

STATE OF DELAWARE

PUBLIC EMPLOYMENT RELATIONS BOARD

SUSSEX COUNTY VO-TECH TEACHERS ASSOCIATION,	:	
and JO-AN ATKINSON,	:	
	:	
Charging Party,	:	
	:	<u>ULP No. 96-07-183</u>
v.	:	
	:	
SUSSEX COUNTY VOCATIONAL TECHNICAL	:	
SCHOOL DISTRICT,	:	
	:	
Respondent.	:	

DENIAL OF MOTION TO DISMISS OR DEFER

Jo-An Atkinson was employed by the Sussex County Vocational Technical School District during the 1995-96 school year at the Broad Creek School, where she was a Personal Care Services instructor. Ms. Atkinson was advised by letter dated April 26, 1996, from District Superintendent George Frunzi, that the District intended to terminate her services as a teacher at the end of the school year “due to a reduction in the number of teachers required as a result of a decrease in education services.” This letter further stated:

Specifically, the Personal Services Vocational Program (“the Program”) offered at Broad Creek will be eliminated effective the end of the 1995-96 school year, and the position you presently occupy will therefore be eliminated. As you know, current enrollment in the Program is extremely low, and student surveys of interest in vocational programs result in a projection of two or three students enrolling in the Program in the 1996-97 school year.

Ms. Atkinson requested that a hearing be held by the Board of Education pursuant to her right under 14 Del.C. Chapter 14, *Procedures for Termination of Services of Professional Employees*. The Board appointed James D. Griffin as its designated Hearing Officer in this matter. The issue, as identified by the Hearing Officer, was, “Whether the District had a bona fide decrease in education services justifying termination of the teacher effective June 30, 1996, pursuant to the notice of termination, dated

April 26, 1996.” The hearing was held on July 18, 1996. The Hearing Officer subsequently issued his recommendation to the Board of Education that it issue a decision finding,

[T]he District made a proper decision to eliminate the Personal Services program based upon the best interest of the student population of the Broad Creek School and that such decision resulted in a decrease in education services necessitating the decision to terminate the services of Jo-An Atkinson, based upon the provisions of the Collective Bargaining Agreement.

The Board adopted the Hearing Officer’s recommendations at its August 19, 1996 meeting, and Ms. Atkinson’s services were terminated effective June 30, 1996.

The instant unfair labor practice charge was filed on or about July 9, 1996. It alleges that the District has engaged in conduct in violation of §§4007(a)(1), (a)(2), (a)(3) and (a)(5) of the Public School Employment Relations Act (“PSERA”). The Association charges that the District’s “claim that it is terminating the educational services that were provided by Ms. Atkinson is false and is a pretext for its desire to retaliate and discriminate against her because Ms. Atkinson successfully exercised her right under the PSERA to pursue grievances for violations of the collective bargaining agreement between [the District] and the Association and foiled the [District’s] attempted discriminatory termination of Ms. Atkinson’s employment in 1992.” The District has denied these allegations.

A hearing was convened by the Public Employment Relations Board on October 1, 1996, for the purpose of receiving evidence necessary to establish a factual record sufficient to make a determination on the merits of the charge. Prior to the introduction of evidence, the District objected to the processing of this charge by the PERB based upon the equitable doctrines of res judicata and collateral estoppel. It further asserted that even if these doctrines are determined not to be applicable, the PERB should defer to the parties’ negotiated grievance procedure for resolution of this matter.

The Association denied that the petition was barred by either res judicata or collateral estoppel and was not subject to deferral. The Hearing Officer proceeded with the hearing on October 1 but the parties were requested to submit expedited letter memoranda on the procedural issues raised by the District, with a decision to be issued before the hearing reconvened on October 9, 1996. Written argument was received from the District on October 3, and from the Association on October 7, 1996. Following is the decision based upon the record thus compiled.

