

H.E. NO. 2021-8

STATE OF NEW JERSEY  
BEFORE A HEARING EXAMINER OF THE  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WAYNE TOWNSHIP BOARD OF EDUCATION,

Public Employer,

-and-

Docket No. TO-2020-004

WAYNE CUSTODIAL & MAINTENANCE ASSOCIATION,

Petitioner.

**SYNOPSIS**

A Hearing Examiner recommends that the Board violated N.J.S.A. 34:13A-25 by transferring Taylor from groundskeeper to head custodian for disciplinary reasons. The Hearing Examiner found that the Association established by a preponderance of the evidence that Taylor was transferred for predominately disciplinary reasons, namely falsifying a work order, insubordination, and not being in the location/area where he was supposed to be during work hours. The Hearing Examiner recommends that Taylor be returned to his former position located as assigned during the 2018-2019 school year.

A Hearing Examiner's Report and Recommended Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission, which reviews the Report and Recommended Decision, any exceptions thereto filed by the parties, and the record, and issues a decision that may adopt, reject or modify the Hearing Examiner's findings of facts and/or conclusions of law. If no exceptions are filed, the recommended decision shall become a final decision unless the Chair or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further.

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Petitioner.

Appearances:

For the Public Employer, Scarinci Hollenbeck, LLC,  
attorneys (John G. Geppert, of counsel)

For the Petitioner, Springstead & Maurice, LLC,  
attorneys (Alfred F. Maurice, of counsel and on the  
brief; Lauren E. McGovern, on the brief)

**HEARING EXAMINER'S REPORT**  
**AND RECOMMENDED DECISION**

On November 25, 2019, the Wayne Custodial & Maintenance Association (Association) filed a petition for contested transfer determination. The petition alleges that the Wayne Township Board of Education (Board) violated the New Jersey Employer-Employee Relations Act (Act), N.J.S.A. 34:13A-1, et seq., specifically N.J.S.A. 34:13A-25, by transferring Brian Taylor (Taylor) from groundskeeper to head custodian for disciplinary reasons.

On January 9, 2020, the Board filed an Answer denying that the transfer was for disciplinary reasons, asserting that the

transfer was beneficial for Taylor as he would have greater opportunities for advancement and would receive an increased stipend.

On March 12, 2020, a Notice of Hearing issued.<sup>1/</sup> On November 30, 2020, a hearing was held via ZOOM video teleconference.<sup>2/</sup> The parties examined witnesses and exhibits were admitted into evidence. Post-hearing briefs were filed by March 5, 2021. Subsequent mediation efforts during the period March 6-31, 2021 were unsuccessful.

Based upon the record, I make the following:

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1/ On March 16, 2020, the Commission Chair (Chair) sent a memorandum - and a series of memoranda thereafter extending until August 30, 2020 - to "Parties, Attorneys and Customers of PERC" specifying that "all in-person conferences and hearings" were cancelled until further notice due to "the evolving situation relating to [COVID-19]." On August 31, 2020, the Chair issued a memorandum extending "the cancellation of in-person conferences, hearings and mediations . . . until further notice" while specifying that "the Agency [was] actively preparing to expand the use of remote video dispute resolution, including evidentiary hearings . . . [, that the Agency] plan[ned] to advance the use of technological alternatives as soon as possible . . . [, and that] the application of any changes [would] be made according to specific needs and capabilities of the parties."

2/ Transcript references for the November 30, 2020 hearing are denoted by "1T."

**FINDINGS OF FACT**

**I. The Parties' Stipulations**

1. Brian Taylor (Taylor) has been employed by the Wayne Township Board of Education (Board) for 26 years. [1T7:15-17]
2. The Board and the Wayne Custodial & Maintenance Association (Association) are parties to a collective negotiations agreement (CNA) which governs the terms and conditions of employment. [1T7:17-19; J-1]
3. Taylor is a member of the Association. [1T7:19-21]
4. John Maso (Maso) serves as Director of Facilities Management for the Wayne Public School District (District). [1T7:21-22]
5. Andrew Rocco (Rocco) serves as Buildings & Grounds Supervisor for the District. [1T7:22-23; 1T63:4-13]
6. Taylor served as an outside groundskeeper for the District for the 2018-2019 school year. He was assigned to Wayne Hills High School from September through November 2018 and from March through June 2019. From December 2018 through February 2019, Taylor was assigned to outside duties as a groundskeeper at various buildings and other District properties.<sup>3/</sup>

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<sup>3/</sup> In response to my inquiries about Taylor's work site/location during the 2018-2019 school year, the parties (continued...)

7. Effective September 6, 2019, Taylor was transferred from the position of groundskeeper to the position of head custodian. [1T7:24-25; PE-1]
8. The District met with officers of the Association to discuss Taylor's transfer. [1T7:25 thru 1T8:1]
9. Taylor was formally advised of the transfer by way of correspondence, dated September 6, 2019, submitted by the Board's Director of Human Resources, Compliance and Labor Relations, Paula Clark (Clark). [1T8:2-4; PE-1]
10. Taylor's transfer from groundskeeper to head custodian did not result in a change in his salary guide. [1T8:4-6; 1T36:20 thru 1T38:4; 1T48:4-10; 1T107:11 thru 1T108:14; 1T124:3-5; J-1; PE-7; PE-8]
11. While there was no change in salary guide as head custodian, Taylor was entitled to a stipend in the amount of \$1,300. [1T8:6-8; 1T124:18 thru 1T125:2; J-1]
12. On September 20, 2019, Clark submitted correspondence to Taylor advising that he had been transferred from "Head

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3/ (...continued)  
agreed to this stipulation via correspondence dated March 30, 2021. See Mt. Arlington Bd. of Ed., P.E.R.C. No. 98-4, 23 NJPER 450 (¶28211 1997) (holding that "the Legislature intended to prohibit disciplinary transfers between buildings").

Custodian - PACK" to "Head Custodian - RC."<sup>4/</sup> [1T8:8-11; PE-2]

13. During the 2018-2019 school year, during which he served as a groundskeeper, Taylor earned an annual base salary of \$53,310 as per the guide. [1T8:12-14; J-1]

14. During the 2019-2020 school year, during which he served as a head custodian, Taylor earned an annual base salary of \$54,235 as per the guide. [1T8:15-17; J-1]

15. Taylor's personnel file includes reference to only two disciplinary infractions which resulted in letters of counseling, one occurring in September 2013 and one in September 2018, approximately one year before his transfer. [1T8:18-22; PE-3; PE-4]

16. Taylor has not been subject to any other formal disciplinary penalties. [1T8:22-25; 1T9:1-2]

## **II. Facts Adduced from Witness Testimony and Admitted Evidence**

### **A. 2017-2021 CNA**

17. The Association represents full-time custodians, maintenance personnel, bus mechanics, storekeepers, and groundskeepers employed by the Board. The Board and the Association are parties to a CNA in effect from July 1, 2017 through June

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<sup>4/</sup> The Board provided no explanation regarding why Taylor was originally transferred from groundskeeper to head custodian at Packanack Elementary School. The Board also provided no explanation regarding why, only a few days later, Taylor was transferred again to head custodian at Randall Carter Elementary School.

