

P.E.R.C. NO. 2018-10

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

PATERSON STATE OPERATED SCHOOL DISTRICT,

Respondent,

-and-

Docket No. TO-2017-001

PATERSON EDUCATION ASSOCIATION,

Petitioner.

SYNOPSIS

The Public Employment Relations Commission denies the District's motion for summary judgment in a contested transfer case filed by the Association. The District argued that the petition was filed more than 90 days after the unit member was notified of the transfer, and was therefore untimely per N.J.A.C. 19:18-2.3. Finding that the only certified statement on record concerning the date of receipt indicates that the notice of transfer was received three days after the District's proffered date and within 90 days of the petition, the Commission holds that the contested transfer petition was timely filed.

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, Robert E. Murray, LLC, attorneys
(Karen A. Murray, of counsel; Robert E. Murray, on the
brief)

For the Petitioner, Springstead & Maurice, attorneys
(Alfred F. Maurice, of counsel)

DECISION

On September 21, 2016, the Paterson Education Association petitioned for a contested transfer determination. The Association alleges that the Paterson State Operated School District transferred a teacher between work sites for disciplinary reasons in violation of N.J.S.A. 34:13A-25. The petition was supported by a September 27, 2016 certification of the transferred employee.

On October 26, 2016, the District filed an Answer denying that the petitioner was transferred for disciplinary reasons. The Answer was supported by an October 26, 2016 certification of Principal Jorge Ventura of the District's School 29.

The matter was assigned to a Commission staff agent to clarify the issues in dispute and explore the possibility of settlement. N.J.A.C. 19:18-3.2. On May 26, 2017, the staff agent was notified that the matter would not settle.

On May 26, 2017, a briefing schedule was set pursuant to N.J.A.C. 19:18-3.9. By letter of June 2, the Case Administrator granted the District's request to file an amended Answer.^{1/} On June 12, the District filed an amended Answer asserting that the Association's petition was untimely. The Association did not seek leave to file a brief in reply to the amended Answer. On June 28, a new briefing schedule was set with each party's brief due July 19.

On July 12, 2017, the District filed a motion to dismiss the petition alleging that it was untimely. On July 12, the Case Administrator notified the parties that the Commission would treat the District's motion as a motion for summary judgment and therefore the Association would have ten days to respond. See N.J.A.C. 19:18-3.10(b) and N.J.A.C. 19:14-4.8(c). On July 21,

^{1/} By letter of May 31, 2017, the Commission Case Administrator notified the District that its November 1, 2016 request for an evidentiary hearing did not comply with the requirements of N.J.A.C. 19:18-3.8(a). By letter of June 2, 2017, the Case Administrator permitted either party another opportunity to file a request for an evidentiary hearing in compliance with the regulation. By letter of June 28, the Case Administrator notified the parties that neither party had filed a compliant request for an evidentiary hearing and therefore a new briefing schedule would issue.

the Association filed its response to the District's motion for summary judgment. The Association's response to the motion was supported by a July 13, 2017 certification of the transferred unit member.

Summary judgment will be granted if there is no genuine issue of material fact and the movant is entitled to relief as a matter of law. N.J.A.C. 19:14-4.8(e); Brill v. Guardian Life Ins. Co. Of America, 142 N.J. 520, 540 (1995). In determining whether there exists a "genuine issue" of material fact that precludes summary judgment, we must "consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill at 540.

N.J.A.C. 19:18-2.3 requires that a contested transfer petition be filed no later than the 90th day from the date of receipt of the notice of transfer.

The petition indicates that the unit member was notified "on or about June 21, 2016" that she was being transferred for the 2016-17 school year. The District notes that the Association attorney's September 27, 2016 cover letter attaching the certification to be included with the petition referred to the unit member as receiving notice of transfer on June 21, 2016. The District also notes that the written notice of transfer was

dated June 21, 2016. The District therefore asserts that written notice of the transfer was received on June 21, 2016 and that because September 19, 2016 is 90 days later, the petition filed on September 21, 2016 was two days late.

The unit member's September 27, 2016 certification did not state on what date she received the written notice of transfer. However, the unit member's July 13, 2017 certification addressed the issue and stated the following:

4. The notice of transfer was dated June 21, 2016. I did not, however, receive the notice on the date it was issued, neither was it sent to my residence as indicated on the notice.
5. I was hand-delivered with a copy of the notice by Principal Ventura on June 24, 2016 not the date indicated in the letter.

Given the June 24, 2016 date of receipt of the notice of transfer letter to which the unit member certified, the Association asserts that the September 21 petition was filed within 90 days as required by N.J.A.C. 19:18-2.3.

Principal Ventura's October 26, 2016 certification did not state when or how he delivered the notice of transfer to the unit member. The District's motion was not accompanied by any supporting certifications regarding the District's assertion that notice of transfer was received on June 21, 2016. The District's motion does not include any proof of service or delivery receipt to refute the unit member's certification that she was hand-

delivered the notice of transfer on June 24, 2016. Regarding the District's arguments about statements from the Association suggesting otherwise, the petition used an approximation ("on or about") for the date of notice of transfer, while the cover letter was an uncertified statement by the Association's attorney. The only certified statement on record that unequivocally, and based upon personal knowledge, stated a specific date for receipt of the notice of transfer was the unit member's July 13, 2017 certification. Cf. Hamilton Tp. Bd. of Ed., P.E.R.C. No. 2004-2, 29 NJPER 323 (¶99 2003) (contested transfer petition dismissed as untimely where Board's certification refuted Association's petition regarding the date of notice of transfer, and Association's affidavit did not indicate a date).

Under these circumstances, we find that the petition was received on June 24, 2016. Therefore, the contested transfer petition had to be filed by September 22, 2016. Since the petition was filed on September 21, 2016, the Association's petition is timely. Accordingly, the District's motion for summary judgment is denied. The parties shall file their briefs on the merits in accordance with the briefing schedule that will

follow this decision, and this matter shall proceed to final determination in accordance with N.J.A.C. 19:18-3.13.^{2/}

ORDER

The Paterson State Operated School District's motion for summary judgment is denied.

BY ORDER OF THE COMMISSION

Chair Hatfield, Commissioners Boudreau, Eskilson and Jones voted in favor of this decision. None opposed. Commissioners Bonanni and Voos were not present.

ISSUED: September 28, 2017

Trenton, New Jersey

2/ The regulation provides in relevant part:

[T]he Commission or its designee shall issue and serve on the parties its findings of fact and conclusions of law, including its determination as to whether the basis of the disputed transfer was predominantly disciplinary, and may take reasonable action to effectuate the purposes of the Act. If no exceptions are filed, the recommended decision shall become a final decision unless the Chairman 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.