

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HAMILTON TOWNSHIP BOARD
OF EDUCATION,

-and- Respondent,

Docket No. TI-2001-1

LINDA PIANTONI,

Petitioner.

SYNOPSIS

The Public Employment Relations determines whether the Hamilton Township Board of Education transferred Linda Piantoni, a physical education teacher, between work sites for disciplinary reasons. The Commission notes that the Board has not suggested that the transfer was intended to address any concerns the school administration might have had with Piantoni's teaching performance and the only documented explanation for the transfer is the principal's letter referencing a previous letter from a parent who was unhappy with Piantoni's classroom techniques. The Commission concludes that Piantoni has proven that she was transferred between work sites for disciplinary reasons.

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. 2001-74

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Appearances:

For the Petitioner, Bergman & Barrett, attorneys
(Michael T. Barrett, on the brief)

For the Respondent, Destribats, Campbell, DeSantis, Magee
& O'Donnell, attorneys (Dennis M. DeSantis, on the brief)

DECISION

On December 4, 2000, the New Jersey Education Association filed a petition for contested transfer determination on behalf of Linda Piantoni. The petition alleges that the Hamilton Township Board of Education transferred Piantoni, a physical education teacher, between work sites for disciplinary reasons. The petition was supported by Piantoni's affidavit.

On December 27, 2000, the Board filed an Answer verified by Glenn Kohler, Piantoni's supervisor. These facts appear.

Piantoni has been employed by the Board for nearly 30 years. Until September 1, 2000, she was a physical education teacher in the elementary schools and had favorable reviews.

During Piantoni's employment as an elementary physical education teacher, she also worked for extra pay as a ticket-taker for a number of years at high school athletic events. During that time, Piantoni exhibited the capability of handling secondary school students.

On November 15, 1999, Piantoni taught a physical education class at Robinson Elementary School that was observed by some parents, among them Rose Lepore, mother of a student and PTA president. The observation was part of "Classroom Visitation Day." The next day, Lepore wrote a letter to Piantoni complaining about how she administered her classes; copies of the letter were sent to several administrators.

Within two days, a meeting between Piantoni and her immediate supervisor, Glenn Kohler, took place. The purpose of the meeting was to discuss the observation/allegations made by Lepore as to Piantoni's management of the physical education class.

On November 22, 1999, Kohler issued an Observation Report as a record of his meeting with Piantoni. According to the report, the meeting revealed that: 1) Piantoni had not received Lepore's letter; 2) there were approximately 60 students in the class -- both boys and girls and classified students; 3) Piantoni's inquiring as to the whereabouts of the aide for a student with Down's Syndrome was necessary and not made in a loud degrading manner to the student (the student was lying on the floor and in need of her aide who was not present); 4) Piantoni

addressed Lepore's squad determination location concern as a means of teaching the student responsibility for finding her own position (squad positions have been established since September); 5) Piantoni assured that clapping and cheering by students is permitted and encouraged in her classes, uncontrolled yelling/screaming is not permitted; 6) Kohler and Piantoni reaffirmed the importance of ensuring that elementary physical education is to be a fun experience as well as a safe one; and 7) Kohler and Piantoni discussed "other possible outcomes as a result of the concerns/allegations" including that additional letters or meetings may be forthcoming, and "the request/need for transfer."

The balance of the year progressed uneventfully. On June 19, 2000, Piantoni received a copy of a letter from Principal Gary Mattia to the district administrator. The letter stated, in pertinent part:

The following letter is in response to the latest letter written by the Robinson School PTA President, Rose Lepore. Over the past 3 years I have met with Ms. Piantoni on various occasions to speak with her about parental concerns about the discipline techniques she used during her classes. Each time I have met with Ms. Piantoni, she has addressed those concerns by either speaking with the student or by contacting the parent of the student. This problem became more of a concern during a visitation during American Education Week when a parent wrote a letter regarding her perception of what happened in physical education class (see attached letters). I met with Ms. Piantoni regarding the concerns of Mrs. Lepore and Ms. Piantoni said she would address the problem with the students. I monitored Ms. Piantoni during the remaining months of school and found her to be utilizing appropriate classroom management techniques. On May 26, 2000, I received another letter from Mrs.

Lepore stating that she had spoken to Mr. Kohler in hopes that we could have a change in physical education personnel for Robinson Elementary School. At this time, I feel it would be in the best interest of Robinson School, the students, and Ms. Piantoni if she was assigned to another school.

A month later, a vacancy occurred in the physical education department for the 2000-2001 school year. The position required half-time attendance at a middle school and half-time attendance at a high school.

On July 10, 2000, Piantoni's supervisor advised Piantoni that her position would be changed from elementary to middle school/high school effective July 13, 2000. Piantoni had not requested a transfer and never in her 30 years of employment had the question of an involuntary transfer arisen. She strenuously objected to the transfer.