30, 2021. The grievance procedure ends in advisory arbitration. [J-1 at Sections I, XVIII, XXIV]

18. Section III of the parties' CNA, entitled "Salaries," provides:

All salaries are set forth in Appendix A (hourly rate). The guide reflects a 2.1% salary increase inclusive of increment, for the 2017-2018 school year effective July 1, 2017, a 2.4% salary increase for the 2018-2019 school year, inclusive of increment, effective July 1, 2018, a 2.5% increase for the 2019-2020 school year, inclusive of increment, effective July 1, 2019, and a 2.5% increase for the 2020-2021 school year, inclusive of increment, effective July 1, 2020.

A. Salaries for the 2017-2018, 2018-2019, 2019-2020, and 2020-2021 school years shall be paid in accordance with the salary schedules annexed hereto, made a part hereof, and identified as Schedules A-1 through A-4.

B. Head Custodians

Each Head Custodian shall receive the following appropriate annual contract salary in addition to his/her annual custodian's salary as set forth on the current year's salary guide (Schedule A-1, A-2, A-3 or A-4):

	<u>2017-2021</u>
Elementary School:	\$1300
Middle School:	\$2450
High School:	\$3600

All salary guides to be developed and mutually agreed to by the parties.

C. Employee Licenses

Licensed Personnel assigned to work within their respective trade and licensed by the State of New Jersey to perform such work as a contractor or operator in such trade shall receive a stipend as follows for each month they serve in such a capacity. The employee is responsible to maintain his/her license in

good standing and keep such records of valid licensure on hand with the Director of Facilities Management or his/her designee. This shall apply to the following licenses:

Electrical Contractors License	\$200/mo
Master Plumber License	\$200/mo
EPA Certified Universal Freon Recovery and Reclamation	\$75/mo
Black Seal Low Pressure Boiler Operator	\$50/mo
Commercial Pesticide Applicator or Operator	\$50/mo
ASE School Bus Certifications (there are 7)	\$30/210/mo
Master ASE School Bus Certification	\$250/mo
Locksmith	\$50/mo
HVAC State-Licensed Technician	\$200/mo
Heavy Equipment Operator	\$50/mo

All WCMA employees shall be entitled to claim no more than two (2) stipends in any fiscal year. Any stipend claimed must be required within the employee's regular job responsibilities. The Board shall be responsible for the license renewal, including the renewal fees, for all employees licensed as Black Seal Low Pressure Boiler Operators. Employees possessing any other licenses set forth above, shall be responsible to maintain his/her/their licenses in good standing, including license renewal and the payment of any initial and/or renewal fees.

[J-1]

19. Section IV of the parties' CNA, entitled "Working Hours and Conditions - Custodial, Maintenance, Grounds and Night Security Personnel," provides in pertinent part:

B. Overtime Hours

- Overtime shall be paid at the rate of one and one-half (1-1/2) times the custodial and maintenance employee's hourly rate.
- Overtime shall be paid after eight (8) working hours in one day. Overtime shall be paid for all regular hours in excess of forty (40) regular working hours in any one week.
- Overtime hours shall be worked at the

direction of the employee's immediate supervisor and/or the request of the Principal/Building Administrator with the approval of the employee's immediate supervisor.

4. Overtime hours shall be worked when deemed necessary by the Building Principal/Building Administrator, or the employee's immediate supervisor.

5. Holiday work shall be paid time and one-half (1-1/2) plus the day's pay.

6. Overtime shall be within each position category:

- Custodians by location
- Maintenance
- Groundskeeper
- Bus Mechanic

And shall be assigned on a rotating basis based on seniority, except in cases of emergency in which case may be assigned overtime without regard to seniority. The school district may invoke its management rights as provide for under Section XXII, paragraph 6 of this agreement "to take whatever actions may be necessary to carry out the mission of the school district in situations of emergency."

[J-1]

20. Section XV of the parties' CNA, entitled "Transfers and Vacancies," provides

A. Vacancies

Approved vacancies in full-time positions in the Facilities Department which are created due to death, retirement, resignation or non-renewal will be posted and filled within 150 days of the vacancy. Vacancies, which are defined as an opening in a position which needs to be filled on a permanent basis, shall be posted for a period of not less than ten (10) school days.

B. Transfers

All requests for transfers or reassignments shall be submitted in writing to the Director

of Facilities or his/her designee. The deciding factor in the selection of employees to other or different positions shall be performance.

C. A transfer is the change of an employee's job location between buildings, and a reassignment is a change of location or shift within the same building.

D. Involuntary transfers or reassignments shall be made only after a meeting between the Superintendent (or designee) and the employee so affected at which time the reasons for the transfer or reassignment shall be given.

E. Involuntary transfers shall not result in an employee being reduced in compensation.

[J-1]

21. Section XXII of the parties' CNA, entitled "Management's Rights," provides:

Except as limited by existing law and the terms of this Agreement, the Board reserves to itself sole jurisdiction and authority:

- (1) to direct employees of the school district;
- (2) to hire, promote, transfer, assign, and retain employees in positions in the school district, and to suspend, demote, discharge, or take other disciplinary action against employees;
- (3) to relieve employees from duty because of lack of work or for other legitimate reasons;
- (4) to maintain efficiency of the school district operations entrusted to them;
- (5) to determine the methods, means, and personnel by which such operations are to be conducted; and
- (6) to take whatever actions may be necessary to carry out the mission of the school district in situations of emergency.

[J-1]

**B. Association Witnesses**

22. Franco Rosella has been employed by the District for approximately seven years. He currently serves as a maintenance man for the District. Rosella is also Vice President of the Association. [1T16:3 thru 1T18:1]
23. Gino Luigi Tulipani (Tulipani) has been employed by the District for approximately 33 years. He currently serves as Custodial Supervisor (Supervisor) for the District. Tulipani previously served as Grounds Supervisor for approximately 24 years. Tulipani was the best man at Taylor's wedding. [1T32:17 thru 1T34:25; 1T41:18 thru 1T41:1]
24. Dezzie Young III (Young) is employed by the District and currently serves as a floater - i.e., he works in Shipping & Receiving; substitutes for head custodians; and performs groundskeeping on overtime when needed. Young was also the President of the Association for three years, including in 2019. [1T46:10 thru 1T48:18; 1T56:2-8]
25. Brian Taylor (Taylor) has been employed by the District for approximately 27 years. He currently serves as a head custodian. Taylor previously served as a groundskeeper for approximately 25 years. In 2020, Taylor also became the President of the Association. [1T116:18 thru 1T119:10; 1T137:18 thru 1T138:24; 1T48:11-18; 1T56:2-8]

**C. Board Witnesses**

26. Andrew Rocco (Rocco) has been employed by the District for approximately six years. He currently serves as Buildings & Grounds Supervisor (Supervisor), and served in that position during the 2019-2020 school year. [1T63:4 thru 1T65:12]
27. Robert Blanchard (Blanchard) has been employed by the District for approximately nine years. He currently serves as the Assistant Director of Facilities Management, Safety & Security (Assistant Director), and served in that position during the 2019-2020 school year. [1T80:14 thru 1T82:10]
28. Paula Clark (Clark) has been employed by the District for approximately five years. She currently serves as Director of Human Resources, Compliance and Labor Relations (Director), and served in that position during the 2019-2020 school year. [1T105:6 thru 1T107:10]

**D. Background****i. Relationship between Taylor and Rocco**

29. Taylor testified that starting in 2018, Rocco became his supervisor in grounds. [1T118:16 thru 1T119:25] Taylor testified that his relationship with Rocco "was very awkward" because Rocco "was very demanding since he started as a groundskeeper supervisor"; that Rocco "would . . . pressure [Taylor], . . . [and] would say things that normally you wouldn't say"; and that "it wasn't a very good

relationship with the workers." [1T120:1 thru 1T121:9]

Taylor also testified that Rocco "spoke to [him] in an uneven tone [and/or] yelled at [him]"; that Rocco

"threaten[ed] to have [Taylor] fired or transferred continuously since he took over as grounds supervisor."

