

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

CAMDEN BOARD OF EDUCATION,

Respondent,

-and-

Docket No. TI-H-99-1

CLARENCE TURNER,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission orders the Camden Board of Education to promptly return Clarence Turner to a physical education teaching position at Camden High School. Turner alleged that the Board violated N.J.S.A. 34:13A-25 by transferring him from a high school to a middle school position for disciplinary reasons. The Commission concludes that this transfer was intended to punish Turner as a teacher for actions that took place while he was a coach and was an attempt to satisfy an NJSIAA condition that administrative action be taken against the former coach.

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.

P.E.R.C. NO. 2001-9

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CLARENCE TURNER,

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Appearances:

For the Respondent, Murray, Murray & Corrigan, attorneys
(Karen A. Murray, of counsel)

For the Charging Party, Wills, O'Neill & Mellk, attorneys
(Arnold M. Mellk, of counsel; Gidian R. Mellk, on the
brief)

DECISION

On September 11, 1998, Clarence Turner filed a petition for contested transfer determination. The petition alleges that the Camden Board of Education violated N.J.S.A. 34:13A-25 by transferring him from a high school to a middle school position for disciplinary reasons.

On October 7, 1998, the Board filed an Answer denying that the transfer was for disciplinary reasons. It asserts that the transfer was an administrative decision based on the Board's need to restructure and improve the athletics program; and the middle school's need for a qualified and experienced physical education teacher.

On March 10, 1999, a Notice of Hearing issued. On July 21, Hearing Examiner Jonathon Roth conducted a hearing. The parties examined witnesses, introduced exhibits, and filed post-hearing briefs.

On November 10, 1999, the Hearing Examiner issued a report and recommendations. H.E. No. 2000-3, 26 NJPER 145 (131056 1999). He found that the Board's former superintendent, Roy Dawson, who recommended the transfer to the Board, essentially admitted that the transfer was intended to placate the New Jersey Interscholastic Athletic Association (NJSIAA), which had suspended the boys varsity basketball team from post-season play for two years but held out the possibility of a waiver if the Board took "administrative action" against the coach, who was Clarence Turner. The Hearing Examiner recommended promptly transferring Turner back to Camden High School as a physical education teacher. The Board also removed Turner from his coaching position, but the Hearing Examiner noted that whether the Board had just cause to remove Turner as varsity coach or whether he had coaching job security were issues outside the purview of our contested transfer jurisdiction. See N.J.S.A. 34:13A-25.

On March 2, 2000, after an extension of time during which the parties engaged in settlement discussions, the Board filed exceptions. The Board argues that it evaluated Turner's qualifications and determined that he was the most qualified to improve the physical education and athletic programs at the middle school. It notes that during Turner's nearly four decades of

service, the Board has never filed tenure charges, withheld an increment, reprimanded Turner or otherwise disciplined him in any manner. Thus, it argues, the transfer reflected an evaluation of Turner's performance as a well-qualified, experienced educator. It further argues that the Board's Corrective Action Plan for Interscholastic Athletics does not constitute a disciplinary measure.

On March 7, 2000, Turner filed a response. He asserts that he brought acclaim to Camden High School during his tenure and that it is incredible that the Board would have transferred him for other than disciplinary reasons. It urges adoption of the Hearing Examiner's recommendations.

We have reviewed the record. We adopt and incorporate the Hearing Examiner's findings of fact (H.E. at 2-8).

On May 22, 1998, the NJSIAA Controversies Committee issued two decisions regarding two Camden High School basketball games. One decision described Coach Turner's "unsportsmanlike manner" at a varsity game and concluded that the high school basketball program and Turner would be placed on probation and banned from post-season play for two years. Turner was also fined \$300. Another recommendation was that:

the NJSIAA may waive some or all of this penalty if it deems sufficient administrative action by the Camden Board of Education has been taken against the Camden coach. [C-1]

The second decision concerned an altercation between players and fans at a tournament game. The report concluded that

Camden High School, including Turner, was responsible. The Committee again recommended a two year probation as a penalty. The Board was fined \$1000; Turner was fined \$300 and suspended from coaching for the 1998-99 school year. The Committee also recommended that the Board submit an "administrative corrective action plan" and allowed it to "make application to waive the second year of ineligibility." The NJSIAA Executive Director sustained the recommendations.

