

**COMMONWEALTH OF MASSACHUSETTS**

**SUFFOLK, SS.**

**CIVIL SERVICE COMMISSION**

One Ashburton Place: Room 503  
Boston, MA 0210  
(617) 727-2293

DEBORAH LUCEY,  
Appellant

v.

D-06-213

BILLERICA PUBLIC SCHOOLS,  
Respondent

Appellant's Attorney:

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AFSCME Council 93  
Boston, MA 02108  
(617) 367-6024

Respondent's Attorney:

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Commissioner:

Donald R. Marquis

**DECISION ON RESPONDENT'S MOTION TO DISMISS**

Pursuant to the provisions of G.L. c. 31, § 2(b), the Appellant, Deborah Lucey (hereafter "Lucey" or Appellant") appealed the decision of the Respondent, the Billerica Public Schools (hereafter "Respondent" or "Billerica") alleging that her bumping rights as a permanent civil service employee were denied by Respondent. A pre-hearing conference was conducted at the offices of the Civil Service Commission on November 27, 2006. On December 27, 2006, Billerica filed a Motion to Dismiss the appeal with the

Commission. Appellant filed an opposition to the Motion to Dismiss on January 31, 2007.

### *Factual Background*

Due to budgetary constraints, Respondent decided to reorganize its Clerk/Typists such that they were working in areas of the schools where they were needed the most. On July 20, 2006, Billerica notified Appellant that her ten-month a year position as a permanent Civil Service Clerk/Typist to the Directors at Billerica High School had been consolidated with the position of Clerk/Typist to the Library Supervisor. Based on her length of service, the Clerk/Typist to the Library Supervisor was chosen for the new position. Appellant was assigned to a ten month position as Clerk/Typist in the Special Education department at the high school, effective August 29, 2006.

### *Respondent's Action towards Appellant*

Appellant's appeal to the Civil Service Commission is based on a claim of being separated from her employment and denied bumping rights, while Respondent's Motion to Dismiss is premised on its having transferred Appellant, an action that did not give her the right to bump another employee. However, a review of this case shows that Appellant was in fact reassigned by Respondent, not transferred. Prior civil service decisions have interpreted the term "transfer" as, "a change of employment under the same appointing authority from a position in one class to a similar position in the same or another class or a change of employ in the same position, under the same appointing authority, from one geographical location to a different geographical location shall be one which is both more than a commuting distance from the employee's residence than its prior location and more distant from the employee's residence than his prior location..." In re Butler, Civil

Service Decision, June 19, 1974. Here, Appellant remained in the high school in a Clerk/Typist position where her hours of work, duties, title and salary remained the same. The reassignment did not effect the terms or conditions of her employment, nor did it impact Appellant's commuting distance. These facts demonstrate that Appellant was not transferred. Accordingly, G.L. c. 31, § 35 is not applicable.

This case is distinguishable from transfers that are disciplinary in nature and subject to review by the Commission. In those cases, a transfer often occurs as part of a disciplinary action against an Appellant. Nothing submitted by either party indicates that Lucey's reassignment was disciplinary in nature. Rather, the evidence shows it was made solely as part of a reorganization by the Appointing Authority.

Respondent, although incorrectly terming its action toward Appellant a transfer, appears to have reorganized its Clerk/Typists based on the guidance provided in the applicable Collective Bargaining Agreement ("CBA"), allowing Billerica to "transfer (permanently or temporarily) employees from one job to another in the interest of maximizing the system efficiency." (Ex B, Art. 11). Further, its reassignment of Appellant appears to conform to the Education Reform Act of 1993 giving school principals, superintendents and their designees wide authority to conduct transfers within their schools.

Appellant asserts that Respondent informed her that her position was being abolished and that she could apply for three other positions in the department, but there was no guarantee she would get one of those jobs. She claims that this lack of a guarantee that she would be selected for one of the jobs demonstrates she was separated from her position. Appellant contends that as she was separated from her job due to lack of money

and abolition of the position thus giving her the right to bump any of a number of provisional employees in clerical positions in the department accordance with PAR.15(2). PAR.15 is not applicable to Appellant's situation as she was not laid off. Specifically, there was no cessation of her employment relationship with Billerica. Evidence in the form of the July 20, 2006 letter to Appellant from the Assistant Superintendent of Billerica Schools indicates that, after Appellant declined to accept the three twelve-month positions offered to her, she was assigned to a ten-month position in the Special Education Office at the high school. As such, the Appellant was never separated from her employment with Billerica.

In as much as the Appellant was reassigned and not transferred, the Commission lacks jurisdiction over the Appellant's appeal, and the appeal under Docket No. D-06-213 is hereby *dismissed*.

Civil Service Commission

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Donald R. Marquis, Commissioner

By vote of the Civil Service Commission (Bowman, Guerin, Marquis and Taylor, Commissioners) on April 26, 2007.

A true record. Attest:

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Commissioner

Either party may file a motion for reconsideration within ten days of the receipt of a Commission order or decision. The motion must identify a clerical or mechanical error in the decision or a significant factor the Agency or the Presiding Officer may have overlooked in deciding the case. A motion for reconsideration shall be deemed a motion for rehearing in accordance with G.L. c. 30A, § 14(1) for the purpose of tolling the time for appeal.

Under the provisions of G.L. c. 31, § 44, any party aggrieved by a final decision or order of the Commission may initiate proceedings for judicial review under G.L. c. 30A, § 14 in the superior court within thirty (30) days after receipt of such order or decision. Commencement of such proceeding shall not, unless specifically ordered by the court, operate as a stay of the Commission's order or decision.

Notice:  
Michael J. Maccaro, Esq.  
Matthew E. Feiner, Esq.