

P.E.R.C. NO. 2015-1

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION
AND
COMMISSIONER OF EDUCATION

In the Matter of

TRENTON ADMINISTRATORS AND
SUPERVISORS ASSOCIATION,

Petitioner,

-and-

PERC DOCKET NO. TO-2014-001

CITY OF TRENTON BOARD OF EDUCATION,

Respondent.

-and-

MONIQUE HARVEY,

Petitioner,

AGENCY DOCKET NO. 190-8/13

OAL DOCKET NO. 14855-13

-and-

CITY OF TRENTON BOARD OF EDUCATION,

Respondent.

SYNOPSIS

The Chair of the Public Employment Relations Commission and the Acting Commissioner of Education issue a Joint Order consolidating for hearing a petition filed by Monique Harvey before the Commissioner of Education and a contested transfer petition before PERC filed by the Trenton Administrators and Supervisors Association. The Chair and Commissioner further hold that the predominant interest rests with the Commissioner of Education.

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Appearances:

For the Petitioners Trenton Administrators &
Supervisors Association and Monique Harvey, Robert M.
Schwartz, attorney

For the Respondent/Respondent, Parker McCay, attorneys
(Carl Tanksley, of counsel)

DECISION

On August 27, 2013, Petitioner Trenton Administrators and
Supervisors Association ("Association") filed a Petition for a
Contested Transfer Determination with the Public Employment
Relations Commission ("PERC"). The petition alleges that Monique

Harvey was transferred from supervisor to coordinator for disciplinary reasons in violation of N.J.S.A. 34:13A-25.^{1/}

On August 22, 2013, Petitioner Monique Harvey filed a verified Petition of Appeal with the Commissioner of Education seeking a determination that the Trenton Board of Education (Board) violated her tenure rights by transferring her from the tenured position of supervisor to the non-certified position of coordinator. The petition further asserts that the Board did not obtain prior approval from the Executive County Superintendent for use of the unrecognized title of coordinator.

The Board denies the allegations in both cases and has asserted affirmative defenses. On October 16, 2013, petitioner's Commissioner of Education petition was transferred to the Office of Administrative Law ("OAL") for hearing as contested cases. On April 21, 2014, petitioner filed a motion to consolidate the Commissioner of Education and PERC cases and for a determination of predominant interest.

On May 30, 2014, Administrative Law Judge Susan M. Scarola issued an Order for Consolidation and Determination of Predominant Interest finding the matters should be consolidated

^{1/} This provision of the New Jersey Employer-Employee Relations Act provides: "Transfers of employees by employers between work sites shall not be mandatorily negotiable except that no employer shall transfer an employee for disciplinary reasons."

and that the Commissioner of Education has the predominant interest.^{2/}

Having independently evaluated the record and considered the Administrative Law Judge's Order, the Chair of the Public Employment Relations Commission on July 2, 2014, acting pursuant to authority delegated to her by the full Commission, and the Acting Commissioner of Education on July 10, 2014, made the following determination in this matter.

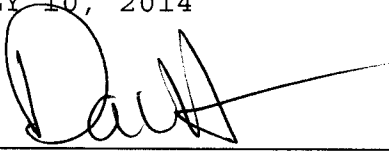
JOINT ORDER

The matters should be consolidated for hearing before the Administrative Law Judge for the reasons set forth in her initial decision. That decision is modified to note that the Association has filed a Contested Transfer Petition only and not an unfair practice charge with PERC. The Commissioner of Education has the predominant interest. The Administrative Law Judge will first perform an analysis of all education law issues and then make a determination as to whether the reason for Harvey's transfer was disciplinary in violation of N.J.S.A. 34:13A-25. The Administrative Law Judge will first offer recommended findings of fact and conclusions of law to both the Public Employment Relations Commission and the Commissioner of Education, disposing

^{2/} The ALJ's decision states that the Trenton Administrators and Supervisors Association is not the Petitioner in the PERC matter. PERC has not received an amended Contested Transfer Petition substituting Harvey for the Association.

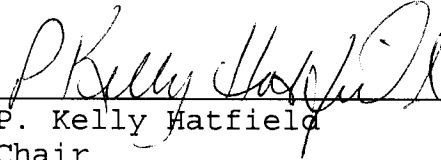
of all issues in controversy through a single initial decision under N.J.A.C. 1:1-18.3 and consistent with N.J.A.C. 1:1-17.8(a). Upon transmittal of the initial decision to both agencies, the underlying record will be forwarded to the Commissioner of Education to determine whether the education laws were violated. The Commissioner's decision and the complete record will then be sent to the Public Employment Relations Commission to render a decision on whether petitioner was transferred for predominately disciplinary reasons.

DECISION RENDERED BY THE
COMMISSIONER OF EDUCATION ON
JULY 10, 2014



David C. Hespe
Acting Commissioner
Trenton, New Jersey

DECISION RENDERED BY THE CHAIR
OF THE PUBLIC EMPLOYMENT
RELATIONS COMMISSION ON
JULY 2, 2014



P. Kelly Hatfield
Chair
Trenton, New Jersey