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 58-3/15

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 and Order

By the April 2, 2015 appointment letter from the Department of Education of the State of New Jersey, I was appointed Arbitrator in the Matter of the Tenure Hearing of Lorraine Williams, State Operated School District of the City of Newark, Essex County, Agency Docket No.58-3/15. I had previously served as the Arbitrator in the L. Williams/Newark 501-14 matter (see my Decision of December 20, 2014, dismissing charges) On April 24, 2015, Respondent moved for Summary Judgment and Dismissal of all of the charges in the present case now before me. A flurry of pre-hearing papers had already commenced, and increased in complexity and intensity, further supplemented by concurrent telephonic oral argument in several instances. Commissioner of Education Hespe stated in his letter of June 9, 2015 that the District could bring its May 19, 2015 Motion for a Stay Pending Appeal to me as the Arbitrator. During May 17-25, 2015, I was attending the annual meetings of the American Law Institute as a Life Member and of the National Academy of Arbitrators. Both principal lawyers also took some vacation time, with one of the lawyers traveling abroad. In order to be fully informed upon her return, she reasonably requested some necessary additional time. Meanwhile, over the course of the winter and spring of 2015, several encyclopedic decisions were issued by highly respected arbitrators on the TEACH NJ panel of 25. Most, albeit not all, of these decisions clearly favor Respondent.

The equitable principles of Comity and of resolution of the entire case are critically important in this matter, and the District's request that this Arbitration be placed in Abeyance is very well presented in both the District's papers and in the telephonic oral arguments further elucidating those papers. The dilemma of the decision maker only deepens, for the Motion papers and oral arguments of Respondent's attorney are just as impressive. The Commissioner of Education weighed in with letters bearing on these complexities. The steadily growing body of arbitral authority on the 25 member statewide panel of TEACH NJ arbitrators may indeed be more favorable to Respondent regarding the issues at the heart of the present matter. As I discussed at some length in my December 20, 2014 Decision in Newark, it would, at the very least, be outrageously and unjustifiably expensive to proceed forward with the arbitration hearing while awaiting the response from appeals to the New Jersey Superior Court Appellate Division. More prudent and more gracious than wrestling with legalisms, Comity embodies common sense and civility among and within branches of government. "Sensible case management dictates that arbitration should not go forward on an agency referral to arbitration that has been appealed ..." (District's attorney's June 8 2015 letter at page 1). More immediate, the District asserts that I was selected out of order, and not at random, to serve as arbitrator for this present Williams case.)

What I said in the first Williams/Newark case I decided in December 2014 seems even more apt several months later, making the District's request that I place the present case in abeyance even more jurisprudentially resonant.

To wit:

"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 District replied to the Motion. By Notice letter dated December 16, 2014, the District cross-moved 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 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.

New Jersey has dramatically redesigned and rejuvenated its teacher tenure dynamic to be prospective and proactive. 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.

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."

Abeyance is not in perpetuity, and it certainly is not another means to buy time. Comity equitably reinforces the propriety of timely deference to the state judiciary in this matter. Absent a reasonably timely response decision from the state appellate court, Respondent may bring motions necessary and sufficient to move to hearing dates convening the arbitration in the present matter.

So Ordered,

Dave Gregory

David L. Gregory

I, David L. Gregory, affirm that I have executed this document as my Decision and Order on this 2nd of July, 2015.