

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

OLD BRIDGE TOWNSHIP BOARD
OF EDUCATION,

Respondent,

-and-

Docket No. TO-2005-002

OLD BRIDGE TOWNSHIP EDUCATION
ASSOCIATION,

Petitioner.

SYNOPSIS

The Public Employment Relations Commission dismisses a petition for contested transfer determination filed by the Old Bridge Township Education Association. The petition alleges that the Old Bridge Township Board of Education transferred a teacher between work sites for disciplinary reasons in violation of N.J.S.A. 34:13A-25. The Board failed to file an Answer and the Association moved for summary judgment. The Chairman determined that a late Answer filed by the Board would not be considered, but denied summary judgment on the merits because neither party had had the opportunity to argue why the transfer was or was not disciplinary. The Association argues that the teacher was transferred for his refusal to do bus duty, among other things. The Commission concludes that, given the statements of three administrators about the teacher's difficulty in getting along with others, the dominant reason for the transfer was not disciplinary, but that the Board sought to place the teacher in a position where he could continue to perform well without having conflicts with fellow employees.

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

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Appearances:

For the Respondent, Sills, Cummis, Radin, Tischman,
Epstein & Gross, attorneys (Philip E. Stern, of
counsel)

For the Petitioner, Wills, O'Neill & Mellk, attorneys
(Arnold M. Mellk, of counsel)

DECISION

On August 30, 2004, the Old Bridge Township Education Association petitioned for a contested transfer determination. The petition alleged that a teacher was transferred between work sites for disciplinary reasons in violation of N.J.S.A. 34:13A-25. On September 1, we notified the petitioner that N.J.A.C. 19:18-2.2(b)6 requires that a petition be accompanied by all documents and affidavits supporting the petition's factual allegations. On September 9, the petitioner filed a supporting affidavit from the teacher.

On September 9, 2005, we notified the respondent that a petition had been filed and that it had until September 29 to file an Answer. We stated that the Answer shall specifically admit, deny or explain each of the allegations set forth in the petition, and that, if no Answer is filed, all allegations in the petition shall be deemed to be admitted to be true and shall be so found by the Commission, unless good cause to the contrary is shown. No Answer was filed.

On December 2, 2004, the petitioner moved for summary judgment on the basis of the respondent's failure to file an Answer. Any response to the motion was due by December 13. On January 6, 2005, the Board filed an Answer and letter opposing summary judgment and asking that the case be decided on the merits.

On January 27, 2005, we granted the Chairman authority to decide the motion for summary judgment. The Chairman then found no good cause for not filing a timely Answer or a timely response to the motion for summary judgment and determined that the Answer would not be considered. He nevertheless denied summary judgment on the merits because neither party had had the opportunity to argue why, given the facts alleged in the petition and now deemed to be admitted to be true, this transfer was or was not disciplinary within the meaning of N.J.S.A. 34:13A-25. The Chairman set a briefing schedule and asked the parties to address

the standards established in West New York Bd. of Ed., P.E.R.C. No. 2001-41, 27 NJPER 96 (¶32037 2001).

The following are the factual allegations in the petition that were deemed to be admitted to be true and that form the basis for our determination:

During a meeting with Superintendent Bosco, I asked him, why am I being transferred from the Middle School? He said, because you can't get along with people. I then asked him who? He said the entire physical education staff. Dr. Bosco made comments about my personality. He said to me, I understand you're a perfectionist. I understand you are very, very, very rule structured. I understand your personality perfectly. We've never gone out and had a beer, but I understand your personality perfectly.

I spoke with Dr. Gannon, the principal at Sandburg Middle School about my transfer on June 17. He said to me, from what I understand, you're really good at your job. I understand you have problems communicating with other people. Dr. Gannon told me it's my first year here (Middle School) and that I should do everything the way other teachers do it, and not complain. He remarked that I was the new guy on the block.

I spoke with Frank Notaro, the supervisor of health and physical education about my transfer on June 18. Mr. Notaro said he had something to do with the transfer. He told me, you've got to get along with people, I'm telling you now, they're going to come after you, this is the last move you're going to make. I asked Mr. Notaro, who don't I get along with? He said, everybody, everybody complained. Mr. Notaro said to me, here's the thing, you're an excellent teacher, the kids like you, you just can't work with other people, everybody wants to kill you.

