

P.E.R.C. NO. 2006-101

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

EAST ORANGE BOARD OF EDUCATION,

Respondent,
-and-

Docket No. TI-2006-004

CLARISSE SMITH-JARVIS,

Petitioner.

EAST ORANGE BOARD OF EDUCATION,

Respondent,
-and-

Docket No. TI-2006-005

RODNEY BEAVER,

Petitioner.

EAST ORANGE BOARD OF EDUCATION,

Respondent,
-and-

Docket No. CO-2006-153

EAST ORANGE EDUCATION ASSOCIATION,

Charging Party.

SYNOPSIS

The Public Employment Relations Commission denies the East Orange Board of Education's motion for summary judgment. Clarice Smith-Jarvis and Rodney Beaver petitioned for contested transfer determinations claiming that the Board transferred them between work sites for disciplinary reasons in violation of N.J.S.A. 34:13A-25. The East Orange Education Association filed an amended unfair practice charge alleging that the Board violated the Act when it transferred Smith-Jarvis, Beaver and other employees because they spoke out in opposition to the non-renewal of a co-worker's employment contract. The Commission concludes that there are issues in both the contested transfer petitions and the unfair practice charge that cannot be decided without a hearing.

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, Schwartz Simon Edelstein Celso & Kessler LLP, attorneys (Nicholas Celso, III, on the briefs)

For the Petitioners and Charging Party, Oxfeld Cohen, P.C. attorney (Benjamin A. Spivack, on the brief)

DECISION

On December 1, 2005, Clarice Smith-Jarvis and Rodney Beaver petitioned for contested transfer determinations. They claim that the East Orange Board of Education transferred them between work sites for disciplinary reasons in violation of N.J.S.A. 34:13A-25.^{1/} More specifically, Smith-Jarvis alleges that she was transferred from the Costley Middle School to the Garvin Elementary School because she was a "resister." Beaver alleges that he was transferred from the Costley Middle School to the Carver Institute to teach 2nd grade because he asked questions about the whole school reform model and because he was a "resister."

On December 13 and 27, 2005 and April 6, 2006, the East Orange Education Association filed an unfair practice charge and amendments against the Board. Paragraph 8 of the amended charge alleges that Smith-Jarvis, Beaver and other employees were transferred because they spoke out in opposition to the non-renewal of a co-worker's employment contract.

On May 8, 2006, the Board filed a motion for summary judgment supported by a certification and documents. The Board seeks dismissal of the contested transfer allegations and

^{1/} N.J.S.A. 34:13A-25 applies to school board employees and provides that: "Transfers of employees by employers between work sites shall not be mandatorily negotiable except that no employer shall transfer an employee for disciplinary reasons."

paragraph 8 of the amended charge. The Board bases its motion on responses to a Request for Admissions in which the charging party Association admitted that Smith-Jarvis and Beaver had requested to be transferred out of Costley Middle School. In those responses, the charging party also denied that the teachers had been transferred out of the Costley Middle School pursuant to their requests.

On May 31, 2006, the petitioners and charging party filed a brief opposing the motion, supported by certifications and documents. This brief admits that in January and April 2005, Smith-Jarvis and Beaver, respectively, requested transfers out of the Costley Middle School, but it alleges that their transfers did not occur until August 30 and were punitive, retaliatory and disciplinary. According to the petitioners and charging party, they were transferred after an August Board meeting at which the Superintendent allegedly stated that the petitioners were resisters to the whole school reform program and were going to be removed.

On June 12, 2006, the Board filed a reply brief again asserting that the petitioners were transferred pursuant to their requests. Its brief denies that the Superintendent made the statement alleged or transferred employees because of their protected activity. The brief also asserts that it acted on the transfer requests at an appropriate time several months after

they were made, but it has not submitted a factual basis explaining why the transfers were not made until August.

Summary judgment will be granted if there are no material facts in dispute and the movant is entitled to relief as a matter of law. N.J.A.C. 19:14-4.8(d); Brill v. Guardian Life Ins. Co. of America, 142 N.J. 520, 540 (1995); Judson v. Peoples Bank & Trust Co., 17 N.J. 67, 73-75 (1954).

The 5.4a(3) allegations in paragraph 8 of the unfair practice charge involving employees other than Smith-Jarvis and Beaver are not addressed by this motion and must proceed to hearing. In addition, the 5.4a(1) allegations involving the statements allegedly made by the Superintendent and the Costley School principal are not addressed by this motion and must proceed to hearing. As for the 5.4a(3) and contested transfer allegations involving Smith-Jarvis and Beaver, we cannot determine without a hearing whether the August transfers from a middle school to the elementary schools were consistent with and in response to the earlier requests, as argued by the Board in its motion; or to improve the educational programs at the affected schools, as stated by the Superintendent in his grievance response; or for disciplinary and retaliatory reasons

as alleged by the petitioners/charging party.^{2/} Accordingly, we deny the Board's motion for summary judgment.

ORDER

Summary judgment is denied.

BY ORDER OF THE COMMISSION

Chairman Henderson, Commissioners Buchanan, DiNardo, Fuller and Watkins voted in favor of this decision. None opposed. Commissioner Katz was not present.

ISSUED: June 29, 2006

Trenton, New Jersey

^{2/} We recognize that a transfer request may be granted to improve educational programs and that the first two reasons are not necessarily inconsistent.