

P.E.R.C. NO. 2003-76

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WILMA J. FARMER,

Petitioner,

-and-

Docket No. TI-2001-3

CAMDEN BOARD OF EDUCATION,

Respondent.

SYNOPSIS

The Public Employment Relations Commission dismisses a petition for contested transfer determination filed by Wilma J. Farmer. Farmer, who was the Assistant Superintendent for Administration and Support Services for the Camden School District, alleged that the Board violated N.J.S.A. 34:13A-25 by transferring her to the position of Director, Curriculum and Instruction for disciplinary reasons. The Board filed a motion for summary judgment asserting that there are no disputed material factual issues, that Farmer was not transferred between work sites, and that her retirement made the petition moot. The Commission concludes that the N.J.S.A. 34:13A-25 and 27 apply only to disciplinary transfers where the employee's work site has been changed. Since Farmer's work site did not change, the Commission dismisses the petition. The Commission does not consider the Board's alternative assertion that the petition is moot.

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 Petitioner, Zeller & Bryant, attorneys
(Angela B. Kosar, on the brief)

For the Respondent, The Murray Law Firm, attorneys
(Laurette Asante, on the brief)

DECISION

On June 25, 2001, Dr. Wilma J. Farmer, then Assistant Superintendent for Administration and Support Services for the Camden School District, petitioned for a contested transfer determination. Farmer alleged that her employer, the Camden Board of Education, violated N.J.S.A. 34:13A-25 by transferring her to the position of Director, Curriculum and Instruction for disciplinary reasons.^{1/}

On September 28, 2001 the Board filed an Answer asserting, among other things, that the petition was procedurally defective,

^{1/} The petitioner is arguing that the transfer was a form of invidious discrimination and is apparently pursuing this claim in other administrative and/or judicial forums.

that the transfer was made for operational reasons, and that the transfer did not violate any of the petitioner's contractual or statutory rights.

On March 22, 2002, a Notice of Hearing issued assigning the case to Hearing Examiner Jonathan L. Roth. On June 30, 2002, the petitioner retired.

On February 8, 2003 the Board filed a motion for summary judgment asserting that there were no disputed material factual issues and that, as a matter of law, the petition should be dismissed because Farmer was not transferred "between work sites" within the meaning of N.J.S.A. 34:13A-25, and because Farmer's retirement on June 22, 2002 made the petition moot.

On March 23, 2003, the petitioner responded to the motion.^{2/} She acknowledges that her work site did not change, but asserts that the Commission has jurisdiction in a contested transfer case to determine that a transfer was nonetheless disciplinary. She also asserts that we have the power to consider a technically moot petition to prevent repeated violations of the Act.

On April 30, 2003, the Chair referred the motion to the full Commission. N.J.A.C. 19:18-3.10(b); N.J.A.C. 19:14-4.8(a).

It is undisputed that the transfer did not change the petitioner's work site. At all relevant times she worked in the

^{2/} We have not considered the Board's reply brief. Our rules do not provide for such a filing and it was submitted without leave. See N.J.A.C. 19:14-4.8.

district's administration building, albeit on a different floor after the change in her job.

N.J.S.A. 34:13A-25 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.

N.J.S.A. 34:13A-27 provides, in part:

a. If there is a dispute as to whether a transfer of an employee between work sites or withholding of an increment of a teaching staff member is disciplinary, the commission shall determine whether the basis for the transfer or withholding is predominately disciplinary.

b. If the commission determines that the basis for a transfer is predominately disciplinary, the commission shall have the authority to take reasonable action to effectuate the purposes of this act.

We have construed these statutes consistent with their terms and have held that they apply to disciplinary transfers only where the employee's work site has been changed. See Mt. Arlington Bd. of Ed., P.E.R.C. No. 98-4, 23 NJPER 450 (¶28211 1997). Mt. Arlington applies to this dispute so we will dismiss the petition. We need not consider the Board's alternative assertion that the petition is moot.

ORDER

The petition is dismissed.

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Chair

Chair Wasell, Commissioners Buchanan, DiNardo, Mastriani, Ricci and Sandman voted in favor of this decision. Commissioner Katz was not present.

DATED: May 29, 2003
Trenton, New Jersey
ISSUED: May 30, 2003