant interest makes a factual or legal determination, the agency that subsequently considers any remaining issues cannot reverse or ignore those earlier determinations. The Commission will first apply In re Bridgewater Tp., 95 N.J. 235 (1984) and determine whether the nonreappointments were illegally motivated. The Commissioner will then determine

whether the nonreappointment and appointment violated N.J.A.C. 6:29-6.3. We do not anticipate that the respective determinations will overlap. We note, however, that should the Commission find that the nonreappointment to soccer coach violated N.J.S.A. 34:13A-5.4, the Commission could remedy that violation by ordering Willard's reappointment. The determination of any remaining issues pursuant to N.J.A.C. 6:29-6.3 could not disturb that result. In the event the Commission does not find a violation, the Commissioner is free to determine whether the Board's action was otherwise justified.

Having considered the record and the Administrative Law Judge's Order, and having made an independent evaluation of the record, the Commissioner of Education on ~~Feb. 5, 1990~~ and the Public Employment Relations Commission on January 31, 1990 made the following determination in the matter.

ORDER

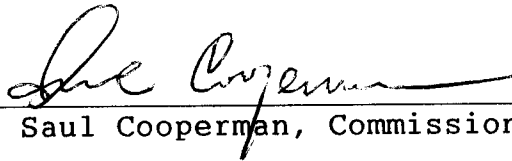
The Commissioner of Education and the Public Employment Relations Commission ORDER that OAL Docket No. EDU 9367-88, EDU Docket No. 354-11/88 and P.E.R.C. Docket No. CO-89-137 be consolidated for hearing; and it is

FURTHER ORDERED that the predominant interest in the conduct and outcome of the consolidated matter rests with the Public Employment Relations Commission; and it is

FURTHER ORDERED that the Administrative Law Judge shall conduct a hearing on this matter and issue a recommended decision; and it is

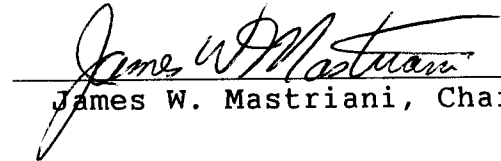
FURTHER ORDERED that the Commission has the authority to issue a final decision on the unfair practice allegations. The Commissioner shall thereafter be granted 45 days to render a final decision on the alleged violation of N.J.A.C. 6:29-6.3.

DECISION RENDERED BY THE COMMISSIONER
OF EDUCATION ON February 5, 1990



Saul Cooperman, Commissioner

DECISION RENDERED BY THE
THE PUBLIC EMPLOYMENT RELATIONS
COMMISSION ON January 31, 1990



James W. Mastriani, Chairman

The Chairman of the Public Employment Relations Commission and Commissioners Ruggiero, Wenzler, Smith and Johnson voted in favor of this Joint Order. Commissioners Reid and Bertolino abstained from consideration.