[1T121:10 thru 1T122:1]

30. Association President Young testified that the personal relationship between Supervisor Rocco and Taylor "was a little tens[e] . . . some days it was smooth, some days it wasn't"; however, Young did not know the reason for the tension. [1T52:9-17]
31. Supervisor Tulipani testified that although the District did not express any misgivings "about how [Taylor] was operating in the grounds position", the District "[was] gunning for [Taylor] -- they were gunning and they were looking to find anything and everything to get to [Taylor]." [1T40:14-19] Tulipani specified that "Andy Rocco" was "gunning for [Taylor]." [1T41:2-4]
32. Supervisor Rocco denied "hav[ing] [any] personal animosity or adverse feelings towards [Taylor]" and denied having "[any] dissatisfaction with Taylor's performance as a grounds person." [1T79:12-18] Rocco testified that his interaction with Taylor "wasn't much" because "Taylor just basically knew what to do . . . [and] was here long enough

to be on his own"; that he spoke with Taylor "regularly"; and that he did not "have any personal issue with Taylor." [1T65:13-25; 1T73:20-25] Rocco also testified that he did not recall "any arguments or significant disagreements with Taylor"; that he "never" used "inappropriate or insulting language towards [Taylor]"; that he "never" "threaten[ed] Taylor personally or his employment"; that he "never" "express[ed] any dissatisfaction with Taylor personally"; and that he "never" "threaten[ed] Taylor with transfer to a different school." [1T66:1 thru 1T67:23]

33. Assistant Director Blanchard testified that his interaction with Taylor was "cordial" and "minimal"; that he "[didn't] have a personal relationship with [Taylor] . . . but [they got] along well"; and that he did not "have any personal issue with Taylor." [1T82:11-23] Blanchard also testified that he "never" had "any arguments or significant disagreements with Taylor"; that he "never" used "inappropriate or insulting language towards Taylor"; that he "never" "threaten[ed] Taylor personally or his employment"; that he "never" "express[ed] any dissatisfaction with Taylor personally"; and that he "never" "threaten[ed] Taylor with transfer to a different school or division." [1T82:24 thru 1T83:17; 1T84:8-14] Blanchard conceded that he did "express . . . dissatisfaction with

Taylor's performance" with respect "to a work order that [Taylor] said was completed and it wasn't." [1T83:11-14]

34. Blanchard conceded that on or about September 25, 2018, he overheard at least one incident/inter-personal exchange between Taylor and Rocco which led to Taylor being disciplined. [1T85:8-23; PE-4]

35. I credit the testimony of Taylor, Young, and Tulipani inasmuch as it indicates that the relationship between Taylor and Rocco was less than amicable; and that Rocco was unhappy with Taylor - professionally and/or personally - and interested in having Taylor move out of the groundskeeper position. I find this testimony congruous with the record as a whole regarding the basis for Taylor's transfer. Assistant Director Blanchard knew, or should have known, about the discord in the relationship between Taylor and Rocco based in part upon overhearing the September 25, 2018 incident/inter-personal exchange.

**ii. Head Custodian Position**

36. Taylor testified that he received "the same pay and the same stipends" as a head custodian, "[t]he difference being . . . a[n additional] . . . \$1,300 [stipend] to be a head custodian." [1T124:3 thru 1T125:2; 1T132:12 thru 1T133:14; 1T134:25 thru 1T135:2; 1T135:20 thru 1T136:5; PE-5]

37. Taylor conceded that he had "put in for supervisory jobs" in

the past approximately "three [times]" - i.e., "[o]ne was a night supervisor . . . [a]nd two were . . . grounds supervisors." Taylor clarified that "night supervisor is . . . [a] custodial" position. [1T134:17-24; 1T135:4-15]

38. Director Clark testified that "the salary guides" for groundskeepers and custodians "are the same"; and that an employee "would have the same salary in both positions" but "as a custodian, you would also receive an additional stipend." Clark clarified that as a head custodian at an elementary school, "Taylor would receive . . . a \$1,300 annual stipend" that "he wouldn't receive as a groundskeeper." [1T108:2 thru 1T109:5; 1T109:22 thru 1T111:5; 1T111:24 thru 1T112:13; 1T113:19 thru 1T115:4; 1T140:13-22; J-1; PE-1; PE-2; PE-5]

39. Clark testified that Taylor's transfer from groundskeeper to head custodian "was promotional and a supervisory opportunity for [Taylor]"; that it was considered "a promotion . . . [b]ecause the [head custodian] is in charge at the school of the custodians while they're there . . . [a]nd it's supervisory and you receive the additional stipend." [1T109:6-21]

40. Assistant Director Blanchard testified that "it's very infrequent" for "an employee [to be] transferred from grounds to . . . [head custodian]" and "would normally be a

request and if we felt they were capable of performing the duties." [1T87:12-17]

41. Blanchard testified that "be[ing] transferred from a groundskeeper to head custodian [is] considered promotional" because "[i]t would mean an increase in pay[,] [i]t would be a supervisory roll[,] [a]nd . . . [Taylor] wouldn't be out in inclement weather, he would be in good condition inside the school." Blanchard also testified that Taylor "would . . . have an opportunity for overtime . . . based on the school, custodial, and also . . . to assist with snow removal." [1T87:18 thru 1T88:10]
42. Blanchard testified that "potential promotions could be made after [an employee is] appointed head custodian" such as "a supervisory role for the District in the office." [1T88:11-21] Blanchard also testified that he was "[n]ot . . . aware of" any "direct promotions other than through head custodian." [1T88:22-24]
43. Supervisor Rocco testified that a "transfer from groundskeeper to head custodian is considered a promotion" because there's more opportunity for advancement, more opportunity salary-wise, and you still have the opportunity to make overtime." [1T69:8-22]
44. I credit the testimony of Clark, Blanchard, and Rocco that a transfer from groundskeeper to head custodian is considered

a promotion given that the head custodian position is a supervisory role, includes a \$1,300 stipend, and carries the potential for additional promotion. However, I also credit the testimony of Taylor insofar as it indicates that his transfer from groundskeeper to head custodian was unsolicited - i.e., he did not apply for this particular transfer/promotion. I find this testimony congruous with the record as a whole regarding the basis for Taylor's transfer.