In June 1998, Camden Board Superintendent Roy Dawson met with Turner to discuss his status in the district. Dawson mentioned to Turner that physical education teaching positions may be available at other middle schools, but Turner did not volunteer to be transferred. The Hearing Examiner also found that their discussions focussed on "saving the kids," meaning they wanted the varsity team to be allowed to participate as soon as possible in NJSIAA sanctioned post-season tournament play.

In July 1998, Dawson recommended to the Board that Turner be transferred from the high school to Hatch Middle School. The Hearing Examiner found that Dawson essentially admitted that he recommended transferring Turner to placate the NJSIAA, which had held out the possibility of a penalty waiver if the Board took sufficient administrative action against the Camden coach. Thus, the Hearing Examiner concluded that the Board transferred Turner because of activity associated with his coaching. Nothing in this record suggests that the transfer would have occurred but for the NJSIAA controversy.

The Board argues that there is no testimony or evidence to support the Hearing Examiner's finding that the transfer was for disciplinary reasons. It contends that, given Dawson's status as superintendent, his concern for the "kids" and "our children" had to refer to all of the district's children. It asserts that Turner's transfer involved observations, evaluations, impressions and judgments intended to improve the delivery of physical education and athletic instruction at the middle school. It contends that the Board transferred Turner for predominantly educational reasons in the best interest of the Camden High School basketball players, the students attending the Hatch Middle School, and the numerous other students attending schools in the district.

N.J.S.A. 34:13A-25 prohibits transfers of school district employees between work sites for disciplinary reasons. The statute defines discipline to include "all forms of discipline, except tenure charges ... or the withholding of increments pursuant to N.J.S. 18A:29-14." N.J.S.A. 34:13A-22.

The record fully supports the Hearing Examiner's conclusion that Turner was transferred as a sanction intended to placate the NJSIAA. There is nothing to suggest that the transfer had anything to do with any judgments about Turner's teaching performance. The transfer was directly linked to Turner's extracurricular activity as varsity basketball coach. We appreciate that his transfer will affect the students in the Hatch

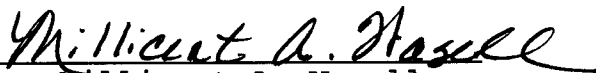
Middle School. Any transfer of a teaching staff member will have an impact on students at both ends of the transfer. Nevertheless, we must ask what motivated the transfer; and the answer is the desire to effectuate some "administrative action" against Turner to satisfy the NJSIAA. N.J.S.A. 34:13A-25 does not ask whether a transfer was for cause or otherwise justified. It asks only whether a transfer was for disciplinary reasons. If it was, the transfer is prohibited and we are required to take reasonable action to effectuate the purposes of the Act. N.J.S.A. 34:13A-27b. See Boonton Tp. Bd. of Ed., P.E.R.C. No. 99-101, 25 NJPER 288 (¶30121 1999) (increment withholding based on incident during extracurricular activity found to be disciplinary and not based on evaluation of teaching performance).

We conclude that this transfer was intended to punish Turner as a teacher for actions that took place while he was a coach and was an attempt to satisfy an NJSIAA condition that administrative action be taken against the former coach. Under these circumstances, we adopt the Hearing Examiner's recommendation to order the Board to promptly transfer Turner back to Camden High School as a physical education teacher. We take no position on Turner's removal from the coaching position as our jurisdiction in a contested transfer case is limited only to the transfer between work sites, not to a removal from an extracurricular position.

ORDER

The Camden Board of Education is ordered to promptly return Clarence Turner to a physical education teaching position at Camden High School.

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: July 20, 2000
Trenton, New Jersey
ISSUED: July 21, 2000

H.E. NO. 2000-3

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Docket No. TI-H-99-1

CLARENCE TURNER,

Charging Party.

SYNOPSIS

A Hearing Examiner recommends that a physical education teacher was transferred between work sites for disciplinary reasons, violating N.J.S.A. 34:13A-25. The Hearing Examiner finds that the former Board superintendent, who recommended the transfer to the Board of Education, essentially admitted that the transfer was intended to placate the NJSIAA, which had suspended the boys varsity basketball team from post-season play for two years but held out the possibility of a waiver if the Board took "administrative action" against the coach (the physical education teacher).

