

New Jersey Commissioner of Education

Final Decision

Brianna Butts,

Petitioner,

v.

Board of Education of the City of Newark,
Essex County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed and considered. The parties did not file exceptions.

Petitioner in this matter was employed by the Board and was released from employment after a 90-day working test period. Upon review, the Commissioner concurs with the Administrative Law Judge (ALJ) that the Commissioner lacks jurisdiction to adjudicate petitioner's claims, as claims related to working test periods fall under the jurisdiction of the Civil Service Commission.

The Commissioner notes that the ALJ refers in the Initial Decision to a motion to dismiss filed by the Department of Education. The Department of Education is not a party to this matter and the motion to dismiss was filed by the Newark Board of Education, a separate entity. Nonetheless, this correction does not alter the Commissioner's analysis or conclusion.

Accordingly, the Initial Decision is adopted as the final decision in this matter and the petition of appeal is hereby dismissed.

IT IS SO ORDERED.¹



ACTING COMMISSIONER OF EDUCATION

Date of Decision: April 14, 2022

Date of Mailing: April 14, 2022

¹ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A.* 18A:6-9.1. Under *N.J.Ct.R.* 2:4-1(b), a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

SUMMARY DECISION

OAL DKT.NO. EDU 08894-21

AGENCY DKT. NO. 182-9/21

BRIANNA BUTTS,

Petitioner,

v.

**BOARD OF EDUCATION OF THE CITY OF
NEWARK,**

Respondent.

Samuel Wenocur, Esq. for petitioners (Oxfeld Cohen, attorneys)

Bernard Mercado, Esq., for respondent, (Newark City Board of Education)

Record Closed: February 24, 2022

Decided: March 2, 2022

BEFORE **KIMBERLY A. MOSS**, ALJ:

Appellant Brianna Butts appeals the determination by respondent Board of Education of the City of Newark (Newark) releasing her from employment following a ninety-day working test period. The matter was transmitted to the Office of Administrative Law on October 27, 2021, for determination as a contested case. Respondent filed a motion for summary decision on October 26, 2021. Petitioner filed opposition on February

8, 2022. Respondent replied to the opposition on February 24, 2022, on which date the record closed.

FACTUAL DISCUSSION

Petitioner was a civil service employee hired by Newark as a custodial worker under a ninety-day working test period on June 9, 2021. She worked at the South Seventeen Street school during the working test period. Petitioner's performance was rated unsatisfactory during the ninety-day working test period. Petitioner was issued a letter of termination at the end of her ninety-day test period on September 9, 2021. The letter stated that petitioner had a right to appeal to the New Jersey Civil Service Commission in writing within twenty days of receipt of the letter. Petitioner filed an appeal with New Jersey Department of Education on or about September 29, 2021. Petitioner filed the appeal as pro se on September 17, 2021. A notice of appearance by Lorenzo Hall, President of Local 617 on behalf of petitioner was signed by petitioner on September 17, 2021. Hall took part in a telephone conference at OAL on petitioner's behalf.

LEGAL ARGUMENT AND CONCLUSION

At any time prior to transmittal of the pleadings to the OAL, in the Commissioner's discretion or upon motion to dismiss filed in lieu of answer, the Commissioner may dismiss the petition on the grounds that the petitioner has advanced no cause of action even if the petitioner's factual allegations are accepted as true or for lack of jurisdiction, failure to prosecute or other good reason. N.J.A.C. 6A:3-1.10.

The New Jersey Commission of Education has jurisdiction only over controversies and disputes that arise under the school laws. The New Jersey Civil Service Commission hears disputes that arise under civil service law involving its employees. The Civil Service commission among other things renders final decisions in appeals concerning employees in there working test period including termination at the end of the working test period for unsatisfactory performance. N.J.S.A. 11A:2-6(a)(4).

Petitioner was a civil service employee who was sent a termination notice on September 9, 2021, which specifically stated that to appeal the decision she would have to file an appeal with the Civil Service Commission within twenty days. She filed the appeal within twenty days, but with the Department of Education, not the Civil Service Commission. Petitioner states that she filed the petition on September 17, 2021, as proposed. However, a notice of representation was also filed on her behalf by Lorenzo Hall, president of Local 617 on September 17, 2021. Petitioner was represented by the union before the expiration of the twenty-day period.

R.1:13-4(a) On Motion. Subject to the right to be prosecuted by indictment, if any court is without jurisdiction of the subject matter of an action or issue therein or if there has been an inability to serve a party without whom the action cannot proceed as provided by R. 4:28-1, it shall, on motion or on its own initiative, order the action, with the record and all papers on file, transferred to the proper court, or administrative agency, if any, in the State. The action shall then be proceeded upon as if it had been originally commenced in that court or agency.

In Driggins v. Board of Education of the City of Newark, 93 N.J.A.R. 2d (EDU) 371 the Commissioner of Education remanded the case to OAL to determine if the matter should be dismissed for failure to comply with the ninety day rule. An initial decision had previously been rendered on the merits. Driggins had requested back pay and benefits because of being acquitted of criminal charges. Newark stated that he was precluded from back pay due to the circumstances regarding his retirement. Driggins filed a complaint in Middlesex County Superior Court seeking damages because of not receiving back pay. Middlesex County Superior Court transferred the matter to Essex County Superior Court. At that time the Commissioner of Education requested that the matter be transfer to the Commissioner of Education.

In this matter, petitioner filed a petition with the wrong agency not the wrong court. In addition, in the Driggins case the Commissioner of Education requested that the matter be transferred from Superior Court to the Commission of Education. It then remanded

the matter. In this case the Department of Education elected to file a motion to dismiss the petitioner. The Department of Education does not handle civil services matters. Petitioner is requesting that the Department of Education to transfer the matter to Civil Service Commission. The Department of Education has decided to file a motion to dismiss. This is distinguished from Driggins where the Commissioner of Education requested that the matter be transferred from Superior Court to the Commissioner of Education.

Petitioner received a letter from Newark stating that if she wanted to appeal her termination, the appeal had to be filed with the Civil Service Commission within twenty days. Petitioner filed her appeal within twenty days but with the Department of Education.

Petitioner argued that she was pro se when she filed the petition. Petitioner had a representative Lorenzo Hall, President of Local 617 file an appearance on her behalf on or about September 17, 2021, which is the same day she filed the petition. She had representation with the union within twenty days of the notice of termination.

I **CONCLUDE** that the Petitioner filed her petition with the wrong agency. The Department of Education Decided to file a Motion to Dismiss in this matter and not transfer it to the Civil Service Commission.

I further **CONCLUDE** that petitioner was represented by the president of Local 617 on September 17, 2021, within twenty days of the date she received the termination notice.

ORDER

It is therefore **ORDERED** that the respondent's Motion to Dismiss the petition be and hereby is **GRANTED**.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified, or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of Education does not adopt, modify, or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

March 2, 2022



DATE

KIMBERLY A. MOSS, ALJ

Date Received at Agency:

March 2, 2022

Date Mailed to Parties:

March 2, 2022

ljb