

P.E.R.C. NO. 2002-31

STATE OF NEW JERSEY  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

NORTH BERGEN TOWNSHIP  
BOARD OF EDUCATION,

Respondent,

-and-

Docket No. TO-H-2000-2

NORTH BERGEN FEDERATION OF TEACHERS,

Petitioner.

SYNOPSIS

The Public Employment Relations Commission denies the request of the North Bergen Township Board of Education for a stay of P.E.R.C. No. 2002-12, 27 NJPER 370 (132135 2001), pending appeal. In that decision, the Commission found that the Board violated the Act by transferring Louise Peterkin between work sites for disciplinary reasons and ordered the Board to restore the status quo.

This synopsis is not part of the Commission decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commission.

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Appearances:

For the Respondent, Giblin & Giblin, attorneys  
(Michael A. Gannaio, of counsel)

For the Petitioner, Mullica & Mullica, attorneys  
(Victor P. Mullica, of counsel)

DECISION

On November 7, 2001, the North Bergen Board of Education requested a stay of P.E.R.C. No. 2002-12, 27 NJPER 370 (¶32135 2001) pending appeal. In that decision, we found that the Board violated N.J.S.A. 34:13A-25 by transferring Louise Peterkin between work sites for disciplinary reasons and ordered the Board to restore the status quo. We deny the Board's request.

The Board argues that it has a substantial likelihood of success on the merits. In particular, it argues that our decision did not comport with the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., because we stated that we need not accept all of the Hearing Examiner's credibility determinations to accept his

conclusion that the transfer was predominately disciplinary. The Board suggests that we rejected the Hearing Examiner's findings without explanation. We disagree.

The Hearing Examiner found that the transfer was linked to Peterkin's filing a grievance and receiving a reprimand from the Board Secretary for leaving work before a replacement arrived. The Hearing Examiner rejected the non-disciplinary explanation offered by the superintendent. We accepted the Hearing Examiner's findings and relied on them in agreeing with him that the transfer was disciplinary. The Hearing Examiner further found that the reprimand referenced the grievance. We did not reject that specific finding or issue a ruling inconsistent with that finding. We simply did not need to rely on it to conclude that the transfer was disciplinary since it was based on the grievance and reprimand and not the proffered operational reason.

Similarly, a stay is not warranted simply because we acknowledged that the Board may have an interest in having a bi-lingual switchboard operator. N.J.S.A. 34:13A-25 prohibits disciplinary transfers between work sites of school board employees. We found that this transfer would not have occurred but for the grievance and the disciplinary incident. That the Board asserted an alternative and legitimate non-disciplinary explanation for a transfer does not warrant a stay in circumstances where the petitioner proved that discipline,

and not that alternative explanation, motivated this transfer.

Compare In re Bridgewater Tp., 95 N.J. 235 (1984).

The Board also argues that we did not properly apply the burden of proof. We disagree. The petitioner proved that Peterkin was transferred immediately after filing a grievance and receiving a disciplinary reprimand. The transfer was mid-year and there was no evidence of a precipitating problem caused by Peterkin's inability to speak Spanish. We inferred from that evidence that the transfer was disciplinary. The Board offered no evidence other than its superintendent's testimony to support its explanation for the transfer and the Hearing Examiner rejected that explanation. The Board did not provide any basis for setting aside the Hearing Examiner's credibility determination rejecting the superintendent's testimony.

The Board also argues that the Hearing Examiner and this Commission inexplicably cite the Board's failure to produce the Board Secretary to testify. However, we simply noted that the reprimand was disciplinary on its face and that the Board Secretary was not called as a witness to explain why it was not.

The Board argues that our Decision and Order are contrary to education and labor law. It may be that under education law, a secretary does not acquire tenure in a specific position, but instead gains tenure as a secretary in the entire school system. That education law right is not, however, inconsistent with a secretary's right under N.J.S.A. 34:13A-25 not to be transferred

between work sites for disciplinary reasons. The Board retains the right to transfer secretaries for non-disciplinary reasons. But if a transfer between work sites is disciplinary, as in this case, it violates N.J.S.A. 34:13A-25.

The Board argues that it has demonstrated that it will suffer irreparable harm if a stay is not granted. It asserts that Peterkin cannot handle incoming telephone calls and that the current switchboard operator would have to be let go for the Board to comply with our Order. The record did not indicate any precipitating problem caused by Peterkin's inability to speak Spanish. Nor does the Board explain why transferring Peterkin back to her former work site would require letting go her replacement. Before her replacement was transferred to Peterkin's position, she was a part-time clerical aide at the Franklin School. Peterkin was transferred to the Franklin School and has remained there, even after the person the Board alleged she was temporarily replacing returned from maternity leave. The Board has not explained why it would be irreparably harmed by returning Peterkin to the Board offices and her replacement to the Franklin School.


Finally, the Board argues that there is no harm to Peterkin if a stay is granted. N.J.S.A. 34:13A-25 prohibits disciplinary transfers between work sites. Peterkin was transferred for disciplinary reasons. We cannot secondguess the Legislature's judgment that employees are harmed by such transfers.

For all these reasons, we deny the Board's request for a stay pending appeal.

ORDER

The request of the North Bergen Board of Education for a stay of the Order in P.E.R.C. No. 2002-12 pending appeal is denied.

BY ORDER OF THE COMMISSION

  
Millicent A. Wasell  
Chair

Chair Wasell, Commissioners Buchanan, Madonna, McGlynn, Muscato, Ricci and Sandman voted in favor of this decision. None opposed.

DATED: November 29, 2001  
Trenton, New Jersey  
ISSUED: November 30, 2001