

**STATE OF NEW JERSEY - DEPARTMENT OF EDUCATION
BUREAU OF CONTROVERSIES AND DISPUTES**

In the Matter of Tenure Hearing of Leonard Yarborough:

**STATE OPERATED SCHOOL DISTRICT
FOR THE CITY OF NEWARK, ESSEX COUNTY**

Case No. 268-9/14

and

**OPINION
and AWARD**

LEONARD YARBOROUGH

Before:

Edmund Gerber, Arbitrator

Appearances:

For the State Operated School District of the
City of Newark, Essex County:
Charles I. Auffant, Esq.
Stuart Ball, LLC

For the Respondent:
Ramon E. Rivera, Esq.
Scarinci & Hollenbeck, LLC

By letter dated October 9, 2014, the Department of Education of the State of New Jersey, pursuant to P.L. 2012, c. 26, appointed me to hear and decide this tenure matter as arbitrator. On December 5, 2014, the Respondent, Leonard Yarborough, filed a Motion to Dismiss the tenure charges. The Petitioner, the State Operated School District of the City of Newark, Essex County, filed a Petitioner's Brief in Opposition to Respondent's Motion to Dismiss on December 12, 2014. In its Motion to Dismiss, the Respondent cited several recent arbitrators' decisions granting similar motions.

Since October of this year four arbitrators have granted similar motions to dismiss. These decisions include: Arbitrator Stephen M. Bluth, Sandra Cheatham and School District of the City of Newark, Agency Docket Number 226-8/14, Arbitrator Robert T. Simmelkjaer, Neil Thomas and the State-Operated School District of the City of Newark, Agency Docket Number 244-9/14, Arbitrator David Gregory, Lorraine

Williams and the State Operated School District of the City of Newark, Agency Docket Number 255-9/14 and Arbitrator Joyce M. Klein, Elena Brady and the State-Operated School District for the City of Newark, Agency Docket Number 270-9/14 is particularly relevant here.

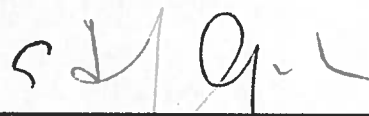
As stated by Arbitrator Gregory, although the awards of fellow arbitration panel members do not formally have *res judicata* or collateral estoppel effect, their prior decisions concerning the Newark School District focus on the same statutory law, have closely analogous facts are highly influential.

In particular, the District's arguments before me are identical to those before Arbitrator Klein; they were thoroughly considered and disposed of in her award. Effectively, the issues before me have already been litigated; there was a final decision concerning those issues on the merits, the determination of those issues was essential to the resolution of that proceeding and the party opposing the motion, the State Operated School District of the City of Newark, is one and the same. All of the elements necessary to apply the doctrine of collateral estoppel are present. Olivieri v. Y.M.F. Carpet, Inc., 186, N.J. 511, 521, 897 A.2d 1003 (2006.)

Accordingly, given that all issues before me have already been fully and fairly litigated and in full reliance on the decisions cited above, I enter the following:

AWARD

Respondent's Motion to Dismiss the charges in their entirety is granted and Respondent shall be made whole.



Edmund Gerber, Arbitrator
December 29, 2014