In the Matter of the **TENURE** Hearing	)	
	)	
"Petitioner"	)	**DECISION ON MOTION TO DISMISS**
	)	
STATE OPERATED SCHOOL DISTRICT OF THE CITY OF CAMDEN	)	
	)	
"Respondent"	)	AGENCY DOCKET NO. 275-8/24
	)	
CORINNE MACRINA	)	
	)	

Ruling on Respondent's Motion to Dismiss

In accordance with the Teacher Effectiveness and Accountability for Children of New Jersey Act, ("TEACHNJ Act" or "Act") P.L. 2012, Chapter 26 signed into law by Governor Chris Christie on September 25, 2022 the undersigned was appointed as Arbitrator of the dispute described herein.

BEFORE: Mattye M. Gandel, Arbitrator

APPEARING FOR PETITIONER:

Louis R. Lessig, Esq.
Brown & Connery, LLP

APPEARING FOR RESPONDENT:

Robert M. Schwartz, Esq.
Schwartz Law Group, LLC

BACKGROUND:

The designation letter from the Commissioner's office stated, in part, that

> the above captioned tenure charges have been reviewed and deemed sufficient, if true, to warrant dismissal or reduction in salary, subject to determination by the arbitrator of the respondent's motion to dismiss and any other defenses or motions which may be filed with the arbitrator. . .

A pre-hearing conference was held on October 22, 2024 during which time this Arbitrator started the call by asking the Respondent's attorney for its position on the Respondent's Motion to Dismiss and asked the Charging Party's attorney to respond. Upon hearing both their positions and advising them that I had read the complete file submitted to me by the Commissioner's office, I stated that the Motion to Dismiss was denied. The parties proceeded to identify dates for interrogatories and ten dates for the hearing and the location and time of the hearing dates.

Unfortunately, there was no recording of the call and memories differed with one party agreeing that I had denied the Motion and the other party having a different memory. On October 30, 2024, I received an email from Respondent's counsel regarding a second Motion to Dismiss this matter relating to the requirements of N.J.S.A. 18A:6-17.1(b)(3). Apparently, he did not recognize that the Motion to dismiss had been denied. Therefore, because it was important to clarify the record as to what might have been perceived as a mis-understanding, the following letter was sent to the parties on November 4, 2024 regarding the pre-hearing conference call and the steps forward.

Gentlemen;

On September 30, 2024, I wrote to the parties advising that I had been designated as the arbitrator in this matter, suggested some hearing dates and offered to arrange for a pre-hearing conference call. A conference call was held on October 22, 2024 with Mr. Schwartz, Mr. Farinella, Mr. Lessig, Mr. Clifford and me at which time Respondent's attorneys were asked to address its Motion to Dismiss. They cited the facts that Ms. Macrina had been disabled since June 2023 and that she was not given an opportunity to recover. Mr. Lessig responded that the Motion was inappropriate; that Ms. Macrina never said she had a disability and that there were many reasons for termination.

I responded that I had read the entire file sent to me by Jennifer Simons, Director, Office of Controversies & Disputes, which included the tenure charges filed by the Board and Respondent's Brief in Support of a Motion to Dismiss and a statement from the Acting Commissioner's office stating that

"charges have been reviewed and deemed sufficient, if true, to warrant dismissal or reduction in salary, subject to determination by the arbitrator of the respondent's motion to dismiss and any other defenses or motions which may be filed with the arbitrator. . ."

On our conference call and in response to the parties' positions, I clearly, succinctly but briefly stated that the Motion to Dismiss the Charges was denied. Subsequently, we proceeded to review the calendar for dates to hold the hearing. It was clear to me that the parties understood that the Motion to Dismiss had been denied because, if that had not been clear, there would have been no reason for the participants on the call to have spent time reviewing all our calendars, agreeing upon dates for interrogatories and dates for exchanging witness lists and the date, time and place for the first hearing on November 26, 2024. Additionally, a series of nine dates were agreed upon in January and February 2025. It is accurate that my email of October 22, 2024 did not state that the Motion to Dismiss had been denied but the actions of the parties made it very clear that everyone understood the way forward. Furthermore, because of my clear decision/statement and the clear actions of the parties during the call, there was no reason to discuss or even set a briefing schedule.

Finally, there is no proof that the filing of the Charges were amended or corrected. The Charges before me are as submitted to the Commissioner dated August 23, 2024 and as sent to me by Ms. Simons on September 25, 2024.

I trust that this matter is now settled and understood by both parties and that we can commence the tenure hearing on November 26, 2024.

