WILLINGBORO ADMINISTRATORS ASSOCIATION,
Petitioner,

v.

WILLINGBORO EDUCATION ASSOCIATION AND THE
BOARD OF EDUCATION OF THE TOWNSHIP OF
WILLINGBORO, BURLINGTON COUNTY,
Respondents.

Decided April 29, 1980

Initial Decision

SYNOPSIS

N.J.A.C. 6:3-1.21(a) requires an annual evaluation of tenured teachers. To fulfill this requirement the Willingboro Board of Education and the Willingboro Education Association negotiated an agreement providing for a January 15 deadline date for such evaluations. The Willingboro Administrators Association, composed of supervisors who would be performing the evaluation, brought this action before the Commissioner of Education to determine if the negotiation of an evaluation deadline is in compliance with applicable education law. The Education Association argued that the Commissioner lacked jurisdiction over the matter since it is one raising a scope of negotiations question, which should have been filed before the Public Employment Relations Commission (PERC).

The administrative law judge noted that original jurisdiction over scope of negotiations questions is with PERC, but that this jurisdiction was not exclusive if the expertise of another state agency is required for the resolution of the major issue raised. The judge determined that the essential issue in this case is whether the negotiated deadline date meets the requirements for an annual teacher evaluation program, and that the resolution of the question required the expertise of the Commissioner and not PERC. Accordingly, the motion to dismiss for lack of jurisdiction was denied.

Robert M. Schwartz, Esq., for Petitioner;
Joel S. Selikoff, Esq., and John E. Collins, Esq., for Respondent Willingboro Education Association
John T. Barbour, Esq., for Respondent Willingboro Board of Education (Barbour & Costa, Attorneys)
ERRICKSON, ALJ:

PROCEDURAL RECITATION

This matter was filed by the Willingboro Administrators Association, hereinafter “WAA,” before the Commissioner of Education seeking a determination as to whether a provision in the negotiated agreement entered into by the Willingboro Board of Education, hereinafter “Board,” and the Willingboro Education Association, hereinafter “WEA,” is in non-compliance with N.J.A.C. 6:3-1.21 and/or N.J.S.A. 18A:11-1. The matter was transferred on February 14, 1980, to the Office of Administrative Law, as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq.

The WEA moved for dismissal of the matter on grounds that:

1. The Commissioner is without jurisdiction over the matter which should have been filed before PERC as a scope of negotiations question; and
2. Petitioner lacks standing.

Briefs were filed by the petitioning Willingboro Administrators Association and respondent WEA. Oral argument was heard, thereafter, on April 16, 1980, at the Office of Administrative Law, Trenton.

APPLICABLE PROVISIONS OF STATUTE, ADMINISTRATIVE CODE
AND THE NEGOTIATED AGREEMENT

The applicable statutes and regulations are as follows:

N.J.S.A. 18A:11-1 General mandatory powers and duties
The board shall–
a. Adopt an official seal;
b. Enforce the rules of the state board;
c. Make, amend and repeal rules, not inconsistent with this title or with the rules of the state board, for its own government and the transaction of its business and for the government and management of the public schools and public school property of the district and for the employment, regulation of conduct and discharge of its employees, subject, where applicable, to the provisions of Title 11, Civil Service, of the Revised Statutes; and
d. Perform all acts and do all things, consistent with law and the rules of the state board, necessary for the lawful and proper conduct, equipment and maintenance of the public schools of the district.

N.J.A.C. 6:24-2.1 Petition for declaratory rulings
Pursuant to N.J.S.A. 52:14B-8, any interested person(s) may petition the commissioner for a declaratory ruling with request to the applicability to any person, property or state of facts of any statute or regulation enforced or administered by the commissioner. The determination to entertain such petitions for declaratory judgments shall be within the sole discretion of the commissioner. If such request
is granted, the matter shall proceed in accordance with these regulations as they pertain to petitions. A declaratory judgment shall be binding upon the commissioner and all parties to the proceedings on the specific statement of facts set forth therein.

_N.J.A.C._ 6:3-2.1 Evaluation of tenured teaching staff members

(a) Every local board of education shall adopt policies and procedures requiring the annual evaluation of all tenured teaching staff members by appropriately certified personnel (_N.J.S.A._ 18A:1-1; _N.J.A.C._ 6:11-3.4).

(b) The purpose of the annual evaluation shall be to:

1. Promote professional excellence and improve the skills of teaching staff members;
2. Improve student learning and growth;
3. Provide a basis for the review of performance of tenured teaching staff members . . .