I. Res Judicata

The doctrine of res judicata precludes relitigation of the same issue by the same parties in a separate action before a different judicial or administrative body. The issue before the Board of Education was circumscribed by section 1413(a)(6) of Title 40, which states, in relevant part, "... the testimony to be heard shall be confined to the reasons stated in the written notice to terminate services." The Board's decision to terminate Ms. Atkinson is premised upon its conclusion that "A preponderance of the evidence supports the District's decision to decrease education services by eliminating the Personal Services Occupations course taught by the Teacher." ¹

The Public Employment Relations Board has exclusive authority to resolve unfair labor practice charges between reorganized public school districts, public school employees and their representatives. 14 Del.C. §4006; §4008. The jurisdiction of the PERB to resolve unfair labor practice charges is separate and independent from the jurisdiction of a Board of Education to resolve issues under Chapter 14 of Title 40.

Further, the record of the Board of Education's termination hearing clearly evidences that the issues raised by the unfair labor practice charge were not litigated in that proceeding. Pages 7 and 8 of the transcript establish that the Association clearly stated its position that the unfair labor practice issues would not be placed before the Board for its consideration.

The District's argument that the issue of union animus could have been placed before the Board of Education is misplaced. Clearly, the Board had no authority, as a party of interest in this charge, to enter a ruling on the disposition of the unfair labor practice charge in the proceedings before it. Had it chosen to do so, which it clearly did not, that decision would not have bound the PERB, in which exclusive authority for the resolution of unfair labor practice charges has been vested by statute.

¹ Rule 4(K) of the Sussex County Vo-Tech School District Rules of Procedure for the Conduct of Termination Proceedings for Teachers states:

Grounds for termination have not been established unless one or more of the reasons set forth in the Notice of Intention to Terminate is established by a preponderance of the evidence.

II. Collateral Estoppel

The Delaware Supreme Court held in Tyndall v. Tyndall (238 A.2d 343, 346 (1968)):

Under the doctrine of collateral estoppel, where a question of fact essential to the judgment is litigated and determined by a valid and final judgment, the determination is conclusive between the same parties in a subsequent case on a different cause of action. In such a situation, a party is estopped from relitigating the issue again in a subsequent case.

The issue decided by the Board in its termination hearing, namely whether there was a bona fide decrease in educational services justifying Ms. Atkinson's termination, does not resolve the charge of union animus. Wilmington Firefighters Association, Local 1590 v. City of Wilmington (Del.PERB, ULP 93-06-083, PERB Binder 937 (1994)).

For this reason, the doctrine of collateral estoppel does not bar the processing of the unfair labor practice charge by the Public Employment Relations Board.

III. Deferral

The District finally argues that this matter is appropriate for resolution under the parties' negotiated grievance procedures. The PERB has adopted a limited discretionary deferral policy for resolution of unfair labor practice charges which (1) turn on interpretation of specific contractual provisions, (2) where there exists a long-standing and well established collective bargaining relationship, (3) where the employer has indicated its willingness to arbitrate a grievance properly filed pursuant to the negotiated grievance procedure, and (4) where the resolution of the contractual dispute would also resolve the underlying issued presented in the unfair labor practice complaint. Red Clay Education Association, DSEA/NEA v. Bd. of Education of Red Clay Consolidated School District, Del.PERB, AULP No. 90-08-052A (1991). This deferral policy has most frequently been applied to charges alleging that a party has committed a per se violation of the statute by unilaterally changing a mandatory subject of bargaining.

There is no allegation in the instant charge which requires interpretation or application of any provision of the parties' negotiated collective bargaining agreement. Further, as discussed above, the question of whether the employer has engaged in conduct in violation of 14 Del.C. §4007(a)(1), (a)(2), (a)(3) and (a)(5), is statutorily reserved to the PERB to resolve.

WHEREFORE, the Motion to Dismiss or Defer this unfair labor practice charge on the basis of res judicata, collateral estoppel and/or deferral to the parties' contractual grievance procedure is denied. The hearing will reconvene as scheduled at 10:00 a.m. on Wednesday, October 9, 1996.

IT IS SO ORDERED.

/s/Charles D. Long, Jr.

CHARLES D. LONG, JR.
Executive Director
Del. Public Employment Relations Bd.

DATED: 7 October 1996