Mattye M. Gandel
Arbitrator

During the pre-hearing conference call there was no mention of any briefing schedule because it was understood that the matter was proceeding to a hearing. In a memo sent to me on November 1, 2024, Respondent cited N.J.A.C 6A:3-1.5(g) regarding a briefing schedule. That language stated, in part, that

> . . . Briefing on the motions shall be in the manner and within the time fixed by the Commissioner, or by the arbitrator <u>if the motion is to be briefed</u> following transmittal to an arbitrator. (emphasis added)

Respondent claimed that this rule had not been followed but the Arbitrator cannot agree. The language is clear, "Briefing on the motions . . . fixed . . .by the arbitrator if the motion is to be briefed . . ." There was no request or discussion about briefing and, therefore, the clear statement in the November 4, 2024 letter was that the Motion to Dismiss was denied and that the Tenure hearing would commence on September 26, 2024.

SECOND MOTION TO DISMISS & DISCUSSION

The second Motion to Dismiss, issued on October 30, 2024 from Respondent, cited two counts. The first was that there had been no disposition of the first Motion to Dismiss. However, contrary to Respondent's claim, the record has established, as stated above, that during the October 22, 2024 pre-hearing conference call, the first Motion to Dismiss regarding the sick leave dismissal was denied. Though Respondent did not recognize that the Motion was denied, it was made very clear from the written response on October 22, 2024, well in advance of Respondent's October 30, 2024 letter, that the first Motion to Dismiss was denied.

Respondent's second claim addressed the District's failure to provide the "complete" Charge including its list of witnesses along with a summary of their anticipated testimony." N.J.S.A. 18A:6-17.1(b)(3) states that

> Upon referral of the case for arbitration, the employing board of education shall provide all evidence including, but not limited to, documents, electronic evidence, statements of witnesses, and a list of witnesses with a complete summary of their testimony, to the employee or the employee's representative. The employing board of education shall be precluded from presenting any additional evidence at the hearing, except for purposes of impeachment of witnesses. . . . (emphasis added)

The Board filed this tenure Charge with Kevin Dehmer, Acting Commissioner, Department of Education on August 23, 2024. A review of the packet of information revealed that it contained multiple documents as it relates to this tenure matter including all the Charges, documentary evidence in support of the Charges, three Confidential Investigation Reports including interviews with multiple staff members, Psychological Fitness-for-Duty Evaluation, Summons and supporting documents, suspension notice to Respondent and all certifications.

However, the statute is very clear that certain documents were required to be submitted upon referral of the case for arbitration. Amongst other items, it required the submission of "statements of witnesses, and a list of witnesses with a complete summary of their testimony."

Part of the packet submitted by the Board included the August 7, 2023 Investigation Report, which contained the names and the actual interviews of seven people; the August 29, 2023 Investigation Report contained the names and the actual

interviews of two people and the December 28, 2023 Investigation Report contained the names and the actual interviews of three people.[1] However, while the packet of information submitted by the Board contained the interviews of Board employees, a careful review indicated that statements of witnesses and a list of witnesses, separate and apart from the actual interviews, were not included. Furthermore, the language of the Statute included three required areas regarding witnesses and crafted the words in the Statute to be given meaning and this Arbitrator must take every word as having some meaning. Simply because the actual interviews were included did not mean that every interviewee would be called as a witness and cannot be considered complying with the clear language of the statute, which required the submission of a list of witnesses and a summary of their testimony.

While the Board attempted to cure this deficiency in its attachment to its October 31, 2024 letter, with the list of witnesses and a summary of their statements, the words of the Statute are very clear that this information was to be included "upon referral of the case for arbitration." The Board's claims that the witnesses listed in the referral to arbitration were known to Respondent and that the list and statements submitted on October 31, 2024 would have been no surprise to respondent are not the issues. They were required upon referring a matter for a tenure determination.

Furthermore, Respondent submitted three arbitration awards, which were

[1] One of the people listed, Steven Murray, could not be reached.

instructive in this matter.[2] In *Marie Ebert v the State-Operated School District of the City of Newark,* Agency Dkt. No 267-9/14, decided on January 30, 2025 by Arbitrator Tia Schneider Denenberg, it was determined that the Board failed to adhere to its statutory obligations as set forth and stated that "[T]he Legislature could not have more lucidly articulated the District's obligation" and agreed that "a prudent District would not file charges until it was ready to proceed with discovery, since the respondent had to be given all discovery documents and a complete summary of each potential witness' testimony as soon as the case is referred to the arbitrator."

Similarly, in *Tenure Charges of Noel Gordon and the Englewood School District,* Agency Dkt. 24-1/18 decided August 13, 2018, Arbitrator Joseph Licata stated that "since N.J.A.C 6A:3-5.1(b)1 requires a Statement of Evidence to include all documents identified therein, the failure to do so in a material sense, . . . cannot be countenanced" and granted the Motion to Dismiss.

Finally, in *Tenure Arbitration between the School District of the Camden County Technical Schools and Bett Fetty,* Agency Docket No. 173-7/19, Arbitrator Arnold H. Zudick granted the Motion to Dismiss the Charges because the District failed to comply with the statutory and procedural filing requirements.