(f) The annual written performance report shall be prepared by a certified supervisor who has participated in the evaluation of the teaching staff member and shall include but not be limited to:

1. Performance areas of strength;
2. Performance areas needing improvement based upon the job description;
3. An individual professional improvement plan developed by the supervisor and the teaching staff member;
4. A summary of available indicators of pupil progress and growth, and a statement of how these indicators relate to the effectiveness of the overall program and the performance of the individual teaching staff member;
5. Provision for performance data which have not been included in the report prepared by the supervisor to be entered into record by the evaluatee within 10 working days after the signing of the report.

(g) Local board of education policies for the evaluation of tenured teaching staff members, based upon but not limited to the above provisions, shall be developed during the 1978-79 school year and shall become operational September 1, 1979. These provisions are the minimum requirements for the evaluation of tenured teaching staff members . . .

The Negotiated Agreement between the parties provides at Article XVIII, No. 4:

... With respect to tenured teachers, such supervisory evaluation shall be provided once each year no later than January 15, except that a tenured teacher shall be so evaluated a second time if he files a written request for the same with his building principal on or before February 1. The second evaluation, if requested, shall be completed on or before April 15.
The issues of whether the WAA has standing and whether the matter was filed before the proper jurisdiction are treated, *seriatim*.

**STANDING OF PETITIONER**

Principals in the school district are required by enunciated Board policy to provide evaluative reports for tenured teachers once each year no later than January 15 (Negotiated Agreement, Article XVIII, E). *N.J.A.C. 6:3-1.21(a)* requires annual evaluation of tenured teaching staff members. WAA represents individuals who in the normal performance of their duties must carry out the policy requirements of the Board and the rules of the State Board of Education. It naturally follows that those individuals represented by WAA are persons interested in legally carrying out their responsibilities in full compliance with applicable mandates of the education law.

I **CONCLUDE** that any such persons and their representative organization, the WAA, meet the test of being interested persons within the intent of *N.J.A.C. 6:24-2.1*, which provides that:

Pursuant to *N.J.S.A. 52:14B-8*, any interested person(s) may petition the commissioner for a declaratory ruling with request to the applicability to any person, property or state of facts of any statute or regulation enforced or administered by the commissioner.

The mere fact that the WAA was and is not a party to the negotiated agreement between the Board and WEA does not divest it of the right to petition for a declaratory judgment on behalf of its members who qualify as interested persons vitally and inextricably involved in the evaluation process.

Petitioner has standing; it is so **ORDERED**.

**JURISDICTIONAL AUTHORITY OVER THE DISPUTE**

WEA argues that the Commissioner of Education has no jurisdiction over the fixing of a particular deadline date for evaluations in this single negotiated agreement between the Board and WEA. In this regard, WEA argues that no general opinion is sought "... as to whether *N.J.A.C. 6:3-1.21* prohibits fixing a date for teacher evaluations. ..." It is further argued that petitioner is raising a scope of negotiations questions which should be filed before PERC, which has sole original jurisdiction over scope of negotiability questions. In this regard WEA cites, *inter alia, Board of Education of the Township of Bernards v. Bernards Township Education Association, 79 N.J. 311, 316 (1979); State v. State Supervisory Employees Association, 78 N.J. 54 (1978); Board of Education of the Town of Newton v. Newton Teachers Association, 1970 S.L.D. 444; Parents Union of Burlington County v. Board of Education of the Township of Willingboro,*
1978 S.L.D. 794. WEA, contending that the Commissioner is without jurisdiction in this matter to make a binding determination pursuant to N.J.A.C. 6:24-2.1, requests that an Order of Dismissal be entered.

WAA argues, conversely, that its Petition of Appeal requires, pursuant to N.J.S.A. 18A:6-9, an interpretation by the Commissioner of whether an item which has already been negotiated is in compliance with applicable education law and does not require the expertise of PERC on what may be negotiated. WAA cites in support of this contention Newton, supra; Parsippany-Troy Hills Board of Education v. Parsippany Troy Hills Education Association, 1977 S.L.D. 1080; Board of Education of Plainfield v. Plainfield Education Association, 144 N.J. Super. 521, 524 (App. Div. 1976); and City of Hackensack v. Richard Winner et al., 82 N.J. 1 (1980).

The Board, seeking a speedy decision in the interests of an orderly operation of its schools, asserts its willingness to be bound in the matter by the decision of the Commissioner, who, it believes, has jurisdiction over the matter.

Having considered and balanced these and all other arguments of law set forth by counsel, I find for the petitioning WAA.