**iii. Overtime Opportunities**

45. The Association's witnesses testified that "there's a lot more overtime for grounds than there is for custodia[1] [staff], and it doesn't even compare to the amount"; that "[g]rounds always generates a lot more overtime . . . as opposed to on the custodial side." [1T18:2 thru 1T22:9; 1T27:1-18; 1T35:1 thru 1T36:19; 1T53:4 thru 1T57:24; 1T123:13 thru 1T124:2; 1T125:3-15; 1T126:19 thru 1T130:4; P-7; PE-5]
46. Association Vice President Rosella testified that "it [would] surprise [him if] . . . a head custodian earned a substantial amount of overtime" in a given school year. [1T28:19 thru 1T30:21; P-11]
47. Supervisor Tulipani testified that "it would [not] surprise [him]" if a certain custodian - Nabhan Elsamara (Elsamara) -

"received a substantial amount of . . . overtime during the 2018-2019 school year" because Tulipani "needed help . . . covering schools" and because "[Supervisor] Rocco employed Elsamara on the outside to help out with the grounds"; that Rocco was "always calling [Tulipani's] guys without consulting [Tulipani] first" when Rocco "[was] behind the eight ball." Tulipani also testified that "supervisors like Rocco . . . exercise their preference as to who they're going to call" to work overtime; and that Taylor "would not be given [the] same [overtime] opportunit[ies]" because "Rocco was out to get Taylor." [1T42:2 thru 1T45:13]

48. Association President Young testified that "it wouldn't surprise [him]" if Elsamara "made a substantial amount of . . . overtime" during the 2018-2019 and 2019-2020 school years "if [the District] asked [Elsamara] to work it"; and that custodians at "[the] high school and junior high . . . [have a] lot more [overtime opportunities] than [custodians at] elementary." [1T59:15 thru 1T60:17] Young also testified that "[Supervisor] Rocco designates who he wants to do overtime" and that "he has to go off the rotation of his grounds crew first, and then if he needs anybody else . . . he goes to whoever he picks up"; but that it would not be "unusual for [Rocco] to choose a particular person that he favored to do overtime" because Young "guess[ed] that

person would be more reliable." [1T53:18 thru 1T54:3]

49. Taylor testified that he received fewer overtime opportunities, and therefore less overtime compensation, after he became a head custodian in September 2019 compared with when he was a groundskeeper - i.e., "if [Taylor] subtract[s] the \$1,300 [he] got as a head custodian, [he] could probably clear \$5,000 or \$6,000 annually." Taylor also testified that he wanted to go back to being a groundskeeper because "[he] lost a lot of money in overtime that provides for [his] family." [1T126:3 thru 1T130:4; 1T131:17-21; P-7; PE-5]
50. Taylor testified that he could understand/explain how a head custodian like Elsamara could make a substantial amount of overtime - e.g., custodians assigned to elementary schools have fewer overtime opportunities than custodians assigned to the high school and junior highs; and Elsamara "[was] one of the number one guys that Rocco [would] call on for all summer work" and "is the first to be called and . . . the first to go." Taylor also testified that "[although] there's supposed to be a list [for overtime opportunities], . . . the list really isn't worked by the supervisors, they call the [employees] that they like . . . and that are always there." [1T125:16 thru 1T126:18; 1T130:22 thru 1T131:11]

51. Taylor testified that a "couple of years ago, . . . the Association" filed a grievance related to the allocation of overtime and demanded that the District "go off the list." However, the "Association was okay with [not going off the list]" when "supervisors have [an] emergency . . . as long as [they] do Department first, and then reach out, [and] then there should still be a list." [1T137:18 thru 1T138:24]
52. The Board's witnesses testified that "the opportunity for custodians and groundskeepers to earn overtime . . . [is] very similar"; that "all employees within the Department have the same opportunities for overtime." [1T111:6-21; 1T88:25 thru 1T89:8; 1T103:4-23]
53. Supervisor Rocco testified that he "think[s] custodians make more overtime than the groundskeepers"; and that it "wouldn't surprise [him]" if Elsamara "earned a substantial amount of overtime" during the 2018-2019 and 2019-2020 school years because Elsamara was available for "summer time hours . . . [and] weekends" and "[was] one of the regulars that would sign up for overtime." Rocco testified that overtime opportunities are "[u]sually [allocated] by seniority or by the group, whether it's maintenance, custodial or grounds"; that overtime opportunities "basically stay within their own seniority list" and "[a]re

. . . open to all employees." [1T70:4 thru 1T73:19]

54. Assistant Director Blanchard testified that it "would not surprise [him] at all" if Elsamara "obtained a substantial amount of overtime" during the 2018-2019 and 2019-2020 school years because Elsamara "accepts almost all overtime that is offered to him"; and that Taylor "would . . . be eligible for the same overtime as Elsamara." [1T89:13 thru 1T90:20; P-11]

55. Blanchard testified that "Taylor's status since September 2020 [un]til [the present]" is "out on an off-duty injury" such that Taylor "wouldn't have been eligible for overtime [in the] fall [of 2020]." [1T90:21 thru 1T91:1; 1T118:13-15]

56. Director Clark testified that she "[didn't] know how [overtime was] disseminated other than by looking into records." [1T112:24 thru 1T113:18] Clark also testified that she "would have expected a grievance . . . if [overtime] was not being distributed in accordance with the contract on an ongoing basis"; and that she was not aware of the Association filing any grievance related to the allocation of overtime and "certainly not during Taylor's tenure as [Association] President."<sup>5/</sup> [1T140:23 thru

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5/ On December 18, 2020, the Association requested leave to supplement the record "limited to grievance documents"  
(continued...)

1T141:9]

57. The parties stipulated that there are several custodians and/or head custodians employed by the District that have received a significant amount of overtime compensation.

[1T91:9 thru 1T100:13; P-11]

58. I credit the testimony of Taylor, Young, Rosella, and Tulipani inasmuch as it indicates that generally speaking before COVID-19, there were more overtime opportunities within the District for grounds staff than custodial staff; and custodians assigned to the high school and junior high schools had more overtime opportunities than custodians assigned to elementary schools. I also credit the testimony of Taylor, Young, and Tulipani insofar as it indicates that District supervisors - in particular Rocco - often exercise their personal preference in terms of which employees are

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5/ (...continued)  
related to the allocation of overtime; the Board objected. On December 28, 2020, I denied the Association's request given that the factual record was closed upon the conclusion of the hearing on November 30, 2020 - regardless of the hearing examiner's inquiries during the hearing, the underlying document(s) were available to the Association before/during the hearing and could have been introduced/admitted at that time to support/contradict the record depending on related witness testimony. See Jackson Tp., H.E. No. 2005-14, 31 NJPER 155 (¶69 2005), adopted P.E.R.C. No. 2006-12, 31 NJPER 281, n.3 (¶110 2005) (denying a party's request to supplement the record post-hearing). Moreover, as discussed below, whether any grievance(s) was or was not filed is irrelevant to my ultimate determination regarding whether Taylor's transfer violated N.J.S.A. 34:13A-25.

offered overtime opportunities. I also credit the testimony of Taylor, Young, Rosella, and Tulipani insofar as it indicates that a transfer from groundskeeper to head custodian - even if it is considered a promotion - may not necessarily mean an increase in total compensation due to the variability of overtime opportunities and allocation. I find this testimony congruous with the record as a whole regarding the basis for Taylor's transfer.

