
Lukas v. Dep't of Human Services
Cite as 5 *N.J.A.R.* 81

**BARBARA LUKAS, ALFRED PIERCE,
HERBERT GAISS & AUDREY WILLIAMS,**
Petitioners,

v.

DEPARTMENT OF HUMAN SERVICES,
Respondent.

Decided December 2, 1982

Initial Decision

SYNOPSIS

Petitioners, former teachers and supervisors in institutions which formed part of the Garden State School District, alleged that they were improperly laid off and/or displaced from their positions by the Department of Human Services. Petitioners claimed tenure under education law. The institutions contended that petitioners had been unclassified employees never employed in the Garden State School District.

The administrative law judge assigned to the case denied petitioners' motion for class action certification based on the rules of court and determined that the substantive issue whether teachers in the Department of Human Services had been decided in the negative in a prior case.

Accordingly, the administrative law judge ordered the matter dismissed.

Sidney Reitman, Esq., for petitioners (Reitman, Parsonnet, Maisel & Duggan, attorneys)

Alfred E. Ramey, Jr., Deputy Attorney General, for respondent (Irwin I. Kimmelman, Attorney General of New Jersey, attorney)

OSPENSON, ALJ:

Barbara Lukas, Alfred Pierce, Herbert Gais, and Audrey Williams alleged that they and others similarly situated were employed in teaching or supervisory capacities, at the New Lisbon State School, the Woodbridge State School, the Marlboro Psychiatric Hospital, and the Greystone Park Psychiatric Hospital, institutions that formed part of

the Garden State School District pursuant to *N.J.S.A.* 30:4A-1 *et seq.* The institutions are presently within and under the Department of Human Services and were formerly under the aegis of the latter's predecessor agency, the Department of Institutions and Agencies. After the Garden State School District was abolished by the "State Facilities Education Act of 1979," *N.J.S.A.* 18A:7B-1 *et seq.*, which transferred the functions of the district to the Office of Education in the Department of Human Services and in the Department of Corrections, and after petitioners had continued in their teaching and supervisory capacities at their respective institutions, they were laid off and/or displaced from their positions on or about August 27, 1981 by the Department of Human Services. Alleging such lay offs and displacements were violative of their rights of tenure under *N.J.S.A.* 18A:28-5, which they alleged they had acquired by and through their service as recognized and preserved under *N.J.S.A.* 18A:7B-11(b) as former teaching staff members of the Garden State School District, they filed a petition of appeal in the Bureau of Controversies and Disputes of the Department of Education on November 4, 1981 against the State of New Jersey, the Department of Human Service and their respective institutional employers seeking a declaration by the Commissioner of Education that they and others similarly situated have achieved tenure under education law, seeking judgment revoking their lay offs and displacement, and seeking judgment requiring their reinstatement with back pay and emoluments.

In an answer filed in the Bureau of Controversies and Disputes on December 16, 1981, the institutional employers denied petitioners' claims, contending petitioners were never employed in the Garden State School District and were therefore not entitled to tenure protections applicable to Garden State School District teachers. Instead, alleged respondents, petitioners were unclassified employees not entitled to tenure protection.

The Commissioner of the Department of Education, whose jurisdiction in controversies and disputes was invoked under *N.J.S.A.* 18A:6-9, transmitted the matter to the Office of Administrative Law on December 31, 1981 for hearing and determination as a contested case, pursuant to *N.J.S.A.* 52:14F-1 *et seq.*

The petitioners filed motions in the Office of Administrative Law: (1) for partial summary judgment holding they occupied positions to which tenure could attain; and (2) for certification of the petition by the administrative law judge as a class action by petitioners as representatives of the class of all certificated teaching staff personnel employed in institutions presently administered pursuant to the terms

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of the State Facilities Education Act of 1979, *N.J.S.A.* 18A:7B-1 *et seq.* In the latter motion, petitioners invoked the class action certification procedure of New Jersey Court Rules, *R.4:32-1 et seq.*, which, it was urged, are made applicable to adjudication of contested administrative agency cases in the Office of Administrative Law by *N.J.A.C.* 1:1-3.8(b).

