

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matters of

WILLINGBORO BOARD OF EDUCATION
and WILLINGBORO EDUCATION ASSO-
CIATION,

Respondents,

-and-

Docket No. CI-79-53-60

ERNEST E. GILBERT,

Charging Party.

WILLINGBORO EDUCATION ASSOCIATION,

Respondent,

-and-

Docket No. CI-79-56-61

ERNEST E. GILBERT,

Charging Party.

THE TENURE HEARING OF ERNEST E.
GILBERT, SCHOOL DISTRICT OF THE
TOWNSHIP OF WILLINGBORO, BURLINGTON
COUNTY

OAL DKT. NO. EDU 3388-80

SYNOPSIS

The Commission, pursuant to N.J.A.C. 1:1-9.7, reviews an Order of an Administrative Law Judge which had recommended that an unfair practice charge pending before the Commission be consolidated with tenure charges which had been filed with the Commissioner of Education in one proceeding to be conducted by the Office of Administrative Law. In addition, the Administrative Law Judge found that the "dominant interest" in the entire litigation lay with the Commissioner of Education and recommended that only the Commissioner issue a decision in the consolidated matter, as all the issues pertained to the tenure charges.

On review of the Order, the Commission, based upon the facts of the particular case, agrees with the reasoning of the Administrative Law Judge, affirms her order in its entirety and requests that the Office of Administrative Law exercise jurisdiction over the unfair practice complaint. The unfair practice complaint pending before the Commission is ordered dismissed.

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Appearances:

For the Willingboro Board of Education in Docket
Nos. CI-79-53-60 and CI-79-56-61, Barbour and
Costa, Esqs. (John T. Barbour, of Counsel)

For the Willingboro Board of Education in OAL Dkt. No.
EDU 3388-80, Warren, Goldberg & Berman, Esqs.
(Louis B. Youmans, of Counsel)

For Ernest E. Gilbert in OAL Dkt. No. EDU 3388-80,
Greenberg & Mellk, Esqs.
(Arnold M. Mellk, of Counsel)

DECISION ON REVIEW OF CONSOLIDATION ORDER

In In re Willingboro Board of Education and Willingboro
Education Association and Ernest E. Gilbert, P.E.R.C. No. 81-50

6 NJPER (¶ 1980), the Commission dismissed all unfair
practice charges brought by Ernest E. Gilbert (a Willingboro

teacher) against the Board, with the exception of an alleged violation of N.J.S.A. 34:13A-5.4(a)(4). That charge was based upon the Charging Party's assertion that the Board suspended him and filed tenure charges against him with the Commissioner of Education in retaliation for his filing unfair practice charges with this Commission. The procedural history of the matter leading up to our prior decision, as well as the allegations of the various unfair practice charges filed against the Board by Mr. Gilbert, are set forth in our prior ruling.^{1/}

While we found that the allegations of the charge, if true, might constitute a violation of N.J.S.A. 34:13A-5.4(a)(4), we stayed any hearing on the charge as we had been advised that a proceeding had been commenced before the Office of Administrative Law as to whether the unfair practice charges against the Board should be consolidated for the purpose of hearing with the tenure charges filed with the Commissioner of Education. Also, at issue was whether PERC or the Commissioner of Education should issue separate decisions on their respective cases or whether one agency had a "predominant interest" in the matters being litigated, in which case only a single decision would be issued by that agency.

On November 7, 1980, Administrative Law Judge Beatrice S. Tylutki, who had been designated to hear the consolidation proceeding issued her written ruling, a copy of which was received by the Commission on the same day. On November 10, 1980, the

^{1/} Mr. Gilbert's charges also alleged violations of the Act with respect to conduct by the Willingboro Education Association. That aspect of the case was considered by us in P.E.R.C. No. 81-30, 6 NJPER _____ (¶ _____ 1980).