**E. August 2019 Meeting**

59. In late August 2019, Association President Young, Association Vice President Rosella, Supervisor Tulipani, and Taylor met with Assistant Director Blanchard and Supervisor Rocco to discuss Taylor's transfer. [1T24:11 thru 1T26:22; 1T38:10 thru 1T40:19; 1T48:19 thru 1T53:3; 1T67:24 thru 1T68:21; 1T75:1 thru 1T78:9; 1T84:15 thru 1T88:24; 1T101:1 thru 1T103:3; 1T122:2 thru 1T123:12; 1T130:5-21; P-8]
60. Association President Young testified that the meeting was "in regards to Taylor being transferred from grounds to head custodian" and that "[Taylor] didn't want that transfer." [1T48:19 thru 1T49:17] Young testified that the District provided three reasons for Taylor's transfer - i.e., "falsifying work orders"; "being insubordinate"; and "not being in the area [that Taylor] was supposed to be at." [1T49:18 thru 1T51:19; P-8] Young testified that although

Supervisor Rocco was at the meeting, Rocco "didn't say anything . . . [and] didn't refute or deny" the Association's version of the facts. [1T51:20 thru 1T52:4]

61. Association Vice President Rosella testified that the purpose of the meeting was to "discuss[] . . . transferring Taylor [to] the head custodian position." [1T24:11-24]
- Rosella testified that the District provided three reasons for Taylor's transfer - i.e., "falsified a work order"; "insubordinate and refused to work"; and "seen in an area where he was not supposed to be at the time." [1T24:19 thru 1T25:24; P-8]
- Rosella testified that after the meeting, his understanding was that Taylor was being transferred "because of disciplinary reasons." [1T25:25 thru 1T26:4]
62. Supervisor Tulipani testified that "[he] learned about [Taylor's] transfer the morning of . . . [the] meeting." [1T38:5-21]
- Tulipani testified that Assistant Director Blanchard provided "[a] few" reasons for Taylor's transfer - i.e., "falsified a work order"; "insubordinate"; and "[being] on the other side of town" rather than where he was supposed to be. [1T38:22 thru 1T40:2; P-8]
- Tulipani testified that after the meeting, his understanding was that Taylor was being transferred "[because] it was just a way to get at [Taylor] . . . [and] that there was some animosity against [Taylor], so they wanted [Taylor] out of . . .

grounds." [1T40:5-13]

63. Taylor testified that he "learn[ed] [that] there was a transfer from the grounds position to custodian in the works [for him]" at the meeting. [1T122:2-8] Taylor testified that Assistant Director Blanchard provided three reasons for why he was being transferred - i.e., "insubordination"; "falsifying a work order"; and "being out of the area [Taylor] was supposed to be in." [1T122:9 thru 1T123:12; 1T130:5-21; P-8]
64. Assistant Director Blanchard testified that Taylor was "advised of [his] transfer" at the meeting. [1T84:15 thru 1T85:1] Blanchard testified that he "initially suggested the transfer" to his supervisor, John Maso,<sup>6/</sup> because "[he] thought [Taylor] should be offered a chance to step into a supervisory role . . . and [that] he was capable." [1T87:6-

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<sup>6/</sup> The Board did not call Maso to testify regarding whether or not he spoke to Blanchard about Taylor's transfer. When a party fails to call a witness who may reasonably be assumed to be favorably disposed to the party, an adverse inference may be drawn regarding any factual question on which the witness is likely to have knowledge. State v. Clawins, 38 N.J. 162, 170 (1962); accord Torres v. Pabon, 225 N.J. 167, 181-183 (2016). For a negative inference to be drawn, the witness must be within the power of the of the party to produce and the proffered testimony must be superior to that already in evidence with respect to the fact to be proven. Id. at 171; Torres, 225 N.J. at 181-183. See West New York Bd. of Ed., H.E. No. 2011-9, 38 NJPER 1 (¶1 2011) (drawing a negative inference based upon a failure to call a witness who may reasonably be assumed to be favorably disposed to the party).

11] When asked if he could "recall any reason why Taylor was not previously given a promotion as supervisor," Blanchard testified that "[he] wasn't with the District at that time." [1T86:16-18]

65. Blanchard testified as follows regarding how he described Taylor's transfer during the meeting:

Well, I explained to Mr. Taylor that he had approached me several times, stating that he would like a supervisory role, that he should have been made a supervisor, that he was passed over several times, that he would like to make more money. So I had said to him well, here's chance to show us what you're capable of doing being a supervisor. It will probably include some additional money, but I don't know how much more, and that was the only reason behind the transfer.

[1T86:3-15]

66. Blanchard testified that Taylor "did not make any comments" during the meeting; that he did not object to the transfer or indicate that he thought it was disciplinary. [1T86:19-22] Blanchard testified that he "d[id] not" have "any idea why Taylor considered [the transfer] disciplinary."

[1T87:22-24] Blanchard testified that "since [Taylor's] been transferred to head custodian," "[Taylor has] made some statements to [Blanchard] and the staff that he's very happy up there and the principal seems to be very happy with him also." [1T91:2-6]

67. Taylor testified that in response to Blanchard saying he was

being transferred, Taylor said "okay" and "requested why [he] was being transferred . . . from the grounds to in the building." [1T122:2 thru 1T123:12]

68. Blanchard denied that Taylor was transferred because of "[the] work order incident." [1T83:11 thru 1T85:7]

Blanchard also denied that Taylor was transferred because of the "refusal to assist [with] custodial dut[ies]" incident, which occurred shortly after Blanchard became employed by the Board in/about September 2018. [1T85:8 thru 1T86:1; PE-4] When asked if Taylor "[being] placed on light duty as a result of an injury" had "anything to do with [Blanchard's] decision to transfer," Blanchard testified that he "[didn't] think so" and that Taylor was on light duty "prior to [Blanchard's] coming on with the District." [1T86:23 thru 1T87:5]

69. Blanchard conceded that he recalled Association President Young and/or Vice President Rosella say "that they understood Taylor was being transferred for disciplinary reasons and that . . . had in fact [been] articulated . . . at the August meeting" but that Young and/or Rosella "didn't say who made the comment, whether it was [Blanchard] or Rocco." [1T101:1 thru 1T102:6] Blanchard testified that he refuted these statements and asserted they were "untrue." [1T102:7-9]

70. Taylor testified that Blanchard's testimony "that he never said anything about any kind of discipline with respect to [Taylor's] transfer" was "no[t] accurate." [1T130:5-21]
71. Supervisor Rocco testified that he was "present at the meeting" but "[was] not the one who made the decision" to transfer Taylor; that Assistant Director Blanchard was the one "who initially suggested the transfer." [1T67:24 thru 1T68:3; 1T69:13-14; 1T77:19 thru 1T78:1; 1T79:7-18] Rocco testified that "[his] understanding of the reason for the transfer . . . was an immediate retirement or actually an abrupt retirement, so the position had to be filled"; and that "Taylor was . . . the one we picked, because of his time served and work ethic." [1T68:4-10] Rocco testified that he believed Taylor "deserved a promotion" because of "[h]is knowledge of . . . his years being [with the District] and just being . . . always wanting to be in that supervisory role"; and that "this was the perfect opportunity." [1T68:11-18]
72. Rocco testified that the only reason he thought Taylor might "view[] the transfer as disciplinary" was because of "a loss of freedom" given that "as a custodian, you're in the school all day" whereas "[i]f you're in a pick-up truck on the grounds, you can run for a cup of coffee." [1T69:3 thru 1T70:3; 1T78:17 thru 1T79:3]

