

EDU #8085-99
C # 164-02L
SB # 21-02

PATRICIA HABERTHUR, :
 :
 PETITIONER-RESPONDENT, : STATE BOARD OF EDUCATION
 :
 V. : DECISION
 :
 BOARD OF EDUCATION OF THE :
 BOROUGH OF EATONTOWN, :
 MONMOUTH COUNTY, :
 :
 RESPONDENT-APPELLANT. :

Decided by the Commissioner of Education, April 15, 2002

For the Petitioner-Respondent, Weissman & Mintz (Steven P. Weissman,
Esq., of Counsel)

For the Respondent-Appellant, Lane J. Biviano, Esq.

Patricia Haberthur (hereinafter "petitioner") filed a petition of appeal with the Commissioner of Education alleging that the Board of Education of the Borough of Eatontown (hereinafter "Board") had improperly terminated her employment as the district's school business administrator and board secretary when it abolished her position in May 1999. The Board filed a motion for summary decision, arguing that this matter was primarily contractual and, as a result, that the Commissioner did not have jurisdiction over the petitioner's claims.

On March 26, 2002, an Administrative Law Judge ("ALJ"), observing that the petitioner's claim was a combination of contract and school law dealing with a reduction

in force, concluded that the matter was within the Commissioner's jurisdiction. On April 15, 2002, the Commissioner granted the Board's request for interlocutory review of the ALJ's determination. Upon consideration of the papers filed, the Commissioner agreed with the ALJ that he had jurisdiction over this matter and that summary disposition was not appropriate.

On April 22, 2002, the Board filed a motion with the State Board of Education for leave to appeal the interlocutory decision of the Commissioner.

We grant the Board's motion for leave to appeal, and, after careful review of the papers filed on the motion, we affirm the decision of the Commissioner.

We stress in that regard that the petitioner contends, inter alia, that the Board had improperly terminated her employment in May 1999 in violation of N.J.S.A. 18A:17-1, which provides that:

No secretary, assistant secretary, school business administrator or business manager of a board of education of any school district shall, during the term for which he was appointed, be dismissed or reduced in compensation, except for neglect, misbehavior or other offense unless it is otherwise provided in his contract of employment.

N.J.S.A. 18A:6-9 provides the Commissioner with jurisdiction to hear and determine all controversies and disputes arising under the school laws. Since the petitioner, who had been the district's school business administrator and board secretary, claims that she was improperly terminated in violation of the school laws prior to the expiration of her employment contract, we fully agree with the Commissioner that he has jurisdiction over her claim. We also concur that the Commissioner has incidental jurisdiction over the petitioner's other claims.

Accordingly, we affirm the Commissioner's decision to deny the Board's motion for summary decision.¹

June 5, 2002

Date of mailing _____

¹ We note that we have accepted a brief from the Board dated May 11, 2002, which was filed in response to the petitioner's brief in opposition to the instant motion, and that we have considered that brief in reviewing this matter. See N.J.A.C. 6A:4-2.3; 6A:4-1.18.