In response to these decisions, the Board cited *Allen v E. Orange Bd. Of Educ.* Docket No. A-3995-19, Superior Court of NJ, Appellate Division, in support of its position

[2] Respondent submitted additional decisions, which granted Motions to Dismiss based on the fact that those boards did not submit the list of witnesses and a summary of the testimony when the matter was referred to the Commissioner's office and, therefore, did not comply with the language of N.J.S.A. 18A:6-17.1(b)(3)

and to differentiate this matter from the cases supplied by Respondent. In this matter, the Board asserted that, as compared with the decisions cited by Respondent, it submitted its proofs and all relevant documents including all witnesses, their testimony and materials and that this information was known to Respondent when it filed this tenure matter on August 23, 2024.

However, one difference between this matter and the *Allen* decision is that in *Allen* the Appellate Division was reviewing an arbitration decision after the arbitrator had issued an Award on the merits. In fact, the *Allen* decision acknowledged that courts have limited statutory grounds on which to vacate an arbitration award.

Furthermore, the arbitrator heard plaintiff's motion to dismiss and proceeded to hear the merits, which can be differentiated from this matter. In fact, as stated by Arbitrator Denenberg,

> Holding a full evidentiary hearing is not a prerequisite to considering the motion to dismiss. Nothing in the relevant statutory provisions limits an arbitrator's ability to resolve motions before holding a hearing. Indeed, demanding a full evidentiary hearing before ruling on potentially dispositive motions could unnecessarily prolong tenure disputes, ignoring the expressed desire of the Legislature to expedite them.[3]

Further, there were multiple other issues considered by that arbitrator such as progressive discipline and the claim that the eight counts were not supported by substantial credible evidence. The Court disagreed with plaintiff's position that the failure of that board to supply discovery immediately upon referral of the case to arbitration

[3] *Marie Ebert v the State-Operated School District of the City of Newark,* Agency Dkt. No 267-9/14.

warranted vacating the arbitrator's award and cited the fact that the arbitrator gave the board an opportunity to provide the discovery required by the statute by adjourning the hearing to prepare for arbitration.

In contrast, there was only one issue before this Arbitrator, which was whether to grant the Motion to Dismiss. The merits of this case were not considered. Moreover, this matter has nothing to do with whether the Board was given additional time to present the information. The clear language of the Statute dictated when the documents must have been submitted. Giving the Board more time to present the required information would not have cured the violation.

Herein, Respondent claimed that the Board violated the clear language of N.J.S.A. 18A:6-17.1(b)(3) by not submitting, "[U]pon referral of the case to arbitration . . ." the list of witnesses and witnesses' statements, as required by the Statute. This Arbitrator must agree. While this Arbitrator always wants to, and does as a matter of longstanding practice, give all plaintiffs the opportunity to present all their arguments, this Arbitrator must agree with the arbitrators who have denied Motions to Dismiss based on clear and lucid language of the Statute, as stated by Arbitrator Denenberg. Affording more time, as done by the arbitrator in *Allen*, would hot have changed the violation of the Statute.

The Legislature selected specific words in the Statute and an arbitrator must read the entire Statute and give it its clear meaning. It is significant to note that not only does the Statute say [U]pon referral to arbitration, it continues by saying that "the employing board of education shall provide all evidence . . . (emphasis added). There is no choice.

Upon referral . . . the board shall provide all evidence, specifically in this matter, the list of witnesses and a summary of their testimony. Each word of the Statute must be considered and given meaning. Read as a whole, this Arbitrator was convinced that the Board was required to submit the requested documents when it submitted the Charges to the Commissioner. It did not do so.

In conclusion, this Arbitrator has reviewed and carefully weighed all arguments presented through written statements by both parties even though many facets were not referred to in the Decision. Considering all the facts, this Arbitrator must decide that the Board violated the clear, specific language of N.J.S.A 18A:6-17.1(b)(3) when it did not include the list of witnesses and the summary of the witnesses' testimony, as required by Statute and, therefore, Respondent's Motion to Dismiss is granted. Finally, through this ruling on the Motion to Dismiss, this Arbitrator has informed the Commissioner that the District has not conformed with the statutory requirements.

In consonance with the proof and upon the foregoing, the undersigned Arbitrator hereby finds, decides, determines and renders the following:

DECISION

1. The Motion to Dismiss is granted without prejudice to the District's right to re-file the tenure Charges.
2. If the charges are re-filed, the District must ensure that the re-filing comports with all applicable statutory provisions.
3. Respondent shall be awarded full back pay and benefits, as if she were in a principal position, but this Decision is not intended to require the District to return Respondent to the principal position in the Camden City School District.
4. The ten agreed upon hearing dates for evidence and arguments on the merits of this matter are canceled.

Mattye M. Gandel

Mattye M. Gandel

Dated: November 11, 2024
South Orange, NJ 07079

State of New Jersey)
:SS
County of Essex)

On the 11th day of November 2024, before me personally came and appeared Mattye M. Gandel, to me known and known to me to be the person described herein who executed the foregoing instrument and she acknowledged to me that she executed the same.

Manuela Barros

Notary Public

MANUELA BARROS
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires March 27, 2028
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