73. Rocco denied that Taylor was transferred because he "falsified a work order." [1T68:22 thru 1T69:12] Rocco also denied that Taylor was transferred because of the "refusal to assist [with] custodial duties" incident. [1T66:17 thru 1T67:23; PE-4] Rocco clarified that the District "[doesn't] allow light duty" and that if Taylor came back to work but "his doctor [had] instructed him to be on light duty . . . [Taylor] shouldn't be there." [1T74:11-25] Rocco testified that "there [was no] indication that the transfer was intended to be disciplinary." [1T68:19-21]
74. Rocco conceded that there was a meeting before the transfer where "there was a discussion about why Taylor was being transferred," and that the discussion pertained to "there [being] an opportunity for an opening, an opportunity for [Taylor] to move on." [1T75:1-18] Rocco did not recall "union officers [raising] the issue" that "Taylor was being transferred for disciplinary reasons" or that "[Rocco] gave a list of things that [Taylor] was not able to do." [1T75:19 thru 1T78:9] However, Rocco did recall a meeting where the participants "were upstairs" and there "was a discussion about the overtime and how it was available to everybody and then [Rocco] was cut off by the union representative." [1T75:25 thru 1T77:18]

**F. The Association's November 24, 2019 Letter/Memorandum**

75. Association President Young and Association Vice President Rosella confirmed that after the late August 2019 meeting, the Association contacted its New Jersey Education Association (NJEA) representative and "discussed everything with her and went from there." The Association, together with its NJEA representative, drafted/sent a "rebuttal for the transfer" to the District - i.e., a letter/memorandum dated November 24, 2019 memorializing the three reasons provided by the District for Taylor's transfer and the Association's version of the facts. The letter/memorandum was signed by Association President Young and Association Vice President Rosella. [1T26:5-22; 1T52:18 thru 1T53:3; 1T58:6 thru 1T59:1; P-8]
76. The Association's November 24, 2019 letter/memorandum provides:

In the meeting before Brian Taylor was transferred from the Grounds Dept. to the Custodial Dept. these issues were given as reasoning for the transfer.

1. Accused of signing off on work orders that were not completed.

The specific work order in question was the changing of plastic can liners in the trash cans on the fields at Pines Lake Elementary School. It was explained at a prior meeting with the entire grounds crew that they did not have to change the liners in the cans that had minimal trash in them. John Maso issued that directive many years ago. Brian followed that directive. He was then called away from his duties to

help other grounds personnel elsewhere in the District.

2. Insubordination.

Brian was directed to cover a building for an absent custodian. He refused to do so. He went to his truck to call Franco Rosella. When he came back into the building Andy Rocco had already written him up.

3. Not being where he was assigned to work.

On that morning Brian was assigned to work at Wayne Hills High School. He had explained to Andy Rocco, Robert Blanchard that he went to get gas at the Bus Garage where the fuel pumps are located. After filling his gas containers and vehicle Brian traveled on Route 23 North to return to his assigned job site Wayne Hills. While on Route 23, Brian needed to use the restroom so he stopped at Reyerson Elementary which was the closest building. On his travel to Reyerson School that's when Robert Blanchard stated that he saw Brian on New York Avenue. Throughout Brian's travels he maintained contact with his supervisor Mr. Rocco. Mr. Rocco was present at the meeting and did not confirm or deny what Brian had said. Also there was no prior meeting or written warning for Mr. Taylor about this matter.

[P-8]

77. Assistant Director Blanchard testified that he "[didn't] recall getting anything from the Board"; that he "[didn't] recall ever seeing" the Association's November 24, 2019 letter/memorandum and "didn't acknowledge receipt of it."

[1T102:10 thru 1T103:3]

78. I credit the testimony of Taylor, Young, Rosella, and Tulipani that during the late August 2019 meeting, Blanchard

specified that the reasons for Taylor's transfer were predominately disciplinary - i.e., falsifying a work order, insubordination, and not being in the location/area where he was supposed to be during working hours. I find their testimony about the late August 2019 meeting reliable based in part upon the fact that it is consistent with, and corroborated by, a contemporaneous writing - i.e., the Association's November 24, 2019 letter/memorandum. I also find this testimony congruous with the record as a whole regarding the relationship between Taylor and Rocco, the fact that Taylor did not apply for this particular transfer/promotion, and the fact that being transferred from groundskeeper to head custodian may not necessarily mean an increase in total compensation. Moreover, other than the testimony of Blanchard and Rocco, the Board provided no evidence demonstrating the basis for Taylor's transfer - e.g., contemporaneous writing, allegedly corroborating testimony of John Maso, specific staffing or operational issues necessitating same, etc. The Board also provided no evidence that it followed any formal or informal process related to filling the pertinent head custodian position - i.e., posting a vacancy notice, receiving applications, completing interviews, criteria for selecting a candidate, etc. See, e.g., 2017-2021 CNA, Art. XV. [J-1] The Board

also provided no evidence regarding the relative difficulty/ease in filling the pertinent head custodian position or the relative difficulty/ease in filling Taylor's vacated groundskeeper position.

**G. Association's Contested Transfer Petition**

79. On November 25, 2019, the Association filed the underlying petition for contested transfer determination. [P-1; P-2]

**STANDARD OF REVIEW**

N.J.A.C. 19:18-3.10 provides in pertinent part:

(c) Any evidentiary hearing conducted pursuant to this subchapter shall be governed by the provisions of N.J.A.C. 19:14-6.1 through 19:14-6.13 on unfair practice proceedings, insofar as applicable.

N.J.A.C. 19:14-6.8 provides:

The charging party shall prosecute the case and shall have the burden of proving the allegations of the complaint by a preponderance of the evidence. The respondent shall have the burden of establishing any affirmative defenses in accordance with the law.<sup>7/</sup>

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7/ N.J.A.C. 19:18-3.11 provides:

The record before the Commission after a hearing shall consist of the petition for contested transfer determination, the answer and any replies, the request for evidentiary hearing and any replies, any official transcript of the evidentiary hearing, stipulations, exhibits, documentary evidence, and depositions, together with the hearing examiner's report and any exceptions, cross-exceptions, briefs, and answering briefs,

(continued...)

N.J.A.C. 19:18-3.10 provides in pertinent part:

(d) After the evidentiary hearing, or upon the parties' consent before the conclusion of the evidentiary hearing, the hearing examiner shall prepare a report and recommended decision which shall contain findings of fact, conclusions of law, and recommendations as to the disposition of the case.