Piantoni contends that she was willing to accept a change in assignment so long as she continued as an elementary school teacher. Her objection arose when she was removed from an elementary school and placed in the high school and middle school.

The open position in the high school and middle school was for a female physical education teacher. Piantoni possessed all the necessary certifications and qualifications for that position.

Neither party requested an evidentiary hearing under N.J.A.C. 19:18-3.8. Each party filed a supporting brief.

Piantoni argues that she was punished because one parent -- the PTA President -- did not like her teaching style. She asserts that the transfer was disciplinary and done to appease the parent.

As for the timeliness issue, Piantoni contends that the Association filed for arbitration, inadvertently failing to file a contested transfer petition. The Board waited 90 days before filing a scope of negotiations petition by which it obtained a restraint of arbitration on the ground that a disciplinary transfer can be challenged only through a contested transfer petition. P.E.R.C. No. 2001-39, 27 NJPER 94 (132035 2001). Piantoni asserts that dismissal of this petition on timeliness grounds would be unjust. The Board was aware of the contest, Piantoni has been serving in the position to which she was transferred, and no party has been prejudiced.

The Board contends that Piantoni's experience was considered by the district in its decision to transfer her from her elementary position to that of the split middle school/high school position. Although not in the record and apparently not in dispute, the Board asserts that a number of positions had opened simultaneously due to retirements. It further asserts that because of the difficulty in finding employees for the secondary division, the Board chose to transfer Piantoni to meet its staffing needs.

The Board argues that Piantoni's observation report makes clear that there were concerns about teaching performance based on a parental complaint. It further argues that it did not take any disciplinary action. It simply expressed its concern regarding classroom management and then transferred her to meet the educational needs of the district.

Finally, the Board argues that this petition is untimely and should be dismissed on that ground.

N.J.S.A. 34:13A-25 prohibits disciplinary transfers of school board employees between work sites. N.J.S.A. 34:13A-27 empowers us to decide whether a transfer is disciplinary. Our regulations require that a petition be filed no later than the 90th day from the date of receipt of a notice of transfer.

N.J.A.C. 19:18-2.3.

As for the timeliness issue, Piantoni's representative filed a grievance nine days after she was notified of the transfer. The Association then asked this agency to release a grievance arbitration panel: its request identified the issue to be arbitrated as disciplinary transfer - "request determination pursuant to 34:13A-27." The Board was therefore on notice of Piantoni's desire to contest her transfer under the contested transfer statute. The Board waited until the limitations period for filing a contested transfer petition had run to seek a restraint of binding arbitration. It argued in its scope petition

that the only relief was through a contested transfer petition and that such a petition would be untimely. Had the Board sought a restraint of arbitration earlier, Piantoni undoubtedly would have filed her contested transfer petition sooner. N.J.A.C. 19:10-3.1 allows us to construe our rules liberally to prevent injustices and to effectuate the purposes of the Act. In particular, the rule permits us to alter a non-statutory time period to prevent injustice. We do so here where the Board was on notice of Piantoni's intention to contest her transfer under N.J.S.A. 34:13A-27.

As for the merits, our case law provides a framework for assessing whether a transfer is disciplinary under N.J.S.A.

34:13A-25. A transfer is predominately disciplinary when it is punitive and/or is not made for educational or staffing reasons. West New York Bd. of Ed., P.E.R.C. No. 2001-41, 27 NJPER 96 (¶32037 2001). 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 that prompted the transfer.

It appears that the PTA president's complaint triggered Piantoni's transfer. The parent appears to have objected to Piantoni's classroom management techniques, but monitoring by supervisors revealed that Piantoni's techniques were appropriate.

Although no problems were identified by her supervisor, Piantoni was transferred to new work sites in a middle school and a high school. The only explanation offered for the transfer of this 30 plus year elementary school teacher to a middle school/high school position was that she possessed all of the necessary certifications and qualifications for the position and that it was difficult to find employees for the secondary division. But the Board has not supplied any evidence to support that assertion. The only documented explanation for the transfer is the principal's letter stating that he had received another letter from Lepore who hoped to have a change in physical education personnel in the Robinson Elementary School. There is no suggestion that Piantoni's transfer was intended to address any concerns the school administration might have had with her teaching performance. Compare Camden Bd. of Ed., P.E.R.C. No. 2001-9, 26 NJPER 366 (¶31148 2000) (teacher transferred to satisfy athletic association's concerns about his coaching, not because of any judgments about his teaching performance). Under all these circumstances, we conclude that Piantoni has proven that she was transferred between work sites for disciplinary reasons.

Under all these circumstances, we order the Board to return Piantoni to the Robinson Elementary School.

ORDER

The Hamilton Township Board of Education is ordered to return Linda Piantoni to the Robinson Elementary School.

BY ORDER OF THE COMMISSION

Millicent A. Wasell

Millicent A. Wasell
Chair

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

DATED: June 28, 2001
Trenton, New Jersey
ISSUED: June 29, 2001