

P.E.R.C. NO. 2004-2

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

HAMILTON TOWNSHIP BOARD
OF EDUCATION,

Respondent,

-and-

Docket No. TO-2002-1

HAMILTON TOWNSHIP EDUCATION
ASSOCIATION,

Petitioner.

SYNOPSIS

The Public Employment Relations Commission dismisses a Petition for Contested Transfer Determination filed by the Hamilton Township Education Association. The petition alleges that the Hamilton Township Board of Education transferred a food service employee between work sites for disciplinary reasons in violation of N.J.S.A. 34:13A-25. The Commission concludes that the petition was filed more than 90 days from the date of the notice of transfer. The Commission therefore dismisses the petition as untimely pursuant to N.J.A.C. 19:18-2.3.

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, Destribats, Campbell, DeSantis,
Magree & O'Donnell, attorneys (Dennis M. DeSantis, of
counsel)

For the Petitioner, Bergman & Barrett, attorneys
(Michael T. Barrett, of counsel)

DECISION

On March 5, 2002, the Hamilton Township Education Association petitioned for a contested transfer determination. The petitioner alleges that the Hamilton Township Board of Education transferred a food service employee between work sites for disciplinary reasons in violation of N.J.S.A. 34:13A-25. The petition was supported by an affidavit of the employee.

On May 14, 2002, the Board filed an Answer denying that the petitioner was transferred for disciplinary reasons and asserting that the petition is untimely.

The matter was assigned to a Commission staff agent to clarify the issues in dispute and explore the possibility of

settlement. On January 10, 2003, the staff agent was notified that the matter would not settle. Neither party requested an evidentiary hearing and on February 3, a briefing schedule was set pursuant to N.J.A.C. 19:18-3.9.

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 employee was notified of the transfer on December 15, 2001. The employee's supporting affidavit does not indicate when she was notified of the transfer.

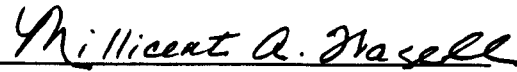
The Board's Personnel Director certified that the statements in the Board's Answer are true. The Answer states that the employee was notified on November 29, 2001 that she would be transferred effective November 30.

Under these circumstances, we must accept the fact that the employee was notified of the transfer on November 29, 2001 and that a petition therefore had to be filed by February 27, 2002. The petition was dated February 28 and not filed until March 5, 2002. Accordingly, it is untimely and therefore dismissed.

ORDER

The petition is dismissed.

BY ORDER OF THE COMMISSION



Millicent A. Wasell
Chair

Chair Wasell, Commissioners DiNardo, Katz, Mastriani, Ricci and Sandman voted in favor of this decision. None opposed. Commissioner Buchanan was not present.

DATED: July 24, 2003
Trenton, New Jersey
ISSUED: July 25, 2003