### **ANALYSIS**

#### **A. Legal Standard**

N.J.S.A. 34:13A-25 prohibits transfers of school employees between work sites for disciplinary reasons. The Act defines discipline to include "all forms of discipline, except tenure charges . . . or the withholding of increments pursuant to N.J.S.A. 18A:29-14." N.J.S.A. 34:13A-22. The Commission has jurisdiction to determine whether a transfer is predominately disciplinary and, if so, to take reasonable action to effectuate the purposes of our Act. N.J.S.A. 34:13A-27a-b. Where the Commission finds that a school employee was transferred for predominately disciplinary reasons, typically the remedy is to return the employee to the former work site. The petitioner has the burden of proving its allegations by a preponderance of the evidence. See East Orange Bd. of Ed., P.E.R.C. No. 2020-13, 46 NJPER 151 (¶35 2019); Irvington Bd. of Ed., P.E.R.C. No. 98-94,

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1/ (...continued)  
which shall be governed by the provisions of N.J.A.C. 19:14-7.3 (Exceptions; cross-exceptions; briefs; answering briefs).

24 NJPER 113 (¶29056 1998).

In West New York Bd. of Ed., P.E.R.C. No. 2001-41, 27 NJPER 96 (¶32037 2001), the Commission set standards for assessing whether a transfer is disciplinary under the Act and stated:

Our case law does not establish a bright line test for assessing whether a transfer is disciplinary. . . . [O]ur decisions indicate that we have found transfers to be disciplinary where they were triggered by an incident for which the employee was also reprimanded or otherwise disciplined or were closely related in time to an alleged incident of misconduct. In all of these cases, we noted that the employer did not explain how the transfer furthered its educational or operational needs.

By contrast, we have found transfers not to be disciplinary where they were effected predominantly to further an employer's educational, operational, or staffing objectives.

Other of our cases have found that transfers effected because of concern about an employee's poor performance of core job duties -- as opposed to concerns about absenteeism or violation of administrative procedures -- were not disciplinary but instead implicated the employer's right to assign and transfer employees based on their qualifications and abilities.

This case law provides a framework for assessing whether a transfer is disciplinary under N.J.S.A. 34:13A-25, and is consistent with what appears to have been the Legislature's understanding that a transfer is predominately disciplinary when it is punitive and/or is not made for educational or staffing reasons. Accordingly, in exercising our jurisdiction under N.J.S.A. 34:13A-27, we will consider such factors as whether the transfer was intended to

accomplish educational, staffing or operational objectives; whether the Board has explained how the transfer was so linked; and whether the employee was reprimanded for any conduct or incident which prompted the transfer.

[27 NJPER at 98 (citations omitted); see also East Orange Bd. of Ed.]

**B. Association's Establishment of Disciplinary Reasons for Taylor's Transfer**

The Association provided both direct and circumstantial evidence demonstrating that Taylor was transferred from his groundskeeper position at Wayne Hills High School (for most of the 2018-2019 school year) to a head custodian position, ultimately at Randall Carter Elementary School, for predominately disciplinary reasons.

Taylor was hired by the District in/around 1994 and worked as a groundskeeper for approximately 25 years. Other than one infraction in September 2013, Taylor's 25 years in grounds were without incident until 2018. See Findings of Fact Nos. 1, 15-16. In 2018, Rocco became Taylor's supervisor. Their relationship was less than amicable - Rocco was unhappy with Taylor, professionally and/or personally, and was interested in having Taylor move out of the groundskeeper position. See Findings of Fact Nos. 5-8, 25-26, 29-31, 34-35.

In 2019, apparently due to a sudden/abrupt retirement, one of the District's head custodian positions became vacant. However, there is no evidence that the Board posted a notice for

this vacancy in accordance with Article XV, Section A of the parties' 2017-2021 CNA. Although Taylor had expressed interest and/or applied for supervisory positions in the past, there is no evidence that he expressed any interest and/or applied for the vacant head custodian position in accordance with Article XV, Section B of the parties' 2017-2021 CNA. See Findings of Fact Nos. 20, 37, 44, 71, 78. Moreover, transfers from groundskeeper to head custodian are "very infrequent" and "would normally be a request." See Finding of Fact No. 40. Nevertheless, effective September 6, 2019, Taylor was transferred from groundskeeper assigned to Wayne Hills High School (for most of the 2018-2019 school year) to head custodian assigned to Packanack Elementary School. A few days later on September 20, 2019, Taylor was transferred again to head custodian at Randall Carter Elementary School. There is no evidence regarding why Taylor was transferred from Packanack Elementary School to Randall Carter Elementary School. See Findings of Fact Nos. 6-7, 9, 12, 37, 44, 71, 78.

Taylor's transfer was preceded by a meeting in late August 2019 between representatives of the Association and the District; same appears to be in accordance with Article XV, Section D of the parties' 2017-2021 CNA. During the meeting, Blanchard specified that the reasons for Taylor's transfer were predominately disciplinary - i.e., falsifying a work order,

insubordination, and not being in the location/area where he was supposed to be during work hours. Although Blanchard did not recall receiving or acknowledging receipt of the Association's written rebuttal, the Association memorialized the District's reasons for transferring Taylor in a letter/memorandum dated November 24, 2019. See Findings of Fact Nos. 59-64, 67, 69-70, 74-76, 78.

It is undisputed that Taylor's most recent disciplinary infraction occurred in September 2018. While the temporal proximity between Taylor's September 2018 disciplinary infraction and Taylor's September 2019 transfer appears somewhat tenuous and may not create an inference of causation or hostility, the Association has provided direct and circumstantial evidence of the District's predominately disciplinary reasons for Taylor's transfer through witness testimony corroborated by a contemporaneous writing. See East Orange Bd. of Ed. (holding that "[a] delay in transferring [an employee] does not bolster [an employer's] argument that operational and educational concerns motivated the transfer"). See Findings of Fact Nos. 15-16, 29-32, 34-35, 59-64, 67, 69-70, 74-76, 78. Further, while it is evident that a transfer from groundskeeper to head custodian is considered a promotion given that head custodian is a supervisory role, includes a \$1,300 stipend, and carries the potential for additional promotion, the Association has provided

direct and circumstantial evidence that Taylor did not seek this particular transfer/promotion and that such a promotion may not necessarily mean an increase in total compensation due to the variability of overtime opportunities and allocation.<sup>8/</sup> See Findings of Fact Nos. 36, 44, 45-51, 58.

Under these circumstances, I find that the Association has established by a preponderance of the evidence that Taylor was transferred for predominately disciplinary reasons.

**C. Board's Failure to Establish Performance, Educational, Operational or Staffing Objectives as a Substantial or Motivating Factor For Taylor's Transfer**

The Board failed to sufficiently refute the Association's direct and circumstantial evidence demonstrating that Taylor's transfer was for predominately disciplinary reasons.

