

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

Mary A. Delagrangé,

*Appellant,*

v.

Case No. 07-TFR-03-0076

Department of Education,

*Appellee.*

**ORDER**

This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

After a thorough examination of the record and a review of the Report and Recommendation of the Administrative Law Judge, along with any objections to that report which have been timely and properly filed, the Board hereby adopts the Recommendation of the Administrative Law Judge.

Wherefore, it is hereby **ORDERED** that the instant appeal be **DISMISSED** for lack of jurisdiction, pursuant to O.R.C. § 4117.10(A).



Lumpe – Aye

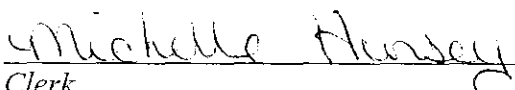
Booth – Aye

  
\_\_\_\_\_  
J. Richard Lumpe, *Chairman*

**CERTIFICATION**

The State of Ohio, State Personnel Board of Review, ss:

I, the undersigned clerk of the State Personnel Board of Review, hereby certify that this document and any attachment thereto constitute ~~(the original)~~ a true copy of the original order or resolution of the State Personnel Board of Review as entered upon the Board's Journal, a copy of which has been forwarded to the parties this date, January 8, 2008.

  
\_\_\_\_\_  
Michelle Hursey  
*Clerk*

**NOTE:** Please see the reverse side of this Order or the attachment to this Order for information regarding your appeal rights.

1-8-08

**STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW**

Mary Ann Delagrance,

Case No. 07-TFR-03-0076

*Appellant*

v.

November 27, 2007

Ohio Department of Education,

*Appellee*

Christopher R. Young  
*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This matter comes on for consideration on November 14, 2007, upon the Appellee's motion to dismiss filed on June 5, 2007, upon the status conference which was held with all parties in attendance on June 13, 2007, at 10:00 a.m. and upon the Appellant's memorandum in opposition to motion to dismiss of Appellee, Ohio Department of Education filed on June 22, 2007. It should be noted that again a status conference on this case was held on June 13, 2007 at 10:00 a.m. and the issue of this Board's jurisdiction to consider the matter was raised by the undersigned after first looking at the Appellee's motion to dismiss without the benefit of the Appellant having filed any memorandum in opposition, as the time for that had not elapsed at that time. As such, the undersigned allowed Appellant's counsel to file the aforementioned memorandum in opposition to Appellee's motion to dismiss on June 22, 2007.

In the instant appeal, based upon the information provided by Appellee's motion, the Appellant's memorandum in opposition, and in the pleadings within the case file it was noted that on February 21, 2007, Ms. Delagrance was notified by the Appellee agency, the Ohio Department of Education that her position as an Educational Employee Consultant headquarters was going to be moved from Summit County to Franklin County effective April 1, 2007. It should be noted that that alleged transfer never took place, nor has it taken place to date and was best described by the Appellee as a "recall of an assignment" and not necessarily a transfer. However, it was noted that whatever the name, which this action would be called, nothing has happened even though she was notified and that time has elapsed. While the Appellee contended in its motion to dismiss that the Appellant

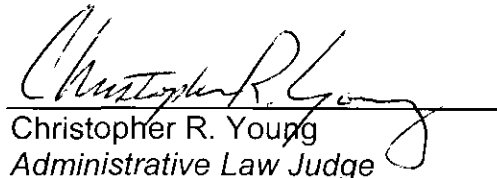
filed prematurely, the undersigned finds and concludes that the Appellant timely filed an appeal within ten days from being notified on February 21, 2007, of an apparent transfer to this Board which is before the undersigned. Thus, Appellee's assertion that the appeal to this Board was filed prematurely is not well taken. However, the Appellee has also alleged that the Appellant, in her position, was hired and treated as an unclassified employee, which would in essence divest this Board of jurisdiction to consider this matter. However, the Appellee has also asserted that the Appellant herein is a member of a collective bargaining unit and therefore has no right to bring her dispute before this Board and that she has already filed a grievance to the union in this regard over the exact same issue, that being, as stated in the "did the agency violate the contract when it notified the grievant on January 11, 2007, that her headquarter county would be changed from Summit County to Franklin County"?

Based upon the information contained in the case file and the pleadings herein, the evidence is quite clear that the Appellant, pursuant to a settlement agreement and date stamped on April 14, 2000, the parties, the Ohio Civil Service Employees Association, ASCME Local 11, AFL-CIO and the State of Ohio, the Department of Education entered into a settlement agreement which among other things placed the Appellant, Ms. Delagrance into the bargaining unit as an Educational Employee Consultant. Thus, I make the following findings that the Appellant, Mary Ann Delagrance, was classified as an Educational Employee Consultant in the Ohio Department of Education's office prior to her filing this appeal to this Board on March 1, 2007. I further find that the Educational Employee Consultant classification is included in the collective bargaining unit, which is represented, by the Ohio Civil Service Employees Association, ASCME Local 11, AFL-CIO. The Appellee, the Ohio Department of Education and the Ohio Civil Service Employees Association ASCME Local 11, AFL-CIO have signed a collective bargaining agreement which covers the Appellant's bargaining unit and position as an Educational Employment Consultant pursuant to the settlement agreement previously mentioned and also attached to the Appellee's motion to dismiss as Exhibit D.

In the case at hand, the Appellant had previous to filing the instant appeal with this Board had filed a grievance with the union and the Appellee filed within its motion to dismiss Exhibit 3, which was the State of Ohio Department of Education's response to a step 3 grievance which had been filed by the Appellant on or about January 23, 2007, which was heard on May 7, 2007. It should be noted that the

issue that was grieved at that time within that union grievance was, did the agency violate the contract when it notified the agreement on January 11, 2007, that her headquarter county would be changed from Summit County to Franklin County. In addition to the Appellant having filed the grievances, I also find that the above referenced contract provides for a grievance procedure resulting in final and binding arbitration. Specifically, under Article 25, a grievance procedure within union contract is laid out. Under Article 25.03 the decision and award of an arbiter shall be final and binding on the parties.

Ohio Revised Code Section 4117.10(A) states that where a bargaining agreement provides for a grievance procedure, which culminates in final and binding arbitration, the State Personnel Board of Review has no jurisdiction to consider the merits of those questions. This Board is, therefore, without jurisdiction to consider this appeal. Therefore, I respectfully **RECOMMEND** that this appeal be **DISMISSED** for lack of jurisdiction.

  
Christopher R. Young  
Administrative Law Judge

CRY:dlm