The question of whether WEA and the Board had authority to negotiate January 15 as the date for completion of an annual evaluation for teaching staff members does indeed raise a question of “scope of negotiations.” The New Jersey Supreme Court and the Commissioner have both declared that original jurisdiction in scope of negotiations questions is with PERC. Plainfield, supra; Parents Union, supra. The Supreme Court, however, has further recognized that, in certain matters over which PERC has original jurisdiction, that jurisdiction may not be exclusive. Such a matter would be one in which the expertise of another administrative agency of the State is required when asserted claims by an aggrieved party are such that the expertise of an agency other than PERC is necessary for resolution of the major issue raised by the complaint. Thus, the New Jersey Supreme Court in Hackensack v. Winner, supra, after careful consideration of holdings in numerous cases involving the authority of PERC, including State v. State Supervisory Employees Association, supra, held that the Civil Service Commission had jurisdiction to consider a dispute, one facet of which involved an unfair labor practice charge. Therein, the Court, considering multiple issues arising from charges of both unfair labor practice (normally under jurisdiction of PERC) and charges of violation of Civil Service regulations (normally under jurisdiction of the Civil Service Commission), stated at pp. 25-27, the following:

... [1]n terms of the issues raised by this case, the most reasonable conclusion as to the intended application of the statute appears to be
that the Civil Service Commission still retains jurisdiction over claims involving factual allegations of improper employment activity when these allegations are integral aspects of valid civil service complaints, even though, if standing alone, the factual circumstances might constitute an unfair practice. Indeed, PERC has conceded that where an unfair practice is not the sole, major or dominant issue in an employer-employee controversy, it would not be improper for the Civil Service Commission to consider that issue if it were otherwise relevant in a civil service proceeding addressing the employer-employee controversy. On the other hand, PERC would have exclusive power over claims involving unfair practice allegations when these allegations do constitute the sole or major complaint of the aggrieved employees. . . . Additionally, there may be cases in which the unfair practice issue is itself obviously severable from other issues and would thus permit separable, nonduplicative factual findings as well as special remedial relief . . . .

We conclude that under the circumstances of this case the concurrent jurisdiction of PERC over the particular claims of the firefighters was not "exclusive" or preemptive under the Public Employer-Employees Relations Act and was not therefore mandatory in the sense that PERC had no choice but to proceed in the matter even though it was properly pending before the Civil Service Commission. The claims raised mixed and multiple factual and legal issues; they directly projected civil service grievances and were not limited to allegations of employer misconduct solely, primarily or predominantly involving unfair practices under the Public Employer-Employee Relations Act. Nor was it suggested that the unfair practice allegations in the case were in any sense severable from that generally contemplated by the Civil Service Commission. Further, there was no adequate indication that the complaints projected issues of fundamental importance which clearly transcended the interests of the immediate participants. PERC, therefore, under the circumstances presented, had the statutory power to abstain initially from proceeding in the matter and to defer provisionally to the exercise of jurisdiction over the controversy by the Civil Service Commission. For reasons which we now explain, infra, that discretion should have been exercised in favor of deference to the Civil Service Commission . . . .

In the instant matter we are confronted with the fait accompli of the Board and WEA having negotiated January 15 as the date by which tenured teachers must receive an annual evaluation. The essential issue requires a determination over whether this comports with the State Board rule requiring an annual evaluation. This paramount issue requires the interpretation of the Commissioner, rather than PERC, which is not required
to have expertise in making the vital interpretation of what, in the field of public education, constitutes an annual evaluation. Nor is there a severable issue which may be decided solely by PERC within the limits of its jurisdictional authority.

While it is apparent that the scope question is raised of whether the Board and WEA could legally negotiate such a deadline date for an annual evaluation, the expertise of the Commissioner is required. I CONCLUDE, therefore, that the Commissioner holds jurisdiction over all issues raised by this petition.

In consideration of this conclusion and the prior determination that WAA has standing as an interested party, it is ORDERED that respondent WEA's Motion to Dismiss for lack of standing and jurisdictional authority be and is DENIED. It is further ORDERED that the matter proceed to a determination in the manner set forth in the Prehearing Order of April 16, 1980.

After reviewing this Initial Decision, the Commissioner of Education on June 6, 1980 issued the following Final Decision:

The Willingboro Education Association, hereinafter "WEA," a party respondent in the above-captioned matter, having filed an Interlocutory Appeal with the Commissioner of Education from the decision of the administrative law judge denying WEA's Motion to Dismiss this matter on the grounds that:

1. The Commissioner lacks jurisdiction over the matter which should be filed before PERC as a scope of negotiations question;

2. Petitioner lacks standing; and

WEA having filed a Brief in support of its appeal before the he moving papers filed by WEA and petitioner, as well as the order of the administrative law judge denying the motion to dismiss is warranted for the reasons set forth therein; now therefore WEA's application for interlocutory relief is hereby DENIED.