On September 10, 1982, respondents filed cross motions for summary decision of dismissal of the petition of appeal and for summary decision in their behalf, pursuant to *N.J.A.C.* 1:1-13.1 *et seq.*, on the grounds that the doctrines of *res judicata* and collateral estoppel barred re-litigation of the issues raised by petitioners and that prior litigation ending in final agency judgments in a companion case precluded re-litigation under the doctrine of *stare decisis* as a matter of law, there being no genuine triable issues of apposite material fact or law in the present action that were not addressed and disposed of in the prior litigation. As to petitioners' motion for class action certification pursuant to *R.4:32-1 et seq.*, respondents agreed such procedures were applicable to adjudication of contested cases in the Office of Administrative Law but argued, nevertheless, that petitioners failed to show any entitlement to class action status on behalf of themselves and others persons similarly situated under standards and criteria in the court rule.

New Jersey Court Rules provide in *R.4:32-1(a)* for the general prerequisites to maintaining a class action. The rule provides, preliminarily, that one or more members of a class may sue or be sued as representative parties on behalf of all only if: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class. Additional prerequisites are spelled out in *R.4:32-1(b)* for maintainability of the class action. The rules are generally applicable to adjudicatory procedures in courts of the judicial branch of government. Enabling legislation for the Office of Administrative Law, *N.J.S.A.* 52:14F-1 *et seq.*, created the Office of Administrative Law in the executive branch of State government. Under *N.J.S.A.* 52:14F-5, the Director of the Office of Administrative Law shall:

- e. Develop uniform standards, rules of evidence and procedures, including but not limited to standards for determining whether a summary or plenary hearing should be held to regulate the

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- conduct of contested cases and rendering of administrative adjudications;
- f. Promulgate and enforce such rules for the prompt implementation and coordinated administration of the Administrative Procedure Act *P.L.*, 1968 c.410 (*N.J.S.A.* 52:14B-1 *et seq.*) as may be required or appropriate;
 - g. Administer and supervise the procedures relating to the conduct of contested cases and the making of administrative adjudications, as defined in . . . (*N.J.S.A.* 52:14B-2.)

Pursuant to such statutory enabling authority, the Director of the Office of Administrative Law has promulgated uniform administrative procedure rules of practice in *N.J.A.C.* 1:1-1.1 *et seq.*; and such rules govern conduct of all contested cases in the executive branch of state government. *N.J.A.C.* 1:1-1.1 (a). Nowhere in such uniform administrative procedure rules of practice is contained any express provision for certification and maintenance of class actions like that in New Jersey Court Rules in *R.4:32-1 et seq.*

The question arises, therefore, whether, absent such express power and authorization for certification of class actions as contained in New Jersey Court Rules, the Office of Administrative Law has implied power or duty to adopt and employ, *ad hoc*, such a rule of judicial procedure in administrative agency actions like this one. Petitioners argued that such power exists and, therefore, the duty is implicit even if not explicit. *N.J.A.C.* 1:1-3.8(b) provides, petitioners argued, that unless otherwise provided in the chapter or clearly implicable in context, the rules and standards contained in the New Jersey Court Rules governing the conduct of lawyers, judges and court personnel shall govern the conduct of lawyers, judges and agency personnel appearing in or processing contested cases in the executive branch of State government.

N.J.A.C. 1:1-1.3(a) provides, petitioners argued further, that the chapter shall be construed:

to secure just determinations, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay. Unless otherwise stated, any procedural rule may be relaxed or dispensed with by a judge if adherence to it would result in unfairness or injustice. In the absence of rule, a judge may proceed in any matter compatible with these purpose.

Respondents agreed in principle and argued there would seem no reason why a class action procedure proper in judicial proceedings should not likewise be utilized in administrative agency hearings.