Mr. Notaro went on to say, the two Middle School principals want me out of their building. When I told Mr. Notaro the reason Principal Popovich doesn't like me is because the union told him to stop making me do bus duty, after I had already informed him I wasn't supposed to have it since I travel each day. Mr. Notaro said you're right, 99% of the time you're right. Mr. Notaro told me I go by the book constantly and that's where I run into problems. Shocked, I asked, going by the book? He said yeah, yeah. Mr. Notaro went on to say there are things in this job that he doesn't have to do, but he does them because he doesn't want a problem. He told me, I'm now going to be in a position where I won't work with other people.

On February 15, 2005, the petitioner filed a brief. It contends that the teacher was transferred for his refusal to do bus duty, among other things.

On February 15, 2005, the respondent filed a brief accompanied by the same affidavit and documents it sought to file with its untimely Answer. The respondent requests reconsideration of the decision not to accept its Answer. It asserts that the lateness of the Answer was due to the respondent's attorney rather than any inattentiveness by the respondent. It asserts that strict adherence to the timelines governing the filing of an Answer "will work surprise or injustice or interfere with the proper effectuation of the act." See N.J.A.C. 19:10-3.1(b).

Reconsideration will be granted only for extraordinary circumstances not present here. N.J.A.C. 19:18-3.14; 19:14-8.4.

The respondent has not shown that it had good cause for not filing a timely Answer or a timely response to the motion for summary judgment. Accordingly, this case will be decided based on the allegations in the petition that have been deemed to be admitted to be true.

N.J.S.A. 34:13A-25 provides that transfers of employees between work sites are not mandatorily negotiable or legally arbitrable. However, transfers of school employees between work sites for disciplinary reasons are prohibited. Where we find that a school employee was transferred for disciplinary reasons, the remedy is to return the employee to the former work site.

As we stated in West New York:

Our case law does not establish a bright line test for assessing whether a transfer is disciplinary. . . . But read together, our 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]

According to the petition, the teacher was told by the superintendent that he was transferred because he could not get along with the entire physical education staff; told by a principal that he was transferred because he had problems communicating with other people; and told by a supervisor that everybody complained about him, that he cannot work with other people, and that he runs into problems because he constantly goes by the book.

We will assume for purposes of this decision that "going by the book" referred to the teacher's informing the principal that he should not have bus duty because of his traveling physical education position. Such a reason is punitive and disciplinary.

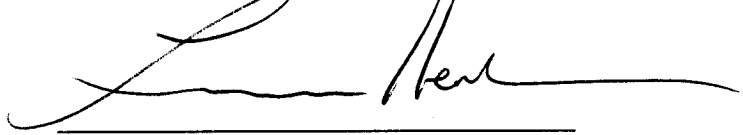
However, this punitive reason is just part of the overall picture of a teaching staff member who was transferred to a position where he would not have to work with other staff members because he did not get along with other staff members. The transfer appears to have been more about operational and staffing concerns than punishment.

The petitioner argues that the transfer was in retaliation for the teacher's refusal to perform bus duty, among other things. Given the statements of three administrators about the teacher's difficulty in getting along with others, we conclude that those "other things" were the dominant reason for the transfer and we conclude that they are not disciplinary. The respondent appears to be looking for a position in which to place the teacher where he can continue to perform well as a teacher without having conflicts with his fellow employees. Under these circumstances, the petitioner has not proven that the transfers were disciplinary. We dismiss the petition.

ORDER

The petition is dismissed.

BY ORDER OF THE COMMISSION

A handwritten signature in black ink, appearing to read "Lawrence Henderson", written over a horizontal line.

Lawrence Henderson
Chairman

Chairman Henderson, Commissioners DiNardo, Fuller and Watkins voted in favor of this decision. Commissioner Buchanan voted against this decision. Commissioners Katz and Mastriani were not present.

DATED: April 28, 2005
Trenton, New Jersey
ISSUED: April 28, 2005