

**STATE OF NEW JERSEY
COMMISSIONARE OF EDUCATION**

IN THE MATTER OF THE TENURE CHARGES OF:

STATE OPERATED SCHOOL DISTRICT, THE CITY OF NEWARK, NJ.

AND

AWARD AND OPINION

RATIBA AHMED, RESPONDENT
Agency Docket No. 284-9/14

BEFORE: ERNEST WEISS, ARBITRATOR.

APPEARANCES: FOR THE RESPONDENT: NANCY I. OXFELD, ESQ.
OXFELD COHEN, P.C.

FOR THE DISTRICT: EUGENE LISS, ESQ.
SHANA DON, ESQ.
RAMON E. RIVERA, ESQ.

POSITION OF RESPONDENT ON MOTION TO DISMISS

Ms. Nancy I. Oxfeld, Esq. argued in relevant part on behalf of Respondent, that the instant motion to dismiss the charges of inefficiency herein against Ms. Ratiba Ahmed, who is a tenured elementary education teacher in the Newark public schools, are premature and must be dismissed. It pointed out that "...the arbitrator's area of review is statutorily limited." And shall only be considered whether or not:

- (1) the employee's evaluation failed to adhere substantially to the evaluation process, including but not limited to providing a corrective action plan:
- (2) there is a mistake of fact in the evaluation:
- (3) the charges would not have been brought but for consideration of political affiliation, nepotism, union activity, discrimination as prohibited by state or federal law, or other conduct prohibited by state or federal law: or
- (4) the district's actions were arbitrary and capricious.
N.J.S.A. 18A:6-17.2a.

The arbitrator's review is limited to the four factors above and,
The evaluator's determination as to the quality of an employee's classroom performance shall not be subject to an arbitrator's review. N.J.S.A. 18A:6-17.2c.

Respondent further argued that the Cheatham and Thomas decisions support the herein claim that the tenure charges against Rabita Ahmed are premature and must be dismissed it “cannot be converted into something else.” Ms. Oxfeld pointed out that each arbitrator deciding the tenure charges in the School District of the city of Newark decided that the charges were premature and cannot begin until after the start of the 2014-2015 school year. Additionally, each arbitrator also provided a make whole remedy.

As a result, the tenure charges against respondent Ratiba Ahmed should be dismissed for having been filed in violation of TEACHNJ.

**THE POSITION OF THE STATE OPERATED SHOOOL DISTRICT OF
THE CITY OF NEWARK NEW JERSEY. (DISTRICT)**

The District argued in relevant part that on October 24, 2014 the District received a letter of clarification from the Department of Education (“DOE”) to General Counsel Charlotte Hitchcock. It essentially confirms that the 2012-2013 evaluation can be used to support a tenure charge for inefficiency against a tenured teacher in Newark, NJ. See N.J.S.A. 18A:6-123b.

This Department of Education’s clarification was intended to provide additional guidance as to the purpose of the language set forth in the FAQs regarding TEACHNJ that the respondent relied upon in her brief.

“At the time the Commissioners representatives found that the Evaluation Rubric met in the intent of the recently adopted TEACHNJ Act and were directionally aligned with the proposed regulations, which would be effective in March of 2013. ”

DISCUSSION AND OPINION

Having recently decided the issue herein in my decision involving respondent Sandra Brienza of the same District, I cannot ignore the argument herein of MS. Oxfeld, regarding the prior decisions with identical issues. She convincingly points out that, the results of the prior arbitrators with essentially identical issues rises to a “collateral estoppel” or “res judicata”.

I am reminded that the tenure issues before me herein of Ratiba Ahmed, is relatively identical to the recently decided Sandra Brienza case decided by me on December 30, 2014, as well as a number of prior decisions in the same District.

Courts “have also recognized that the doctrine of res judicata may apply to arbitrations with strict factual identities.”

In considering the recent awards by the above distinguished panel members, I also agree with Arbitrator Gregory where he correctly quotes that “...*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.

I have previously observed in the Brienza Award that, in a March 28, 2012 letter, from Chief Talent Officer Peter Shulman, he updated resources for 2012-13 school year, as a “planning and capacity-building year” and prepare for the implementation of the new system in the 2013-14 school year. He further advised that from January 2013 through August 2013, districts should test and refine implementation of

the observation instruments and rubrics and prepare for full implementation in the 2013-14 school year. Also, he advised that "By June 2013, thoroughly train teachers on the teacher practice instruments;"

"we have designated 2012-13 as a planning and capacity-building year During this time, districts must engage in one of two options: participate in a second cohort of our pilot program, or build capacity through a defined series of steps for implementing the new system in 2013-14"

I have previously decided that the tenure charges within the same District of Newark were premature and are therefore contrary to the TEACHNJ statute providing for a specific beginning in the school year 2014 and having found that herein also the District prematurely invoked the new inefficiency evaluations prior to the legislated "beginning", I therefore hereby grant the Motion to Dismiss the tenure charges against teacher Ratiba Ahmed Of the State Operated School District of the City of Newark Essex County and I make the following Award.

STATE OF NEW JERSEY
COMMISSIONARE OF EDUCATION

IN THE MATTER OF THE TENURE HEARING
OF RATIBA AHMED,
(RESPONDENT)

-AND-

AWARD

STATE OPERATED SCHOOL DISTRICT OF
THE CITY OF NEWARK, N.J. COUNTY OF ESSEX
(DISTRICT)

AGENCY DOCKET NO. 284-9/14

The undersigned arbitrator having been randomly assigned pursuant to P.L. 2012 c.26, signed by Governor Christie on August 6, 2012, and was appointed on September 15, 2014, by M. Kathleen Duncan, Director of the Bureau of Controversies and Disputes, to hear and decide the above captioned tenure matter, AWARDS as follows:

For the above stated reasons, the tenure charges against Respondent Ratiba Ahmed are hereby dismissed.

The District is herby directed to reinstate Respondent Ratiba Ahmed to her teaching position and make her whole with respect to her salary and benefits.



ERNEST WEISS, ARBITRATOR.

On this 20th day of January, 2015, before me came and appeared Ernest Weiss to me known and known to be the individual described in and who executed the foregoing instrument and he acknowledged that he executed same.

Will E. Parkas
Will E. Parkas
Notary Public
My Commission Expires May 5, 2008