

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

MAYWOOD BOARD OF EDUCATION,

Respondent,

- and -

Docket Nos. CO-76-96-53  
and CE-76-17-54

MAYWOOD EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

Pursuant to a motion for settling the record filed by the Maywood Education Association the Chairman issues a decision clarifying the meaning of a sentence in the Commission decision in the original unfair practice matter. A dispute had arisen as to the meaning of one particular sentence in the Commission decision as it affected an issue pending before the Commissioner of Education by the same parties. The Association had moved before the Appellate Division to have PERC settle the record and the matter had been remanded to the Commission to permit the Association to submit such a motion. The Commission pursuant to N.J.S.A. 34:13A-6(f) had delegated to the Chairman authority to decide the motion.

After a review of the entire record of the unfair practice case, including the transcript and the pleadings, the Chairman indicates that the Commission was ruling solely on the negotiability of a board's decision to lay off a tenured teacher as part of a reduction in force (RIF). Therefore when the Commission stated in its decision that the termination "was lawful and in accord with N.J.S.A. 18A:28-9 and 10" it was only determining that there was a specific statute which precluded the subject matter from being mandatorily negotiable. The record did not permit nor did the Commission intend to rule upon whether or not the board's actions were in full compliance with those two statutory sections; nor whether or not a different teacher should have been laid off pursuant to the procedure set forth therein.

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Appearances:

For the Respondent, Gerald L. Dorf, P.A.  
(David A. Wallace, of Counsel and on the Brief)

For the Charging Party, Goldberg & Simon, Esqs.  
(Theodore M. Simon, of Counsel, Sheldon N. Pincus,  
on the Brief)

DECISION ON MOTION

On October 6, 1975, an Unfair Practice Charge was filed with the Public Employment Relations Commission (the "Commission") by the Maywood Education Association (the "Association") alleging that the Maywood Board of Education (the "Board") had violated the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act") by refusing to negotiate the decision to lay off several teachers and the impact of those layoffs on those discharged and on the remaining teachers. A hearing was held and a Recommended Report and Decision issued by the Hearing Examiner - H.E. No. 78-1, 3 NJPER 244 - and upon exceptions filed as to his recommended remedy only, the Commission in turn issued its decision, P.E.R.C. No. 78-23, 3 NJPER 377 (1977).

We ruled that the decision to lay off Ms. Joan Conley, a tenured teacher, as part of a reduction in force ("RIF") was not negotiable. As part of that holding the Commission stated that "her termination was lawful and in accord with N.J.S.A. 18A:28-9 and 10." Therefore an award of back pay was not appropriate. <sup>1/</sup> 3 NJPER at 379. However, the Board was held to have violated the Act by refusing to negotiate the effect of the RIF on Ms. Conley and the teachers who assumed her duties; and the Board was ordered to so negotiate. <sup>2/</sup> The Association appealed to the Appellate Division and the Board cross-appealed. These appeals are still pending.

Subsequently, the Commission received correspondence from the attorney for the Association. It indicated that a proceeding is currently in progress before the Commissioner of Education, Conley v. Maywood Board of Education, Docket No. 425-11/75, regarding Ms. Conley's claim under the Education Law that she had more seniority than teachers who were not RIFed. Apparently the

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<sup>1/</sup> These statutes read:

18A:28-9 "Nothing in this title or any other law relating to tenure of service shall be held to limit the right of any board of education to reduce the number of teaching staff members, employed in the district, whenever, in the judgment of the board, it is advisable to abolish any such positions for reasons of economy or because of reduction in the number of pupils or of change in the administrative or supervisory organization of the district or for other good cause upon compliance with the provisions of this article."

18A:28-10 "Dismissals resulting from any such reduction shall not be made by reason of residence, age, sex, marriage, race, religion or political affiliation but shall be made on the basis of seniority according to standards to be established by the commissioner with the approval of the state board."

<sup>2/</sup> Other teachers were involved in the case, and there was a companion charge filed by the Board, but they are not relevant to this decision.

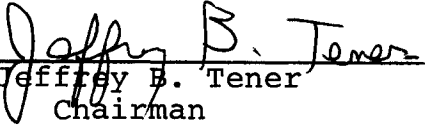
Board was arguing before the Commissioner that the above-quoted language from our decision made Conley's claim before him res judicata, and the Association requested that we modify that language to indicate that Title 18A claims had not been litigated or adjudicated before PERC.

By letter dated November 22, 1978, the undersigned advised the Association that in view of the pending appeal and the Commissioner of Education hearing, modification or clarification of a PERC decision would be inappropriate in response to a letter. Thereupon, the Association moved in the Appellate Division to have this Commission directed to settle the record. By order dated December 21, 1978, the Court remanded the matter to PERC to allow the Association to move for settling of the record, with PERC to file its findings and conclusions with the Court by January 30, 1979. That motion was filed with the Commission on January 5, 1979 with a supporting brief and the Board filed a brief in response. At its meeting on January 16, 1979, the Commission voted to delegate to the undersigned the authority to rule on the motion. N.J.S.A. 34:13A-6(f).

I have reviewed the submissions of the parties as well as the full record of the case including the transcript and the pleadings. This review establishes that the Commission was ruling solely on the negotiability of a dispute as to terms and conditions of employment. In doing so, it was necessary to determine whether there were any specific statutes which might preclude the subject matter from being mandatorily negotiable. State v. State Supervisory Employees, 78 N.J. 54 (1978). Our conclusion was

that N.J.S.A. 18A:28-9 and 10 together constituted a specific statutory mandate on the manner in which the RIF of a tenured teacher was to be effectuated, thus removing the subject from collective negotiations. It was in that sense that the Commission stated that Ms. Conley's layoff without negotiations was indeed "lawful and in accord with N.J.S.A. 18A:28-9 and 10". Nothing more was intended to be conveyed by that sentence, and the Commission was certainly not ruling on whether N.J.S.A. 18A:28-9 and 10 had in fact been correctly applied by the Board. Nor given the ruling on negotiability would the Commission have made such a ruling if the issue had been raised. The record does not reveal anything that would even have made this Commission aware that such a dispute existed. Back pay was held not appropriate under the Employer-Employee Relations Act because there had not been a violation of the duty to negotiate warranting that remedy. Any reading of the decision that would extend it to cover anything further would square neither with the record nor the intent of the Commission.

BY ORDER OF THE COMMISSION

  
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Jeffrey B. Tener  
Chairman

DATED: Trenton, New Jersey  
January 25, 1979