With respect to Taylor's performance, the Board has not asserted that poor performance of core job duties or the relationship between Taylor and Rocco was the basis for Taylor's transfer. See East Orange Bd. of Ed. (noting that "[the

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<sup>8/</sup> The Commission has held that "[a] public employer has a managerial prerogative to determine when governmental services will be delivered and the manning or staffing levels necessary for the efficient delivery of those services and, derivative from those determinations, when overtime work is necessary." Clark Tp., P.E.R.C. No. 2016-55, 42 NJPER 372 (¶105 2016), aff'd 43 NJPER 147 (¶44 App. Div. 2016) (citing City of Long Branch, P.E.R.C. No. 83-15, 8 NJPER 448 (¶13211 1982)). However, "the allocation of overtime and procedures for selecting employees to work overtime are generally mandatorily negotiable and arbitrable." West Milford Tp., P.E.R.C. No. 2016-45, 42 NJPER 310 (¶90 2015).

employer] has no pointed to evidence of ongoing tension or conflict during this time . . . or affecting the classroom or staff, that would establish a legitimate operational objective for the transfer"); Phillipsburg Bd. of Ed., P.E.R.C. No. 2019-51, 45 NJPER 421 (¶114 2019) ("[t]he [employer] did not allege or demonstrate that [the employee] and [his/her supervisor] actually had a bad working relationship, let alone that nay personality conflict between them was irreparable and resulted in such a negative impact on the [employer's] . . . operations as to necessitate a transfer"). See Findings of Fact Nos. 32-33, 64-66, 68-69, 71-74.

With respect to educational, operational, or staffing objectives, the Board failed to sufficiently demonstrate a non-disciplinary basis for Taylor's transfer.<sup>9/</sup> Specifically:

-although Blanchard testified that he initially suggested the transfer to his supervisor, John Maso (Maso), because he thought Taylor was capable of handling a supervisory role, I draw a negative inference from the Board's failure to call Maso as a witness because his testimony could corroborate that Taylor's transfer was discussed among District

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9/ See Phillipsburg Bd. of Ed. ("[t]he [employer] did not . . . explain why a custodial position became available at another school after the year had started, why a more experienced custodian was [or was not] needed for that position, why [the employee] was the best choice to fill that staffing need, or who would replace [the employee] . . . and why that replacement would be better-suited than [the employee] for [the employee's] position rather than for the other opening" and "[t]he [employer] supplied no corroboration of a true staffing or operational need for [the employee] to be transferred . . . at that time").

management and the substance of that discussion (Finding of Fact No. 64);

-although the Board's witnesses disputed the Association's account of the reasons given for Taylor's transfer during the late August 2019 meeting, the Board failed to provide any contemporaneous writing corroborating its own account or responding to the Association's November 24, 2019 letter/memorandum (Finding of Fact Nos. 65-66, 68-69, 71-77);

-although Rocco testified that a sudden/abrupt retirement created the pertinent head custodian vacancy, the Board failed to provide any evidence of specific staffing or operational issues that necessitated Taylor's transfer rather than (for example) promoting an existing custodian or appointing an acting head custodian, etc. (Finding of Fact No. 71);

-the Board provided no evidence that it followed any formal or informal process (in compliance with the parties' 2017-2021 CNA or otherwise) related to filling the pertinent head custodian position such as posting a vacancy notice, receiving applications, completing interviews, criteria for selecting a candidate, etc. (Finding of Fact No. 20);

-the Board provided no evidence regarding the relative difficulty/ease in filling the pertinent head custodian position or the relative difficulty/ease in filling Taylor's vacated groundskeeper position.

Under these circumstances, I find that the Board has failed to establish performance, educational, operational, or staffing reasons as a substantial or motivating factor for Taylor's transfer.

#### **CONCLUSION**

For these reasons, I find that the Wayne Township Board of Education (Board) violated N.J.S.A. 34:13A-25 by transferring Brian Taylor (Taylor) from groundskeeper to head custodian for

predominately disciplinary reasons.

**RECOMMENDED ORDER**

Taylor seeks a return to his former groundskeeper position located as assigned during the 2018-2019 school year - i.e., Wayne Hills High School and various buildings and other District properties. I agree that restoration of the status quo ante is the most appropriate remedy and comports with the Commission's remedial authority pursuant to N.J.S.A. 34:13A-27b. Accordingly,

I recommend that Taylor be returned to the groundskeeper position located as assigned during the 2018-2019 school year.<sup>10/</sup>

/s/ Joseph P. Blaney

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Joseph P. Blaney  
Hearing Examiner

DATED: April 22, 2021  
Trenton, New Jersey

**Pursuant to N.J.A.C. 19:18-3.10(d), this case is deemed transferred to the Commission. Exceptions to this report and**

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<sup>10/</sup> See North Bergen Tp. Bd. of Ed., H.E. No. 2002-1, 27 NJPER 315 (¶32112 2001), adopted P.E.R.C. No. 2002-12, 27 NJPER 370 (¶32135 2001), aff'd 28 NJPER 406 (¶33146 App. Div. 2002) (finding a transfer predominately disciplinary and ordering the employer to return the employee to her previous work site/location and position).

recommended decision may be filed with the Commission in accordance with N.J.A.C. 19:18-3.11. If no exceptions are filed, this recommended decision will become a final decision unless the Chair or such other Commission designee notifies the parties within 45 days after receipt of the recommended decision that the Commission will consider the matter further. N.J.A.C. 19:18-3.13.

Any exceptions are due by May 3, 2021.

**EXHIBIT LIST**

**Joint (J)**

-J-1 - Parties' 2017-2021 Collective Negotiations Agreement

**Petitioner (P)**

-P-1 - Petition for Contested Transfer Determination dated 11/25/2019  
-P-2 - Certification of Brian K. Taylor (Taylor) dated 12/4/2019 (and attached exhibits)  
-P-3 - Answer to Petition for Contested Transfer Determination dated 1/9/2020  
-P-4 - 15<sup>th</sup> Annual New Jersey Educational Facility Manager Graduation Program dated 5/27/2008 and related certificates  
-P-5 - Email thread dated 4/17/2018  
-P-6 - Petitioner's Requests for Admissions dated 5/7/2020 and Public Employer's Responses dated 5/27/2020  
-P-7 - Taylor Earnings Statements dated 12/21/2018, 12/22/2017, 12/23/2016, 12/23/2015  
-P-8 - Letter/Memorandum dated 11/24/2019 from Association

- President Dezzie Young III and Association Vice  
President Franco Rosella
- P-9 - Public Employer Payroll Report for the period  
7/15/2020 thru 10/30/2020
  - P-10 - Public Employer Payroll Report for the period  
7/15/2019 thru 6/20/2020
  - P-11 - Public Employer Payroll Report for the period  
7/13/2018 thru 6/28/2019
  - P-12 - Public Employer Payroll Report for the period  
7/6/2017 thru 6/29/2018

**Public Employer (PE)**

- PE-1 (PE 0245) - Letter dated 9/6/2019 from Paula D. Clark  
(Clark to Taylor
- PE-2 (PE 0247) - Letter dated 9/20/2019 from Clark to Taylor
- PE-4 (PE 0259-0260) - Letter of Counseling dated 9/25/2018  
from Andrew E. Rocco (Rocco) to Taylor
- PE-5 (PE 0270-0271) - Taylor Payroll Records for the period  
7/13/2018 thru 6/30/2020 (4 pages in  
total despite Bates stamp)
- PE-6 (PE 0274) - Taylor Check History for the period 7/30/2019  
thru 1/15/2020
- PE-7 (PE 0275) - 2018-2019 Taylor Employment Contract dated  
5/18/2019
- PE-8 (PE 0242) - 2019-2020 Taylor Employment Contract dated  
5/17/2019