

NANCY J. BERNARD, KATHLEEN :
R. FOSTER AND STEPHEN M. :
KLING, :

PETITIONERS, :

V. : COMMISSIONER OF EDUCATION

BOARD OF EDUCATION OF THE : DECISION
TOWNSHIP OF WILLINGBORO, :
BURLINGTON COUNTY, :

RESPONDENT. :

_____ :

SYNOPSIS

Petitioners, three tenured payroll clerks, alleged the Board voted to terminate them in a reduction in force while retaining nontenured, less senior and/or nonqualified personnel in job titles for which petitioners were fully qualified and for which they claimed entitlement by virtue of their tenure rights.

In light of the testimony of witnesses and the evidence in the record, the ALJ found that the Board violated the tenure rights of petitioners under *N.J.S.A. 18A:17-2* and that the Board owed a duty to petitioners not only to offer other positions to petitioners, but also to notify them in a clear and unequivocal manner that they were required to take steps to demonstrate their qualifications for those positions. ALJ ordered that petitioners be placed in clerk typist or class 4 secretarial positions previously held by nontenured personnel. ALJ further ordered that petitioners be made whole for any loss of salary and/or emoluments resulting from the failure to appoint petitioners to the positions to which they were entitled by virtue of their tenure rights and be appointed to the disputed positions with compensation. ALJ found that this dispute was not controlled by the collective bargaining agreement and that neither any arbitrator's decision nor the decision of PERC on the issue of whether the payroll systems administrator was a confidential position had any legal effect in this matter.

Commissioner adopted findings and determination in initial decision as his own.

OAL DKT. NO. EDU 6762-96
AGENCY DKT. NO. 305-7/96

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The record of this matter and the initial decision of the Office of Administrative Law have been reviewed. Neither exceptions, nor a request for an extension in which to submit same, were timely filed pursuant to *N.J.A.C.* 1:1-18.4 and 1:1-18.8.

Upon careful and independent review of the record in this matter, the Commissioner concurs with the findings and conclusions of the Administrative Law Judge. Accordingly, the initial decision is affirmed for reasons set forth therein.

IT IS SO ORDERED.

COMMISSIONER OF EDUCATION

Date: December 4, 1997