
In the Matter of the Tenure Hearing of

**Marie Ebert,
State-Operated School District
of the City of Newark
Essex County**

Agency Docket No. 49-3/15

Ruling on Respondent's Motion to Dismiss

Tia Schneider Denenberg, *Arbitrator*

APPEARANCES

FOR THE PETITIONER:

Christina Michelson, *Scarinci Hollenbeck*

FOR THE RESPONDENT:

Nancy I. Oxfeld, *Oxfeld Cohen*

BACKGROUND

On November 20, 2014, the parties and the arbitrator opened hearings by telephone in the tenure charges filed by the district against Marie Ebert [Agency Docket No. 267-9/14] and agreed to postpone two other hearings scheduled for November 21 and 22. In a Ruling on Respondent's Motion to Dismiss, issued on January 30, 2015, the arbitrator dismissed the charges for failure to comply with statutory time limits. The ruling stated, in relevant part: "[T]he dismissal is without prejudice to the district's right to file charges again in a manner that fully comports with applicable statutory provisions" [at p. 19].

Subsequently, the district filed "amended" tenure charges against the respondent, alleging inefficiency and unbecoming conduct, pursuant to Section 25 and Section 8 of TEACHNJ [Agency Docket No. 49-3/15]. In a telephone conference held on April 8, 2015, the arbitrator advised the parties that, in light of her January 31, 2015, decision in *Rinita Williams, SOSD of Newark* [Agency Docket No. 241-8/14], she was inclined to dismiss the Section 25

charge of inefficiency. As requested, the arbitrator gave the parties permission to file submissions. Hearings were scheduled for June 11 and 12 at the offices of Scarinci Hollenbeck.

On April 20, 2015, the respondent submitted a motion to dismiss the charges. On April 30, 2015, the district replied, opposing the motion to dismiss.

DISCUSSION

The respondent asserts, among other contentions, that the district's amended tenure charges were not filed in a timely manner and, therefore, must be dismissed. The district maintains that its filing was timely and that the charges are properly before the arbitrator.

A review of the applicable statutes and regulations, along with the court's decision in *Cowan* [224 N.J. Super. 737 (App. Div. 1988)], demonstrates that: (1) once tenure charges are filed with the district, the tenured employee has 15 days to submit a written statement of position and evidence; and (2) upon receipt of the employee's statement of position and evidence, or upon expiration of the allotted 15-day time period, the district superintendent shall determine within 45 days whether there is probable cause to credit the evidence in support of the charges and whether such charges are sufficient to warrant a dismissal or reduction in salary. Here, the record demonstrates that the determination of probable cause was made within 45 days of the respondent's response to the amended tenure charges. See District's Opposition to Respondent's Motion to Dismiss, Exhibits B-H. Accordingly, I reject the respondent's claim and find that the filing of amended tenure charges was timely.

For the reasons detailed in the *Williams* decision and discussed with the parties in the April 8 telephone conference, I grant the respondent's motion to dismiss the inefficiency charge that is based on Section 25 of TEACHNJ. The charge relies on teacher evaluations in the 2012-2013 school year. Nothing in the record warrants a departure from my conclusion in *Williams* that such evaluations could not support removal under Section 25.

The respondent also seeks dismissal of the inefficiency charge filed under Section 8 on the ground that inefficiency can be charged only under Section 25. The district, in response, contends that in cases where "the requirements for inefficiency tenure charges under Section 25 have not been met, the inefficiency charge must be evaluated under Section 8" [District Brief, p. 12].

In enacting Section 25, the legislature introduced a comprehensive framework for resolving tenure charges of inefficiency, clearly intending that the provision would succeed Section 8 as the regular procedure for dealing with such disputes. With regard to inefficiency, Section 25 is meant to supplant Section 8. Nowhere did the legislature express an intention to maintain indefinitely two incompatible procedures for trying such charges. In addition, nothing indicates that the legislature envisioned an inefficiency charge brought under Section 25 reverting to a charge under Section 8 as a fallback tactic.

In this instance, however, the tenure dispute arose during the transition to Section 25 as the designated procedure for resolving a charge of inefficiency, and the charge was originally based on both Section 25 and Section 8. Although a charge involving 2012-2013 evaluations may not be brought under Section 25, no similar impediment prevents the district from seeking removal according to the requirements of Section 8.

The amended tenure charge of unbecoming conduct also is properly before the arbitrator under Section 8. Since Section 25 does not provide an alternative framework for bringing charges of that kind, Section 8 remains the standard procedure for reviewing accusations of unbecoming conduct.

In sum, both charges—inefficiency and unbecoming conduct—shall be heard on June 11 and 12, 2015.


Tia Schneider Denenberg
Arbitrator

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Ruling of Arbitrator

The undersigned arbitrator, having been appointed, pursuant to P.L. 2012, c. 26, to hear and decide the above-captioned matter, rules as follows:

Both charges shall proceed to a hearing, as noted in the opinion.



Tia Schneider Denenberg
Arbitrator

Dated: May 21, 2015

State of New York
County of Columbia

On this 21st day of May, 2015, before me personally came and appeared TIA SCHNEIDER DENENBERG, to me known and known to me to be the individual described in and who executed the foregoing instrument and she acknowledged to me that she executed the same.



Ralph Peters Hubbell, Jr.
Notary Public State of New York
No. 4793303
Qualified in Dutchess County
Commission Expires October 31, 2015