A Hearing Examiner's Recommended Report and Decision is not a final administrative determination of the Public Employment Relations Commission. The case is transferred to the Commission which reviews the Recommended Report and Decision, any exceptions thereto filed by the parties, and the record, and issues a decision which may adopt, reject or modify the Hearing Examiner's findings of fact 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.

H.E. NO. 2000-3

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(Karen A. Murray, of counsel)

For the Charging Party, Wills, O'Neill & Mellk, attorneys
(Arnold M. Mellk, of counsel)
(Gidian R. Mellk, on the brief)

DECISION

On September 11, 1998, Clarence Turner, a physical education teacher, filed a petition for contested transfer determination. The petition alleges that the Camden Board of Education transferred him from a high school position to a middle school position for disciplinary reasons. N.J.S.A. 34:13A-25 prohibits a school board from transferring employees between work sites for disciplinary reasons.

On October 7, 1998, the Board filed an Answer denying that the transfer was for disciplinary reasons. It asserts that

Turner's transfer from Camden High School to the Hatch Middle School was for administrative reasons; specifically, a need to "restructure and improve" the athletic programs and a need at the middle school for a "qualified and experienced" physical education teacher.

On March 10, 1999, a Notice of Hearing issued. On July 21, 1999, I conducted a hearing at which the parties examined witnesses and presented exhibits. Post-hearing briefs and reply briefs were filed by October 4, 1999.

Based upon the entire record, I make the following:

FINDINGS OF FACT

1. Clarence Turner has been employed by the Camden Board of Education for 38 years, most notably as Camden High School boys varsity basketball coach for 28 years (T16-T17).^{1/} Turner began his employment with the Board in or around 1960 as a physical education teacher in a special education program at the Cooper Grant School (T38). After two years, Turner was transferred to Camden Junior High School. In 1964, Turner was transferred to the Landing Square Elementary School, where he initiated a physical education program and taught for three years (T38, T40, T46).

^{1/} "T" refers to the transcript of the hearing, followed by the page number(s); "C" refers to Commission exhibits; "J" refers to joint exhibits.

In or around 1967, Turner was transferred to Camden High School, where he continued to teach physical education and for three years was assistant boys varsity basketball coach. In 1970, Turner was designated varsity coach, a stipended position he held until 1998 (T17, T39).

2. Among his accomplishments, Turner coached seven state championship teams. Several of his players were later honored as All-American basketball players in Division 1 of the National Collegiate Athletic Association (T21, T23). An increment has never been withheld from Turner and tenure charges have never been preferred against him (T38).

3. On May 22, 1998, the New Jersey State Interscholastic Athletic Association (NJSIAA) Controversies Committee issued two decisions regarding two Camden High School basketball games.

One decision described coach Turner's "unsportsmanlike manner" at a February 24, 1998 varsity game against Bishop Eustace Preparatory High School. The committee concluded that Camden High School and Turner would be penalized according to Article IX, Section 2.E of NJSIAA by-laws, which states:

Penalty - any school whose coach violates Section 2.E shall be placed on probation by the Association for not less than one year from the date of violation, and shall not receive championship recognition from the Association in that sport, or enter any championship games, matches, meets or tournaments sponsored by the Association in that sport unless the NJSIAA deems sufficient administrative action has been taken against the coach. Conditions of probation are outlined in the Bylaws...In addition, the coach shall be fined a minimum of \$300.

[C-1]

The committee recommended a two year probation penalty for the Camden High School team, including a ban on post-season tournament play. Turner was fined \$300. Another recommendation was,

Consistent with Article IX, Section 2.E of the Bylaws, the NJSIAA may waive some or all of this penalty if it deems sufficient administrative action by the Camden Board of Education has been taken against the Camden coach.
[C-1]

4. The second decision issued by the Controversies Committee concerned an altercation between players and fans at a March 11, 1998 tournament basketball game between Camden High School and Long Branch High School (C-1). The report concluded that Camden High School, including Turner, was responsible for the altercation(s) and ensuing melee.