Commission advised Judge Tylutki, the Office of Administrative Law and all parties and other agencies to the proceedings that the Commission, pursuant to N.J.A.C. 1:1-9.7, would review Judge Tylutki's order. Additionally, the litigants were afforded an opportunity to address comments to the Commission with respect to Judge Tylutki's order. Responses have been received from the Board's respective counsel in the PERC and Commissioner of Education proceedings and from counsel for Mr. Gilbert in the tenure hearing case. The Office of Administrative Law has sent the Commission the record made before Judge Tylutki and the matter is now properly before us for review.^{2/}

As previously mentioned, the only aspect of the unfair practice charges filed against the Board which we have determined present issues under our Act is the assertion that the Board violated N.J.S.A. 34:13A-5.4(a)(4) when it filed tenure charges with the Commissioner of Education. The Board has filed 19 separate tenure charges with the Commissioner of Education against Mr. Gilbert.^{3/}

^{2/} We recently reviewed an order of this nature in In re Magnolia Board of Education, P.E.R.C. No. 80-65, 6 NJPER _____ (¶ _____ 1980). In that decision we extensively discussed the case of City of Hackensack v. Winner, 82 N.J. 1 (1980) and the factors to be considered in determining whether cases commenced in separate administrative agencies should be consolidated for hearing and/or final decision. We review the instant order with that discussion in mind.

^{3/} Also, before Judge Tylutki was the question whether to consolidate a case brought by Mr. Gilbert in the New Jersey Division on Civil Rights on which the Division had not yet made a determination as to whether a hearing on the charges was warranted. Judge Tylutki determined that the Civil Rights matter and the unfair practice charges brought by Mr. Gilbert against the Willingboro Education Association (now pending before a Commission Hearing Examiner) should not be consolidated with any other pending cases.

As to the tenure charges and the subsection 5.4(a)(4) charge, the ALJ ruled as follows:

The matter pending before PERC involving Mr. Gilbert's unfair labor practice allegations against Willingboro, a portion of CI-79-53-60 and CI-79-53-61, shall be consolidated with the tenure matter, EDU 3388-80 (AGency No. 235-5/80A).

As to the two matters that are to be consolidated for hearing, I FIND pursuant to N.J.A.C. 1:1-14.4 that the Commissioner has the predominant interest and I ORDER that the Commissioner render the final decision. The Director of the Office of Administrative Law shall assign an Administrative Law Judge to preside over the consolidated matter pursuant to N.J.A.C. 1:1-14.6.

We believe that Judge Tylutki properly determined that the two cases should be consolidated for hearing. The unfair practice charge filed by Mr. Gilbert challenges the validity of the reasons for filing the tenure charges, a matter which is certainly relevant to the litigation of the tenure charges. Hence, the development of a single factual record is appropriate herein. We hereby affirm that portion of her order and pursuant to our authority under N.J.S.A. 34:13A-6(g), N.J.S.A. 52:14-F(8)(a) and N.J.A.C. 1:1-14-5(c), we hereby request that the Office of Administrative Law assign an Administrative Law Judge to conduct the hearing on the unfair practice complaint issued in this matter.

Based upon the particular facts of this case, we also agree that the predominant interest in this litigation lies with the Commissioner of Education rather than PERC. There are 19 tenure charges pending before the Commissioner of Education covering a wide variety of events, including the circumstances present at the time Mr. Gilbert filed his unfair practice charges.

Moreover, if the tenure charges are proven to be baseless, which is in essence what the unfair practice charge alleges, and are dismissed, Mr. Gilbert would be reinstated and made whole, which would be the same relief this Commission would have the power to award if the unfair practice charges were proven before us. However, in this case it is clear that the overwhelming majority of the factual and legal issues involve the Commissioner of Education's jurisdiction and that the Charging Party will be afforded ample opportunity to litigate the matters which implicate our jurisdiction in the proceedings before the Administrative Law Judge and the Department of Education. Accordingly, we refer the matter pending before us for disposition in the consolidated proceeding and will dismiss the remaining allegation of the unfair practice charge which is still pending against the Board.

ORDER

For the foregoing reasons IT IS HEREBY ORDERED:

A. That the November 7, 1980 Order of Administrative Law Judge Beatrice S. Tylutki is affirmed in its entirety.

B. That the portion of the complaints in Docket Nos. CI-79-53-60 and CI-79-56-61 alleging that the Willingboro Board of Education violated N.J.S.A. 34:13A-5.4(a)(4) are hereby dismissed.

BY ORDER OF THE COMMISSION


Bernard M. Hartnett, Jr.

Acting Chairman

Acting Chairman Hartnett, Commissioners Graves and Parcels voted in favor of this decision. None opposed. Commissioners Hipp and Newbaker abstained.

DATED: Trenton, New Jersey

December 10, 1980

ISSUED: December 11, 1980