501-14

STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION
TRENTON, NEW JERSEY

In the Matter of Tenure Charges Against LORRAINE WILLIAMS, Respondent

Filed By

THE STATE-OPERATED SCHOOL DISTRICT OF THE CITY OF NEWARK

Agency Docket Number 255-9/14

For the State-Operated School District of the City of Newark, Essex County:
Ms. Teresa L. Moore, Esq.

For Ms. Lorraine Williams, Respondent:
Ms. Nancy I. Oxfeld, Esq,

Arbitrator David L. Gregory
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Arbitrator's Decision, Award, and Order: December 20, 2014

By letter dated September 29, 2014, the Department of Education of the State of New Jersey referred this TEACHNJ matter to me as Arbitrator. By letter dated December 4, 2014, Respondent Tenured Teacher Ms. Lorraine Williams filed this Motion to Dismiss the Tenure Charges brought against her for inefficiency. The School District Employer replied to the Motion. By Notice letter dated December 16, 2014, the School District Employer additionally cross-moves for a ruling that I preclude Respondent from introducing any evidence at the hearing.

I have carefully read and studied all of the parties' submissions. I render my Decision , Award, and Order pursuant to law. Felix Frankfurter, Associate Justice of the United States Supreme Court, was the eminent proponent of the pithy axiom that the law is largely the history of procedure. It is indubitable----procedure matters.

The School District Employer understandably points to the original schedule established in the October 16, 2014 conference call and reiterated in the Employer's letter summary of October 16, 2014: discovery motions by October 31, 2014; opposition by November 7, 2014; and, my decision regarding same by November 21, 2014; and, three hearing dates were scheduled—December 5, 9, and 11, 2014.

Such Motions were not timely submitted October 31, 2014, unfortunately, and opposition thereto was not submitted November 7, 2014. Consequently, lacking such documents, there was no basis whatsoever by which I could provide a written opinion regarding same by November 21, 2014. The Employer's chronology is correct, the Employer seemingly could have, but did not, confront Respondent immediately after November 7, 2014 regarding same.

However, Motions, and, significantly, a critical mass of very influential Arbitral decisions directly on point with the present case before me, have certainly proliferated since early November.

New Jersey has dramatically redesigned and rejuvenated its teacher tenure dynamic. TEACHNJ does not operate in a vacuum. Over time, and probably sooner than later, New Jersey should begin to realize impressive cost savings via the TEACHNJ panel of distinguished Arbitrators. The issue in this battery of analogous cases is especially conducive to being determined with precedential effect, guiding at least the institutional parties in any future cases without significant additional costs..

Although the decisions of fellow panel members do not formally have res judicata or collateral estoppel effect, their prior decisions that routinely involve one of the

institutional parties, focus on the same particular statutory law, have closely analogous facts and corresponding Arbitral elucidation are, at the very least, appropriately highly influential. "…the precedential value of a prior award between the parties is to be determined by the subsequent arbitrator." Elkouri and Elkouri, How Arbitration Works (6th Edition) at 598.

Respondent has extensively cited a burgeoning litany of very persuasive decisions, finding that "the District erred when it discharged Respondent when it used 2012-13 as one of the two evaluation …years ." Arbitrator Stephen M. Bluth, Sandra Cheatham and School District of the City of Newark, Agency Dkt Number 226-8/14, at 14, October 16, 2014. Furthermore, having lost in the Section 25 context, the unsuccessful School District cannot then invoke Section 8, as Arbitrator Bluth explains at considerable length in his decision in Cheatham.

It appears that Arbitrator Robert T. Simmelkjaer has written the comprehensive definitive decision governing the identification, determination, and failure of tenure charges prematurely brought. See, Arbitrator Robert T. Simmelkjaer, Neil Thomas and the State-Operated School District of the City of Newark, Agency Dkt Number 244-9/14, November 19, 2014. This 52 page, singled spaced decision is cited extensively in Respondent's Motion. The most recent pertinent decision applying the Simmelkjaer doctrine is the 25 page, single spaced order of Arbitrator Joyce M. Klein, Elena Brady and the State-Operated School District for the City of Newark, Agency Dkt Number 270-9/14, December 7, 2014. I note that the pertinent time frames and the law of Thomas and Brady, and in the present case before me, are quite symmetrical.

I find that the tenure charges are likewise premature and cannot be invoked against Respondent at this time.

The District categorically maintains that the formidable array of arbitral authority contrary to the District's position is simply wrongly decided. The District's rationale is unpersuasive, suggesting that any additional time allowed a presumptive congenitally incorrigible only exacerbates what is already a colossal waste of everyone's time. However, what the District regards as an unwarranted and ungovernable year is often quite the contrary. Rather than cavalierly disregard the gravity of tenure charges, experience instead demonstrates that teachers facing charges usually endeavor to rise to the occasion. Most take full advantage of all ameliorating and rehabilitative professional programs maximizing due process. In any event, Lawmakers periodically provide for transition periods in the implementation of especially important legislation. The federal Civil Rights Act of 1964 did not go into effect for another year and the Americans with Disabilities was gradually and incrementally effectuated.

Decision, Award, and Order

Respondent's Motion to Dismiss the Charges in their entirety is granted, and Respondent shall be made whole. The Employer's cross-Motion to preclude any and all evidence that may have been proferred by Respondent at a future hearing is consequently completely moot and need not be reached at this time.

So Ordered,

David L. Gregory

I, David L. Gregory, affirm that I have executed this document as my Decision, Award, and Order on this 20th Day of December, 2014.

Njad new jersey arb dec 20 2014
New Jersey arbitration decision December 20 2014