Noting Camden's similar problems over the past decade, including Turner's conduct at the Bishop Eustace game, the Committee again recommended a two year probation penalty for the team, limiting its play to the regular season. The Board was fined \$1000. Turner was fined \$300 and suspended from coaching for the 1998-99 school year. The committee also recommended that the school district submit an "administrative correction action plan" and allowed it to "make application to waive the second year of ineligibility for the basketball tournament and to be reinstated as a fully operating NJSIAA program" (C-1).

5. On June 10, 1998, the NJSIAA Executive Director, on behalf of the Executive Committee, issued a decision on the Camden

Board of Education's appeal of the Controversies Committee recommendations. The Executive Committee essentially sustained the recommendations and advised of a right to appeal to the Commissioner of Education (C-1).

6. In late June 1998, Camden Board Superintendent Roy Dawson had one or two "breakfast meetings" with Turner at a local diner to discuss the coach's "status in the district" (T46, T64). Dawson was superintendent from 1994 to March 1999 and was employed by the Board for about 35 years (T47, T52, T54-T55).^{2/} Dawson considered Turner a friend (T59).

They discussed job possibilities for Turner, including athletic director and other supervisory positions (T42). Turner denied in his cross-examination that Dawson said anything about a position at Hatch Middle School and he did not recall their discussion about a possible physical education teaching position outside the high school (T43). Dawson conceded that he may not have mentioned Hatch Middle School by name, but maintained that he did refer to positions at "some other middle schools" (T65). Crediting

^{2/} Dawson testified that he was superintendent for a "five year period, starting in 1991, I believe" (T47). His testimony could mean that he was not superintendent during the time of the disputed transfer. I do not infer that meaning because Dawson testified that he was superintendent at the time of Turner's transfer and participated in the decision to transfer (T48-T49, T50, T54, T56). Furthermore, both counsels' examinations of Dawson focused especially upon his intentions in recommending Turner's 1998 transfer. Finally, Dawson's certification states that he became superintendent on "July 1, 1994" (C-2).

their clearest recollections, I find that Dawson mentioned to Turner that physical education teaching positions may be available at "other middle schools." Turner did not volunteer to be transferred (T20).

Both witnesses concurred that their primary concern throughout their two discussions was "saving the kids", meaning they wanted the varsity team allowed to participate as soon as possible in NJSIAA-sanctioned post-season tournament play (T42, T50-T51).

7. Sometime in July 1998, Dawson recommended to the Board that Turner be transferred from the high school to Hatch Middle School. The Board adopted the recommendation that month, along with recommendations on other transfers of personnel (T53). In deciding to transfer Turner, Dawson had

...read the plan of action by this committee; I certainly had talked with [the] Board president; I had also talked with members of my staff, and had read all the correspondence from NJSIAA; had read all the newspaper articles; putting all of that together and thinking of our children first, I felt that I had no other choice but to make a transfer.
[T54]

Dawson's reference to the "kids" or to "our children" means Camden High School basketball players (T51). He reiterated that, "all of my decisions related back to our children. Our children came first..." (T50). The only "plan of action" on the record is the "Camden City Public School Corrective Action Plan for Interscholastic Athletics 1998" (J-1). The plan is undated and is an elaborate procedure for the Board's taking "responsibility of

crowd control at interscholastic athletic events...." It was developed by teachers, parents, Board administrators and staff and others in the Camden area (T57). The plan refers to a "coach's" duties, such as demonstrating "leadership and integrity" and ensuring that disqualified players remain on the bench, etc. Coaches are required to know NJSIAA rules and regulations. An attached November 9, 1998 cover letter from Dawson to Boyd Sands, NJSIAA Executive Director, specifies that the plan was approved by the Board in October 1998. I infer that a draft of this plan existed when Dawson recommended Turner's transfer in July 1998.