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It is my view, however, that the class action procedure specifically allowed in judicial proceedings is, perhaps, more than just a simple rule of adjudicative or procedural law. Its utilization implicates the rights, duties, obligations and liabilities not only of those expressly named parties to the action but those of all members of the class. That implication obviously is one of wide scope and one that is of potentially wide consequence in terms, at least, of manageability and the due process of law. To that extent, therefore, I do not think the power of the Office of Administrative Law to adopt such a wide-ranging procedural mechanism should be inferred in the absence of an express provision therefore from a simple general provision, such as in *N.J.A.C.* 1:1-1.3, that "in absence of rule, a judge may proceed in any manner compatible with these purposes." One should also note, it seems to me, the State Board of Education has promulgated no procedural rule for class action maintenance and certification in *N.J.A.C.* 6:4-1.1 *et seq.*, the rules governing procedural requirements in contested education matters.

Accordingly, therefore, based on the foregoing, I **CONCLUDE** that petitioners' motion for class action certification as if in accord with *R.4:32-1 et seq.* in this, an administrative adjudication absent express provision therefor in the Uniform Administrative Procedure Rules should be, and is hereby, **DENIED**.

The petition in this matter seeks judgment determining whether petitioners were entitled to tenure status at the time they were laid off or otherwise displaced or removed from their teaching or supervisory positions within the Department of Human Services. Petitioners claim that they are entitled to such status because the facilities where they were employed were a part of the former Garden State School District (*N.J.S.A.* 30:4AA-1 *et seq.*) and because of language contained in section 15 of the State Facilities Education Act of 1979, *N.J.S.A.* 18A:7B-11(b). Specifically, petitioners alleged that they were employed as teachers 1, 2, as assistant supervisor of educational programs, or in other teacher capacities in the institutions in question. Respondents deny those institutions were part of the Garden State School District pursuant to *N.J.S.A.* 30:4AA-1 *et seq.*, though respondents admit that the Garden State School District was transferred to the Department of Education pursuant to *N.J.S.A.* 18A:61B-1.

By their cross motions for summary decision here, the parties essentially contend there are no material operative facts open to dispute. That is, the parties agreed, in effect, that their respective motions are ripe for determination in summary fashion upon admitted operative facts or assumed operative facts necessary for determination of the

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questions of law raised. The essential question of law raised is whether the institutions that employed petitioners were brought within the Garden State School District by or following its creation in 1972 pursuant to *N.J.S.A.* 30:4AA-1 *et seq.* At that time the Legislature in creating the Garden State School District specified it was to be composed of such correctional, charitable, hospitable, relief, training and other institutions and non-institutional agencies within the Department of Institutions and Agencies as the Commissioner thereof should determine. *N.J.S.A.* 30:4AA-2. The composition was not automatic but was to be implemented in two phases, as the Commissioner of the Department of Institutions and Agencies should determine. Phase two of the statutory transition, it seems clear, was never implemented so as to provide for inclusion in the Garden State School District of various institutions for mental health, state hospitals, charitable institutions and others then within the Department of Institutions and Agencies. The various institutions named by petitioners in this matter, by which they were employed until their termination, it seems clear, are such phase two institutions.

The relevant and operative facts of these petitioners' employment by such institutions are in apposition to the relevant and operative facts before the court in *New Jersey Civil Service Association v. Ann K. Klein, Commissioner of Human Services*, OAL DKT. NO. EDU 1075-81, (February 16, 1982) *aff'd* Commissioner of Education, (March 26, 1982); *aff'd* State Board of Education (August 6, 1982). In that case, Warren E. Ward served in a position of teacher 1 in Woodbine School, Department of Human Services, under State certification, from 1958 until October 9, 1980 when he was terminated. He alleged that he was under tenure as an employee of the Garden State School District, pursuant to *N.J.S.A.* 30:4AA-1 *et seq.* and had continued in such status from 1979, when the Garden State School District was abolished, by merit and virtue of section 15(b) of the State Facilities Education Act of 1979, *N.J.S.A.* 18A:7B-11(b), which provides:

All rights and privileges enjoyed by teaching staff members of the Garden State School District shall be enjoyed by teaching staff members employed in State facilities.

