

SUPREME COURT OF NEW JERSEY

Christina Silviera-Francisco v. Board of Education of the City of Elizabeth

224 N.J. 126 (2016) · No. A-28-14; 074974 · Decided January 27, 2016

SUMMARY

The New Jersey Supreme Court held that the Commissioner of Education’s decision remanding a tenure dispute to the Office of Administrative Law was interlocutory rather than a final agency decision. Because the remand left the petitioner’s tenure and seniority issues unresolved, the Board of Education was not required to appeal that decision as of right when it was issued. The Court reversed the Appellate Division and remanded for consideration of the Board’s appeal.

CASE DETAILS

COURT	Supreme Court of New Jersey
WRITING FOR THE COURT	Judge Cuff, temporarily assigned; Chief Justice Rabner; Justice LaVecchia; Justice Albin; Justice Patterson; Justice Solomon
JURISDICTION	New Jersey
DECIDED	January 27, 2016
DOCKET	A-28-14; 074974
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The New Jersey Supreme Court reviewed the Appellate Division's judgment affirming the Commissioner's final administrative decision and declining to review an earlier agency decision. The Supreme Court granted certification and considered whether the Commissioner's September 2012 remand order was final or interlocutory and whether the Appellate Division properly declined review without notice.
STANDARD OF REVIEW	De novo review of whether an agency order was final or interlocutory and whether appellate jurisdiction was properly invoked.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Board of Education of the City of Elizabeth v. Christina Silviera-Francisco

TOPICS

appellate jurisdiction

interlocutory appeal

judicial review of agency action

appellate procedure

administrative law

PRACTICE AREAS

administrative law

appellate procedure

education law

employment law

QUESTIONS PRESENTED

1. Whether the Commissioner's September 2012 decision rejecting the ALJ's initial decision and remanding the matter for calculation of tenure and seniority rights was a final agency decision or an interlocutory order.
2. Whether the Board was required to seek leave to appeal from the September 2012 remand order.
3. Whether the Board waived review of the interlocutory order by failing to identify it by date in the notice of appeal when it clearly identified the decision in its case information statement.
4. What an appellate tribunal should do when it questions whether an appeal is from an interlocutory order for which leave to appeal was not granted.

HOLDINGS

1. The Commissioner's September 2012 decision was an interlocutory order, not a final agency decision, because it remanded the matter for further administrative proceedings and left the petition's central tenure and seniority issue unresolved.
2. Because the September 2012 order was interlocutory, Appellate Division jurisdiction could have been secured only by submission and grant of a motion for leave to appeal; however, the order could be reviewed in the appeal from the later final agency decision.
3. The Board did not waive review of the September 2012 interlocutory order because its case information statement clearly identified that decision and the opposing parties and the Appellate Division had sufficient notice of the issue it sought to raise.
4. When an appellate tribunal identifies a possible jurisdictional defect involving an interlocutory appeal, it should notify the parties and permit them to address the issue before dismissing the appeal or declining to review a fully briefed issue.

KEY QUOTATIONS

"The Commissioner's first decision was plainly an interlocutory order." (at 2)

"Finally, a remand order from an agency to the OAL for further consideration is by its very nature interlocutory." (at 15)

"When an appellate tribunal identifies a pending appeal that may be from an interlocutory order for which leave has not been granted, the better practice is always to notify the parties and to permit them to comment on the issue rather than dismissing the appeal or declining to review a fully briefed issue without notice to the parties of the jurisdictional issue." (at 21)

FACTUAL BACKGROUND

Christina Silviera-Francisco served as a vice-principal and interim principal for the Elizabeth school district and was returned to classroom teaching after the district abolished vice-principal positions in a reduction-in-force. She petitioned the Commissioner of Education to establish tenure and seniority rights, while the Board challenged the validity and effective date of her principal certification. The Commissioner rejected the ALJ's initial recommendation of dismissal and remanded for calculation of her tenure and seniority rights; after remand, the ALJ found that she had acquired tenure before the reduction-in-force, and the Commissioner ordered reinstatement and back pay.

PROCEDURAL HISTORY

Silviera-Francisco petitioned the Commissioner of Education to establish tenure and seniority rights after being returned to the classroom following a reduction-in-force. An ALJ initially recommended dismissal, but the Commissioner rejected that decision and remanded for calculation of tenure and seniority rights. After the ALJ found that Silviera-Francisco had acquired tenure and the Commissioner adopted that decision and ordered reinstatement, the Board appealed. The Appellate Division treated the earlier remand decision as final, declined to review it, and affirmed. The Supreme Court reversed and remanded for consideration of the Board's appellate issues.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The matter was remanded to the Appellate Division for consideration of the issues presented by the Elizabeth Board in its appeal, including the merits of its objections to the Commissioner's decisions.

CASES CITED

- Petersen v. Falzarano, 6 N.J. 447, 452-53 (1951)
- In re Donohue, 329 N.J. Super. 488, 494-95 (App. Div. 2000)
- In re CAFRA Permit No. 87-0959-5, 152 N.J. 287, 299, 301 (1997)
- DeNike v. Board of Trustees, Employees' Retirement System of New Jersey, 34 N.J. 430, 435-36 (1961)
- In re New Jersey Department of Environmental Protection Conditional Highlands Applicability Determination, Program Interest No. 435434, 433 N.J. Super. 223, 234-35 (App. Div. 2013)
- Director, Office of Workers' Compensation Programs v. Bath Iron Works Corp., 853 F.2d 11, 14 (1st Cir. 1988)
- CH2M Hill Central, Inc. v. Herman, 131 F.3d 1244, 1246 (7th Cir. 1997)
- Cooper Stevedoring Co. v. Director, Office of Workers' Compensation Programs, 826 F.2d 1011, 1014 (11th Cir. 1987) (per curiam)
- South Carolina Baptist Hospital v. South Carolina Department of Health & Environmental Control, 353 S.E.2d 267, 270 (S.C. 1987)

- In re Carton, 48 N.J. 9, 15 (1966)
- N.J. Office of Employee Relations v. Communications Workers of America, 154 N.J. 98, 108 (1998)
- Mettinger v. Globe Slicing Machine Co., 153 N.J. 371, 389 (1998)
- Hudson v. Hudson, 36 N.J. 549, 553 (1962)
- Grow Co. v. Chokshi, 403 N.J. Super. 443, 461 (App. Div. 2008)
- CPC International, Inc. v. Hartford Accident & Indemnity Co., 316 N.J. Super. 351, 365-66 (App. Div. 1998), certif. denied, 158 N.J. 73 (1999)

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