

I.R. NO. 92-7

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NEWARK BOARD OF EDUCATION,

Respondent,

-and-

Docket No. TI-91-2

ROSE MARIE SERRA,

Petitioner.

SYNOPSIS

A Commission designee declines to grant interim restraints which would have required the Respondent Board to rescind its decision to transfer a principal from a high school to an elementary school. The petitioning principal claimed that her transfer was for disciplinary reasons within the meaning of N.J.S.A. 34:13A-25, based essentially on her refusal to purchase scholarship fund tickets at the behest of the Board president. However, since all of the material facts were controverted and the law under the disciplinary transfer amendment is unsettled, a weighing of the relative hardship to the parties was not controlling: Crowe v. DeGioia, 90 N.J. 126, 133, 134 (1982).

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Appearances:

For the Respondent, Marvin L. Comick, General Counsel

For the Petitioner, Murray, Murray & Corrigan, attorneys
(David F. Corrigan, of counsel)

INTERLOCUTORY DECISION AND ORDER

On June 28, 1991, Rose Marie Serra ("Serra"), filed a Petition for Contested Transfer Determination and an Order to Show Cause^{1/} with the Public Employment Relations Commission ("Commission") alleging that the Newark Board of Education ("Board") violated N.J.S.A. 34:13A-25,^{2/} when it transferred Serra on August 13, 1991 [the actual dates of transfer] from Barringer High School to the McKinley Elementary School. Serra had been given oral notice

1/ N.J.A.C. 19:13-3.15 provides that interim relief requests shall be governed by N.J.A.C. 19:14-9.1 et seq.

2/ This subsection provides, in part, "...that no employer shall transfer an employee for disciplinary reasons...."

of the Board's intention to transfer by James Moore, the Assistant Executive Superintendent, on June 21, 1991.

Serra alleges further that she had been employed as an Assistant Principal, and for the last five years she was the Principal at Barringer; that she has always received excellent evaluations; that her transfer to the McKinley school was punishment for her refusal to submit to demands made by local political leaders regarding employee assignments and, additionally, because she refused to purchase tickets for a personal scholarship fund operated by the President of the Board; that for the first time, after twenty-eight years of excellent performance, she received a disciplinary memorandum on May 31, 1991; and that on June 21, 1991, she received an "unsatisfactory" evaluation based on the alleged facts that the standardized tests at Barringer were low, and that the suspension rate and the dropout rate were the highest. [C-3, Serra Affidavit].

The Order to Show Cause was executed on August 19, 1991, returnable August 28, 1991 at the Commission's office in Newark, New Jersey. The delay in the execution of the Order was occasioned by the unavailability of the parties and the fact that the transfer decision of the Board was not actually made until August 13th. The formal hearing was conducted on August 30, 1991, following a two-day adjournment from the original return date. Both parties had, prior to the hearing, submitted written memoranda, affidavits and other evidence. Both parties argued orally from their submissions at the hearing on August 30th and a decision was reserved.

THE FACTUAL CONFLICTS GENERATED BY THE AFFIDAVITSPetitioner's:

1. Serra claims that the Board President ("Simmons") solicited her to purchase tickets for his personal scholarship fund and in early 1991 and he also called her by telephone to inquire about the purchase; early in 1991, the Executive Assistant Superintendent ("Moore") advised her that Simmons did not like her and was attempting to "get rid" of her; two years ago, a political leader demanded the transfer of two of her teachers to which she successfully objected; on June 21, 1991, she received a negative evaluation for the first time and was told that the Barringer standardized tests were low, and that the suspension rate and the dropout rate was the highest at Barringer where she had been Principal for five years (C-3).

2. The four affidavits submitted by the Vice-Principal, a Senior Security Office and two Clerks at Barringer High School supported Serra's claim that she had been solicited to purchase scholarship fund tickets (C-5, Exhib. F).