The administrative law judge found and determined in that matter that Ward was not tenured upon termination in October 1979, that he was not entitled to a hearing before the Commissioner of Education on tenure charges prior to his termination, and that other petitioners

employed as teachers by the Department of Human Services, in situations similar to his, did not serve in tenurable positions. In essence, and for the reasons and reasoning considered, that determination was affirmed and adopted by the Commissioner of Education, a determination that in turn was affirmed by the State Board of Education.

The question results, therefore, whether legal issues in the present matter, by reason of the apposition of operative facts and events alleged and admitted, should not be precluded from re-litigation. Respondents here argued such re-litigation is precluded by principles of *res judicata* and collateral estoppel. Although I am inclined to agree that legal issues here are precluded from re-litigation by the decision in *Ward*, I believe such preclusion is required on the principle of *stare decisis*. That rule, generally, is founded on consideration of expediency and sound principles of public policy to preserve the harmony and stability of law and to make as steadfast as possible judicially declared principles affecting rights of the parties. The *Ward* case has proceeded to final agency adjudication; its finality there, at least for the present, being in no way eroded by the circumstance that there may presently be pending an appeal therefrom before the Appellate Division of Superior Court.

CONCLUSION

Based on the foregoing, therefore, I **FIND** and determine specifically that there is a clear and dispositive apposition of operative facts and events alleged in the present petition of appeal by and between the operative facts and events alleged, heard and determined in the *Ward* case, the holding in which, accordingly, is controlling on the legal issues here. Accordingly, I hereby **CONCLUDE** as follows:

1. Petitioners' motion for partial summary judgment on their on their petition of appeal should be, and is hereby, **DENIED**;
2. Respondents' motion for summary judgment in their favor dismissing the petition of appeal should be, and is hereby, **GRANTED**;
3. Judgment in favor of respondents dismissing the petition of appeal is entered accordingly.

**After reviewing this Initial Decision,
the Commissioner of Education on
November 30, 1979 issued the following Final Decision:**

The Commissioner has reviewed the entire record of the matter

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controverted herein including the initial decision rendered by the Office of Administrative Law.

Petitioners except to the determinations made by the administrative law judge contending that he erred in denying petitioners' motion for class action certification and partial summary judgment while granting respondents' motion for summary judgment. Petitioners argue that the judge erred in relying on *New Jersey Civil Service Association, supra*, because portions of the case reliance therein were overruled in *Spiewak v. Rutherford Board of Education*, 90 *N.J.* 63 (1982). The Commissioner finds no merit in petitioners' exceptions.

An examination of the arguments of law submitted in this matter convinces the Commissioner that the judge properly denied petitioners' motion for class action certification. The Commissioner finds respondents' arguments therein to be persuasive:

To be maintainable as a class action, a suit must satisfy the requirements of *R.4:32-1(a)*. . . .

The action must further fit one of the descriptions listed in *R.4:32-1(b)*. . . .

Petitioners claim they represent, 'a class of all certificated teaching staff personnel employed in institutions presently administered pursuant to the terms of the State Facilities Education Act of 1979.' They allege without submitting any evidence to the administrative court that the class is so numerous that joinder of all members is impracticable. It is submitted that without competent evidence, the petitioner has not presented enough information to the hearer to decide the question of numerosity (sic). On this basis the application for class action should be denied. (Respondents' Brief, at pp. 7, 8)

The Commissioner agrees.

Further, an examination of the circumstances surrounding the present case convinces the Commissioner that the judge properly relied on *New Jersey Civil Service Association, supra*. Therein any issue of fact concerning the nontransfer of Human Services' components to the Garden State School District was considered and resolved by the court. There remaining no material issues of fact there can be no preclusion of summary judgment in favor of respondents. The Commissioner so holds.

Accordingly, the Petition of Appeal is and shall be dismissed.