Dawson acknowledged a pressure affecting his decision to transfer:

...[E]verything that I had read seemed to suggest that a decision would have to be made in order to protect our children. So, in light of that and being honest and up front with everyone, that had to be part of the decision to transfer.
[T51]

Asked if he had understood from the Controversies Committee recommendations that the NJSIAA "wanted Turner out", Dawson testified:

It was never written that I saw it, and it was never stated, but it was in my mind the intent of the NJSIAA, that it was the intent. But no one ever said that directly to me; I never read that, but that was certainly the impression that I received.
[T51]

8. Dawson recommended Turner's transfer but did not recommend any "disciplinary action" (T60). The Hatch Middle School had a vacancy and its program "needed [to be] beefed up", as it was

suffering in both athletic offerings and physical education. "But", Dawson continued:

I got to be honest; also it's connected back to this whole NJSIAA issue, that was part of it too...
[T65]

9. Sometime in the late summer or early fall of 1998, Turner filed a formal grievance protesting the transfer, pursuant to a collective negotiations agreement between the Board and the Camden Education Association, which is Turner's majority representative (T44-T45).

10. In the fall of 1998, Glenn Jackson was appointed boys varsity basketball coach at Camden High School. He teaches at one of the district's middle schools or junior high schools (T26). Jackson was a "volunteer assistant" to Turner, and transported players home after evening practices (T27). Jackson had not coached basketball until his 1998 appointment (T37).

ANALYSIS

N.J.S.A. 34:13A-25 prohibits the transfer of school employees between work sites for disciplinary reasons. The petitioner has the burden of proving its allegations by a preponderance of the evidence. Irvington Bd. of Ed., P.E.R.C. No. 98-94, 24 NJPER 113 (¶29056 1998).

Former Superintendent Dawson recommended Turner's transfer from Camden High School to Hatch Middle School. Dawson admitted that in considering the transfer, "the children...", i.e., the boys varsity basketball team "...came first"; that he had read the NJSIAA

committee recommendations and believed that the NJSIAA wanted Turner gone; that he had spoken preliminarily with others on his staff and on the Board, who concurred in the decision to transfer; and that although a vacancy existed at the Hatch Middle School which Turner could fill, the transfer, in Dawson's view, was "also connected back to the whole NJSIAA issue."

Dawson has essentially admitted that his recommendation to transfer Turner was to placate the NJSIAA, which had suspended the team from post-season play for two years but had held out the possibility of a waiver if the Board "[took] sufficient administrative action...against the Camden coach." The NJSIAA called for Turner's punishment; Dawson and the Board, wanting to restore the team's post-season viability as quickly as possible, obliged by transferring Turner from the school where he had worked for more than an unbroken quarter-century and had had his greatest professional success - as a varsity coach.

All Board contentions that Turner "failed to produce evidence that his transfer was disciplinary" (brief at p. 12) ignore the plain meaning of Dawson's testimony. The former superintendent candidly admitted that the NJSIAA Controversies Committee recommendations motivated or was "connected" to the decision to transfer Turner. Stated another way, the Board adopted the disciplinary intent of the committee's recommendation against Turner by transferring him as a suggested "administrative action" in order to curry favor. That the "predominately disciplinary" intent of the

transfer is associated with coaching rather than teaching responsibilities does not attenuate either the Board's duty to refrain from proscribed conduct or the Commission's authority to "take reasonable action to effectuate the purposes of this act" N.J.S.A. 34:13A-27(b).

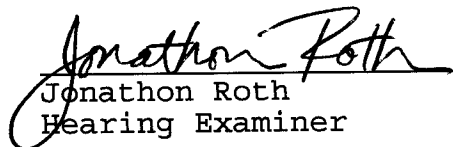
Accordingly, I find that in September 1998, the Camden Board of Education transferred Clarence Turner from his position as physical education teacher in Camden High School to a similar position at Hatch Middle School for "predominately disciplinary" reasons.

REMEDY

Turner seeks to be transferred back to Camden High School and reinstated as boys varsity basketball coach.

N.J.S.A. 34:13A-25 prohibits disciplinary transfers between work sites. See Mt. Arlington Bd. of Ed., P.E.R.C. No. 98-4, 23 NJPER 450 (¶28211 1997). Turner has been transferred between work sites for disciplinary reasons and his prompt transfer back to Camden High School as a physical education teacher is the appropriate and recommended remedy within the meaning of N.J.S.A. 34:13A-27(b).

Whether the Board had just cause to remove Turner as varsity coach or whether he had coaching job security under the collective agreement are issues beyond the purview of N.J.S.A. 34:13A-25. I do not recommend that Turner be reinstated as boys varsity basketball coach.


Jonathon Roth
Hearing Examiner

DATED: November 10, 1999
Trenton, New Jersey