Respondent's:

1. Eugene C. Campbell, the Executive Superintendent, alleged that Serra's allegations were "totally without merit" and "baseless," adding that his recommendation for her transfer was based on personal observations and visits plus recommendations to him by staff; Barringer is in need of fundamental reform which can only be achieved through a change in leadership; and there is no

"hidden agenda" involving the Board President, who at no time advised him that he wished to get rid of Serra as she has alleged (C-6).

2. James Moore, the Assistant Executive Superintendent, alleged that he recommended to Campbell that Serra and the entire administrative staff at Barringer be transferred to another location and this recommendation was based on educational and administrative reasons in the best interests of the students at Barringer; that the level of standardized tests was unacceptable as was the suspension rate and dropout rate; that at no time were political considerations entertained; and that the level of student morale was a matter of major concern (C-7).

3. Perry Simmons, Jr., the Board President, flatly denied Serra's allegation that he solicited her to purchase personal scholarship fund tickets in early 1991 although he did host a fund-raising dinner in October, 1990; that, additionally, during 1990-91, he sold tickets for a fund honoring Robert Talley, a Barringer graduate who lost his life in the Gulf War, but no tickets for this event were sent to Serra and nor was she verbally solicited; finally, he recommended the transfer of Serra and eight other administrators but this recommendation was not influenced in any way by political considerations (C-8, C-9).

THE INTERIM RELIEF STANDARDS

The standards that have been developed by the Commission for evaluating interim relief requests are similar to those applied

by the Courts when addressing similar applications and are now applicable to disciplinary transfer cases [N.J.A.C. 19:13-3.15]. The moving party must demonstrate that it has a substantial likelihood of success on the legal and factual allegations in a final Commission decision and that irreparable harm will occur if the requested relief is not granted. Further, in evaluating such requests for relief, the relative hardship to the parties in granting or denying the relief must be considered.^{3/}

DISCUSSION

Serra's counsel argues that only the standards delineated by the Supreme Court in Crowe, supra. govern the disposition of the instant application to restore the status quo ante. However, well before Crowe, Commission designees were deciding applications for interim relief on the basis of Stafford, Stockton and Little Egg Harbor, supra. With the advent of Crowe, designees now consider as additional factors (1) that an injunction should not issue where all of the material facts are controverted; and (2) the relative hardship to the parties by the grant or denial of relief. [90 N.J. at 133, 134].

Based upon the moving and opposing papers, the undersigned must necessarily conclude that under Crowe, all of the material facts relative to the transfer of Serra are controverted. The conflicts raised in the affidavits of the parties allow of no other

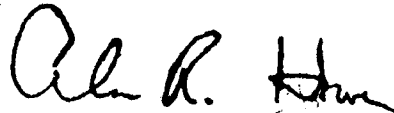
3/ Crowe v. DeGioia, 90 N.J. 126 (1982); Tp. of Stafford, P.E.R.C. No. 76-9, 1 NJPER 59 (1975); State of New Jersey (Stockton State College), P.E.R.C. No. 76-6, 1 NJPER 41 (1975); Tp. of Little Egg Harbor, P.E.R.C. No. 94, 1 NJPER 36 (1975).

conclusion than that the reason or reasons for Serra's transfer cannot be resolved at the interim relief stage.^{4/} Significantly, the Petitioner's memorandum of August 16, 1991, states at page 3: "The only factual dispute that exists is the precise reason that Serra was transferred...." The credibility issues raised by the affidavits are rife and may only be resolved at a plenary hearing.

Notwithstanding that Serra urges that the requested relief may be granted solely on the basis of the final test in Crowe, i.e., the relative hardship to the parties by the grant or denial of relief, the undersigned observes that the plaintiff in Crowe succeeded not only under the "relative hardship" test but also because of the absence of any controversion of the material facts.

ORDER

For all the reasons set forth above, it is hereby ORDERED that the application of the petitioner, Rose Marie Serra, for interim relief prior to a plenary hearing is DENIED.



Alan R. Howe
Commission Designee

DATED: September 6, 1991
Trenton, New Jersey

^{4/} County of Essex, I.R. No. 91-23, 17 NJPER 349, 350 (¶22158 1991).